

BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE
NAVIGABILITY OF THE GILA
RIVER FROM THE NEW MEXICO
BORDER TO THE CONFLUENCE WITH
THE COLORADO RIVER, GREENLEE,
GRAHAM, GILA, PINAL, MARICOPA
AND YUMA COUNTIES, ARIZONA

No.: 03-007-NAV

**REPORT, FINDINGS AND DETERMINATION
REGARDING THE NAVIGABILITY OF THE
GILA RIVER FROM THE NEW MEXICO BORDER TO
THE CONFLUENCE WITH THE COLORADO RIVER**

TABLE OF CONTENTS

	<u>Page</u>
I. PROCEDURE.....	2
II. THE GILA RIVER FROM THE NEW MEXICO BORDER TO THE CONFLUENCE WITH THE COLORADO RIVER	5
A. Upper Gila River Reach (New Mexico border to Florence, Arizona	8
B. Middle Gila River Reach (Florence to Confluence With Salt River.....	8
C. Lower Gila River Reach (Confluence of Salt River to Confluence with Colorado River).....	9
III. BACKGROUND AND HISTORICAL PERSPECTIVES	9
A. Public Trust Doctrine and Equal Footing Doctrine.....	9
B. Legal Precedent to Current State Statutes	12
IV. ISSUES PRESENTED	15
V. BURDEN OF PROOF	17
VI. STANDARD FOR DETERMINING NAVIGABILITY.....	19
VII. EVIDENCE RECEIVED AND CONSIDERED BY THE COMMISSION	21
A. Prehistoric or Pre-Columbian Conditions on the Gila River Watershed	23
B. Early Historical Development of the Gila River Watershed.....	30
C. Settlement and Development of Southern and Central Arizona	35
D. Conditions Around Statehood: Observations and Opinions of Pioneers Who Lived and Traveled in the Area	38
E. Regional Transportation	53
F. Boating on the Gila River.....	57
G. Geology, Geomorphology and Hydrology of the Gila River	62
H. The Gila River at the Confluence of the Colorado	80
VIII. SUMMARY AND CONCLUSION	82
IX. FINDINGS AND DETERMINATIONS	87

GILA RIVER

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Pursuant to Title 37, Chapter 7, Arizona Revised Statutes, the Arizona Navigable Stream Adjudication Commission ("Commission") has undertaken to receive, compile, review and consider relevant historical and scientific data and information, documents and other evidence regarding the issue of whether the Gila River from the New Mexico border to the confluence with the Colorado River was navigable or nonnavigable for title purposes as of February 14, 1912.¹ Proper and legal public notice was given in accordance with law, and hearings were held at which all parties were afforded the opportunity to present evidence, as well as their views, on this issue. The Commission, having considered all of the historical and scientific data and information, documents and other evidence, including the oral and written presentations made by persons appearing at the public hearing and the Commission being fully advised in the premises, hereby submits its report, findings and determination.

¹ Gila is pronounced "hee-la" and is the Spanish spelled version of the Yuma Indian name for the river which translates as "running water which is salty." The Gila River of the Southwest by Edwin Corle, University of Nebraska Press, 1951, p. 9.

I. PROCEDURE

Pursuant to A.R.S. § 37-1123B, the Commission gave proper notice by publication of its intent to receive, compile, review, consider and study all relevant historical and scientific data and information, documents and other evidence regarding the issue of navigability or nonnavigability of the Gila River from the New Mexico border through six (6) counties to the confluence with the Colorado River for title purposes as of February 14, 1912 as follows:

On August 20 and 27 and September 3, 2003 in the Copper Era;

On August 20 and 27 and September 3, 2003 in the Eastern Arizona Courier;

On September 1, 8 and 15, 2004 in the Arizona Silver Belt;

On August 31, and September 7 and 14, 2004 in the Payson Roundup

On January 15, 22 and 29, 2004 in the Casa Grande Dispatch;

On September 1, 8 and 15, 2005 in the Arizona Republic; and

On December 17, 24 and 31, 2004 in the Yuma Sun.

Copies of these Notices of Intent to Study and Receive, Review and Consider Evidence on the issue of navigability of the Gila River in Greenlee, Graham, Gila, Pinal, Maricopa, and Yuma Counties, Arizona, are attached hereto as Exhibit "A1."

After collecting and documenting all reasonably available evidence received pursuant to the notices of intent to receive, compile, review, consider and study evidence, the Commission scheduled public hearings to receive additional evidence and testimony regarding the navigability or nonnavigability of the Gila River in Greenlee, Graham, Gila, Pinal, Maricopa and Yuma Counties. Proper notice of these hearings was given by legal advertising for the Greenlee County hearing on September 10, 2003 in the Copper Era and September 5, 2003 in the Arizona Republic; for the Graham County hearing on September 7, 2003 in the Eastern Arizona Courier and September 5, 2003 in the Arizona Republic; for the hearing in Gila County on October 13, 2004 in the Arizona Silver Belt, on October 8, 2004 in the Payson Round Up and on October 8, 2004 in the

Arizona Republic; for the hearing in Pinal County on February 4, 2004 in the Casa Grande Dispatch and on February 6, 2004 in the Arizona Republic; for the hearing in Maricopa County on October 6, 2005 in the Arizona Republic; and for the hearing in Yuma County on December 20, 2004, in the Yuma Daily Sun and December 24, 2004 in the Arizona Republic, as required by law pursuant to A.R.S. § 37-1126 and, in addition, by mail to all those requesting individual notice and by means of the ANSAC website (azstreambeds.com).

Hearings were held on October 15, 2003, in the City of Clifton, the county seat of Greenlee County; on October 14, 2003, in the City of Safford, the county seat of Graham County; on November 15, 2004, in the City of Globe, the county seat of Gila County; on March 9, 2004, in the City of Florence, the county seat of Pinal County; on November 16, 2005 in the City of Phoenix, the county seat of Maricopa County; and on January 24, 2005 in the City of Yuma, the county seat of Yuma County. These hearings were held in the county seats in each county through which the Gila River flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of the Gila River in their county and further because the law requires that such hearings be held in the counties in which the watercourse being studied is located. Attached hereto as Exhibit "A2" are copies of the notices of these public hearings.

All parties were advised that anyone who desired to appear and give testimony at the public hearings could do so and, in making its findings and determination as to navigability and nonnavigability of the Gila River, the Commission would consider all matters presented to it at the hearing, as well as other historical and scientific data, information, documents and evidence that had been submitted to the Commission at any time prior to the date of the hearings, including all data, information, documents and evidence previously submitted to the Commission under prior law. Following the final public hearing on the Gila River held on November 16 and 17, 2005, all parties

were advised that they could file post-hearing memoranda pursuant to the Commission Rules. Sixteen post-hearing memoranda were filed by the parties, including the State Land Department; Arizona Center for Law in the Public Interest on behalf of its clients, Defenders of Wildlife, Donald Steuter, Jerry Van Gasse, Jim Vaaler; Gila River Indian Community; Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association; Phelps Dodge Corporation (now known as Freeport-McMoRan Corporation); Buckeye Irrigation Company and Buckeye Water Conservation and Drainage District; Maricopa County; San Carlos Apache Tribe; and the Flood Control District of Maricopa County. Attached as Exhibit "B" is a list of the sixteen (16) post-hearing memoranda filed by the various parties.

On May 24, 2006, at a public hearing in Phoenix, Arizona, after considering all of the evidence and testimony submitted and the post-hearing memoranda filed with the Commission, and the comments and oral arguments presented by the parties, and being fully advised in the premises, the Commission, with a unanimous vote, found and determined in accordance with A.R.S. § 37-1128 that the Gila River from the New Mexico border to its confluence with the Colorado River in Yuma County was not navigable as of February 14, 1912, nor was it susceptible of navigability. A copy of the Notice of Hearing for the hearing held on May 24, 2006 is also attached as a part of Exhibit "A2." Copies of the agenda and minutes of all of the hearings on October 15, 2003, in Greenlee County, on October 14, 2003, in Graham County, on November 15, 2004, in Gila County, on March 9, 2004, in Pinal County, on November 16, 2005 in Maricopa County, and on January 24, 2005 in Yuma County and the May 24, 2006 hearing in Phoenix are attached hereto as Exhibit "C." The hearings were recorded by electronic recorder and, in addition, a transcript was made by a court reporter who attended the hearings held in Phoenix on November 16 and 17, 2005, and further a transcript of the electronic recording of the hearing held on May 24, 2006 was prepared

and these transcripts of the hearing are available for review and the Commission reviewed them in its deliberations and before making its decision.

II. THE GILA RIVER FROM THE NEW MEXICO BORDER TO THE CONFLUENCE WITH THE COLORADO RIVER

The headwaters of the Gila River are in the Gila Wilderness area of Western New Mexico. The river flows in a southerly and westerly direction until it crosses the Arizona-New Mexico border at approximately latitude 32°41'10" north, longitude 109°2'50" west, between Section 34, Township 8 South, Range 32 East and Section 3, Township 9 South, Range 32 East, Gila and Salt River Base and Meridian. From there it flows in a northwesterly direction through the Duncan Valley, paralleling Highway 70 and State Highway 75 to a point just south of Clifton, Arizona, where it enters a canyon and turns in a southwesterly direction, flowing through deep canyons including the Gila Box Riparian National Conservation Area. The San Francisco River flows into the Gila at the eastern edge of the Gila Box. The Gila River flows out of these canyons into the upper Gila Valley near San Jose, Arizona, and makes a turn in a northwesterly direction past the towns of Sanches, Solomon, Safford, Thatcher, Pima and Ft. Thomas until it reaches San Carlos Lake and Coolidge Dam.

The upper Gila Valley, with the towns of Safford, Solomon, Thatcher, and Pima, is one of the prime agricultural areas of Arizona and is irrigated from the waters of the Gila River which flows just north of these towns. San Carlos Lake is on the San Carlos Apache Indian Reservation and is backed up behind Coolidge Dam, the only major dam on the upper Gila River. Coolidge Dam is located in a deep canyon and the river remains in the canyons of the Gila Mountains and Mescal Mountains below Coolidge Dam, flowing in a southwesterly direction to about one mile above the confluence of the San Pedro River near Winkelman and Hayden. The river then turns in a northwesterly direction and flows past the towns of Kearny, Riverside and Kelvin. The terrain then broadens into an alluvial valley, and the river flows almost due west from Kelvin

toward Florence, Arizona, to Ashurst Hayden Diversion Dam which was built for irrigation purposes and is located about ten miles north and east of Florence. From the Ashurst Hayden Dam, near North and South Buttes, the river opens onto the plains region of south central Arizona, and flows past Florence through the Gila River Indian Reservation passing near Sacaton. The Santa Cruz river from the south flows into the Gila River on the Indian Reservation. The Gila River winds northwest through the Reservation to the confluence with the Salt River southwest of Phoenix. From there the Gila River turns west and is joined by the waters of the Agua Fria River, a few miles downstream from the confluence with the Salt River, and continues west past Liberty and Buckeye to the Arlington Valley where it is joined by the Hassayampa River. From this point, the river flows south passed the site of Gillespie Dam about 25 miles to Gila Bend where it enters what is known as Citrus Valley. The river turns west and passes through the Gila Bend Indian Reservation and Painted Rock Reservoir backed up behind Painted Rock Dam which is built at the mouth of the Gila River Canyon between the Gila Bend Mountains and the Painted Rock Mountains. From Painted Rock Dam, the river flows southwest through Dendora Valley, Oatman Flat, Hyder Valley, Sentinel Plain, San Cristobal Valley and continues southwest until it enters the Mohawk Valley at Texas Hill. The river continues west-southwest for about 30 miles through the Mohawk Valley past Wellton and turns northwest into the Dome Valley, then enters a brief constriction between the Dome Mountains and Laguna Mountains before opening into the north Gila Valley about 10 miles east of Yuma. The river then flows west to its confluence with the Colorado River, about four miles east of Yuma, at latitude 32°43'20" North, longitude 114°33'20" West, in Section 19, Township 8 South, Range 22 West, Gila and Salt River Base and Meridian.

The principal tributaries of the Gila River are the San Francisco, San Carlos, Salt, Agua Fria and Hassayampa Rivers from the north, and the San Simon, San Pedro and Santa Cruz Rivers from the south. Separate reports on the issue of navigability have

been or will be submitted by the Commission on all of the above-listed tributaries, except the San Carlos and San Simon Rivers, which are treated as small and minor watercourses. The Salt River, although considered a tributary to the Gila, is in fact larger both in catchment area and in historical discharge of water.

Because the Gila River crosses the state from east to west, its topography provided a very important corridor for land transportation. It is one of the longest rivers in Arizona, stretching with its twists and turns some 500 miles across central and southern Arizona. It is Arizona's largest watershed, covering over half the State's land area. The river drains portions of western New Mexico and most of southern Arizona, a total area of 66,020 square miles or approximately 42,252,800 acres, of which 6867 square miles lies in New Mexico, 1168 square miles lies in Mexico, and the balance in Arizona. The watershed ranges in elevation from 12,643 feet above sea level at Humphreys Peak north of Flagstaff (11,590 feet at Mt. Baldy near Greer, Arizona, 10,713 feet at Mount Graham near Safford, Arizona) to 111 feet at the confluence with the Colorado River. The Gila River enters Arizona at the New Mexico border at an altitude of 3,720 feet and gradually descends through mountains and valleys to reach Yuma at 111 feet above sea level. Except for the high mountain areas, the Gila River valleys experience a hot dry climate, typical of the Sonoran Desert. Mean precipitation and temperature do not vary significantly, although climate and precipitation varies somewhat with elevation within the watershed. Precipitation occurs during two major seasons--in late summer as intense localized thunderstorms, and in winter as large-scale cyclonic storms which originate over the Pacific Ocean. Winter storms tend to produce the largest peak and volume flows on the river. A map of the Gila River watershed is attached hereto as Exhibit "D."

Prior to statehood, in the mid-19th Century, the Gila River was considered a perennial stream fed by a number of perennial, intermittent, and ephemeral streams. In the broad alluvial basins or plains through which a substantial portion of the river

passes, the river loses much of its flow to infiltration, such that it is considered by many to be similar to an underground river. Due to the rather frequent, large floods, the Gila River is considered by most to be an erratic, unreliable and unpredictable river blocked by obstructions such as sandbars, gravel beds, boulders and other obstructions. It supported a variety of riparian ecosystems such as marshes and had concentrations of cottonwoods and willows along its banks. In the early part of the 20th Century, salt cedar or tamarisk was introduced, which has become the predominant land cover near the river. There also exists varied species of mesquite, as well as other more desert oriented vegetation such as saguaro, cholla, ocotillo and other cacti, desert broom and brittlebush. Within the streambed itself there are some cattails and native and nonnative grasses.

Because of the geographic, geologic and man-constructed dams and reservoirs, as well as diversions for irrigation, the Gila River has been divided into three separate reaches.

A. Upper Gila River Reach (New Mexico border to Florence, Arizona)

This reach is the most complex, covering the mountainous region of east central Arizona, and it may be divided into smaller reaches or subreaches. Except for the deep canyons above Safford Valley and the canyons of the Gila Mountains where Coolidge Dam is constructed, this reach is characterized by alluvial plains that are excellent for irrigation farming in the Duncan Valley, Safford Valley, and below the Ashurst Hayden Diversion Dam to Florence. A portion of this reach lies on the San Carlos Indian Reservation where San Carlos Reservoir behind Coolidge Dam is located. The major tributaries in this reach are the San Francisco, San Simon and San Carlos Rivers.

B. Middle Gila River Reach (Florence to Confluence with Salt River)

This reach begins where the Gila River splits the gap between North and South Butte east of Florence and enters the southern margins of the Phoenix Basin, and ends with the confluence with the Salt River. Within this reach the river flows over deep

alluvium and loses much of its flow to infiltration. Due to upstream diversions for irrigation agriculture, the middle Gila River flows only during infrequent floods. When it does flow, the Gila River is a wide braided channel with little depth, spreading over the alluvial plain. A good portion of this reach is on the Gila River Indian Reservation. The major tributaries in this reach are the San Pedro and Santa Cruz Rivers which flow from the south. In the mid-19th Century before significant diversion for irrigation, the stream flow on the Salt River was greater than that on the middle Gila River. Prior to statehood, however, the flow in both the Salt and the Gila were greatly reduced by diversions for irrigation and the construction of Roosevelt Dam.

C. Lower Gila River Reach (Confluence of Salt River to Confluence with Colorado River)

Like the middle Gila River reach, this stretch of the Gila River flows mostly over deep alluvium within the basin and range province of southern Arizona. In two places, near Arlington and Painted Rock Dam, the river is confined by bedrock, but elsewhere in this reach it flows over a wide, unconfined floodplain. Its normal or low flow is greatly reduced by infiltration in these alluvial basins and the river tends to move laterally during high water or flood periods. The flow of the river in this area is braided and the river has many sandbars, sand islands and other obstructions in the river bed. All tributaries within this reach, including the Agua Fria and Hassayampa, are ephemeral and seldom flow.

III. BACKGROUND AND HISTORICAL PERSPECTIVES

A. Public Trust Doctrine and Equal Footing Doctrine

The reason for the legislative mandated study of navigability of watercourses within the state of Arizona is to determine who holds title to the beds and banks of such rivers and watercourses. Under the public trust doctrine, as developed by common law over many years, the tidal lands and beds of navigable rivers and watercourses, as well as the banks up to the high water mark, are held by the sovereign in a special title for

the benefit of all the people. In quoting the U.S. Supreme Court, the Arizona Court of Appeals described the public trust doctrine in its decision in *The Center for Law v. Hassell*, 172 Ariz. 356, 837 P.2d 158 (App.1991), review denied October 6, 1992.

An ancient doctrine of common law restricts the sovereign's ability to dispose of resources held in public trust. This doctrine, integral to watercourse sovereignty, was explained by the Supreme Court in *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). A state's title to lands under navigable waters is a title different in character from that which the State holds in lands intended for sale. . . . It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. *Id.* at 452, 13 S.Ct. at 118; see also *Martin v. Waddell*, 41 U.S. (16 Pet.) at 413 (describing watercourse sovereignty as "a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, as well for shellfish as floating fish").

Id., 172 Ariz. at 364, 837 P.2d at 166.

This doctrine is quite ancient and was first formally codified in the Code of the Roman Emperor Justinian between 529 and 534 A.D.² The provisions of this Code, however, were based, often verbatim, upon much earlier institutes and journals of Roman and Greek law. Some historians believe that the doctrine has even earlier progenitors in the rules of travel on rivers and waterways in ancient Egypt and Mesopotamia. This rule evolved through common law in England which established that the king as sovereign owned the beds of commercially navigable waterways in order to protect their accessibility for commerce, fishing and navigation for his subjects. In England the beds of nonnavigable waterways where transportation for commerce was not an issue were owned by the adjacent landowners.

This principle was well established by English common law long before the American Revolution and was a part of the law of the American colonies at the time of the Revolution. Following the American Revolution, the rights, duties and responsibilities of the crown passed to the thirteen new independent states, thus

² *Putting the Public Trust Doctrine to Work*, David C. Slade, Esq. (Nov. 1990), pp. xvii and 4.

making them the owners of the beds of commercially navigable streams, lakes and other waterways within their boundaries by virtue of their newly established sovereignty. The ownership of trust lands by the thirteen original states was never ceded to the federal government. However, in exchange for the national government's agreeing to pay the debts of the original states incurred in financing the Revolutionary War, the states ceded to the national government their undeveloped western lands. In the Northwest Ordinance of 1787, adopted just prior to the ratification of the U. S. Constitution and subsequently re-enacted by Congress on August 7, 1789, it was provided that new states could be carved out of this western territory and allowed to join the Union and that they "shall be admitted . . . on an equal footing with the original states, in all respects whatsoever." (Ordinance of 1787: The Northwest Territorial Government, § 14, Art. V, 1 stat. 50. See also U. S. Constitution, Art. IV, Section 3). This has been interpreted by the courts to mean that on admission to the Union, the sovereign power of ownership of the beds of navigable streams passes from the federal government to the new state. *Pollard's Lessee v. Hagan, et al.*, 44 U.S. (3 How.) 212 (1845), and *Utah Division of State Lands v. United States*, 482 U.S. 193 (1987).

In discussing the equal footing doctrine as it applies to the State's claim to title of beds and banks of navigable streams, the Court of Appeals stated in *Hassell*:

The state's claims originated in a common-law doctrine, dating back at least as far as Magna Charta, vesting title in the sovereign to lands affected by the ebb and flow of tides. See *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 412-13, 10 L.Ed. 997 (1842). The sovereign did not hold these lands for private usage, but as a "high prerogative trust . . . , a public trust for the benefit of the whole community." *Id.* at 413. In the American Revolution, "when the people . . . took into their own hands the powers of sovereignty, the prerogatives and regalities which before belong either to the crown or the Parliament, became immediately and rightfully vested in the state." *Id.* at 416.

Although watercourse sovereignty ran with the tidewaters in England, an island country, in America the doctrine was extended to navigate inland watercourses as well. See *Barney v. Keokuk*, 94 U.S. 324, 24 L.Ed. 224 (1877); *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 434, 13 S.Ct. 110, 111, 36 L.Ed. 1018 (1892). Moreover, by the "equal footing" doctrine, announced in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845), the

Supreme Court attributed watercourse sovereignty to future, as well as then-existent, states. The Court reasoned that the United States government held lands under territorial navigable waters in trust for future states, which would accede to sovereignty on an "equal footing" with established states upon admission to the Union. *Id.* at 222-23, 229; accord *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981); *Land Department v. O'Toole*, 154 Ariz. 43, 44, 739 P.2d 1360, 1361 (App. 1987).

The Supreme Court has grounded the states' watercourse sovereignty in the Constitution, observing that "[t]he shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively." *Pollard's Lessee*, 44 U.S. (3 How.) at 230; see also *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 374, 97 S.Ct. 582, 589, 50 L.Ed.2d 550 (1977) (states' "title to lands underlying navigable waters within [their] boundaries is conferred . . . by the [United States] constitution itself").

Id., 172 Ariz. 359-60, 837 P.2d at 161-162.

In the case of Arizona, the "equal footing" doctrine means that if any stream or watercourse within the State of Arizona was navigable on February 14, 1912, the date Arizona was admitted to the Union, the title to its bed is held by the State of Arizona in a special title under the public trust doctrine. If the stream was not navigable on that date, ownership of the streambed remained in such ownership as it was prior to statehood--the United States if federal land, or some private party if it had previously been patented or disposed of by the federal government--and could later be sold or disposed of in the manner of other land since it had not been in a special or trust title under the public trust doctrine. Thus, in order to determine title to the beds of rivers, streams, and other watercourses within the State of Arizona, it must be determined whether or not they were navigable or nonnavigable as of the date of statehood.

B. Legal Precedent to Current State Statutes

Until 1985, most Arizona residents assumed that all rivers and watercourses in Arizona, except for the Colorado River, were nonnavigable and accordingly there was no problem with the title to the beds and banks of any rivers, streams or other watercourses. However, in 1985 Arizona officials upset this long-standing assumption and took action to claim title to the bed of the Verde River. *Land Department v. O'Toole*,

154 Ariz. 43, 739 P.2d 1360 (App. 1987). Subsequently, various State officials alleged that the State might hold title to certain lands in or near other watercourses as well. *Id.*, 154 Ariz. at 44, 739 P.2d at 1361. In order to resolve the title questions to the beds of Arizona rivers and streams, the Legislature enacted a law in 1987 substantially relinquishing the state's interest in any such lands.³ With regard to the Gila, Verde and Salt Rivers, this statute provided that any record title holder of lands in or near the beds of those rivers could obtain a quitclaim deed from the State Land Commissioner for all of the interest the state might have in such lands by the payment of a quitclaim fee of \$25.00 per acre. The Arizona Center for Law in the Public Interest filed suit against Milo J. Hassell in his capacity as State Land Commissioner, claiming that the statute was unconstitutional under the public trust doctrine and gift clause of the Arizona Constitution as no determination had been made of what interest the state had in such lands and what was the reasonable value thereof so that it could be determined that the state was getting full value for the interests it was conveying. The Superior Court entered judgment in favor of the defendants and an appeal was taken. In its decision in *Hassell*, the Court of Appeals held that this statute violated the public trust doctrine and the Arizona Constitution and further set forth guidelines under which the state could set up a procedure for determining the navigability of rivers and watercourses in Arizona. In response to this decision, the Legislature established the Arizona Navigable Stream Adjudication Commission and enacted the statutes pertaining to its operation. 1992 Arizona Session Laws, Chapter 297 (1992 Act). The charge given to the Commission by the 1992 Act was to conduct full evidentiary public hearings across the state and to adjudicate the State's claims to ownership of lands in the beds of watercourses. See generally former A.R.S. §§ 37-1122 to 37-1128.

³ Prior to the enactment of the 1987 statute, the Legislature made an attempt to pass such a law, but the same was vetoed by the Governor. The 1987 enactment was signed by the Governor and became law. 1987 Arizona Sessions Law, Chapter 127.

The 1992 Act provided that the Commission would make findings of navigability or nonnavigability for each watercourse. See former A.R.S. § 37-1128(A). Those findings were based upon the “federal test” of navigability in former A.R.S. § 37-1101(6). The Commission would examine the “public trust values” associated with a particular watercourse only if and when it determined that the watercourse was navigable. See former A.R.S. §§ 37-1123(A)(3), 37-1128(A).

The Commission began to take evidence on certain watercourses during the fall of 1993 and spring of 1994. In light of perceived difficulties with the 1992 Act, the Legislature revisited this issue during the 1994 session and amended the underlying legislation. See 1994 Arizona Session Laws, ch. 178 (“1994 Act”). Among other things, the 1994 Act provided that the Commission would make a recommendation to the Legislature, which would then hold additional hearings and make a final determination of navigability by passing a statute with respect to each watercourse. The 1994 Act also established certain presumptions of nonnavigability and exclusions of some types of evidence.

Based upon the 1994 Act, the Commission went forth with its job of compiling evidence and making a determination of whether each watercourse in the state was navigable as of February 14, 1912. The Arizona State Land Department issued technical reports on each watercourse, and numerous private parties and public agencies submitted additional evidence in favor of or opposed to navigability for particular watercourses. See, *Defenders of Wildlife v. Hull*, 199 Ariz. 411, 416, 18 P.3d 722, 727 (App. 2001). The Commission reviewed the evidence and issued reports on each watercourse which were transmitted to the Legislature. The Legislature then enacted legislation relating to the navigability of each specific watercourse. The Court of Appeals struck down that legislation in its *Hull* decision, finding that the Legislature had not applied the proper standards of navigability. *Id.* 199 Ariz. at 427-28, 18 P.3d at 738-39.

In 2001, the Legislature again amended the underlying statute in another attempt to comply with the Court's pronouncements in *Hassell* and *Hull*. See, 2001 Arizona Session Laws, ch. 166, § 1. The 2001 legislation now governs the Commission in making its findings with respect to issue of navigability of all watercourses within the State.

IV. ISSUES PRESENTED

The applicable Arizona statutes state that the Commission has jurisdiction to determine which, if any, Arizona watercourses were "navigable" on February 14, 1912 and for any watercourses determined to be navigable, to identify the public trust values. A.R.S. § 37-1123. A.R.S. § 37-1123A provides as follows:

A. The commission shall receive, review and consider all relevant historical and other evidence presented to the commission by the state land department and by other persons regarding the navigability or nonnavigability of watercourses in this state as of February 14, 1912, together with associated public trust values, except for evidence with respect to the Colorado River and, after public hearings conducted pursuant to section 37-1126:

1. Based only on evidence of navigability or nonnavigability, determine which watercourses were not navigable as of February 14, 1912.

2. Based only on evidence of navigability or nonnavigability, determine which watercourses were navigable as of February 14, 1912.

3. In a separate, subsequent proceeding pursuant to section 37-1128, subsection B, consider evidence of public trust values and then identify and make a public report of any public trust values that are now associated with the navigable watercourses.

A.R.S. §§ 37-1128A and B provide as follows:

A. After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming the watercourse was navigable. If the preponderance of the evidence fails to establish that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was nonnavigable.

B. With respect to those watercourses that the commission determines were navigable, the commission shall, in a separate, subsequent proceeding, identify and make a public report of any public trust values associated with the navigable watercourse.

Thus, in compliance with the statutes, the Commission is required to collect evidence, hold hearings, and determine which watercourses in existence on February 14, 1912, were navigable or nonnavigable. This report pertains to the 500-mile reach of the Gila River from the New Mexico boarder in Greenlee County to the confluence with the Colorado River above Yuma in Yuma County, Arizona. In the hearings to which this report pertains, the Commission considered all of the available historical and scientific data and information, documents and other evidence relating to the issue as to the navigability of the Gila River in Greenlee, Graham, Gila, Pinal, Maricopa and Yuma Counties, Arizona, as of February 14, 1912.

Public trust values were not considered in these hearings but will be considered in separate, subsequent proceedings, if required. A.R.S. §§ 37-1123A3 and 37-1128B. In discussing the use of an administrative body such as the Commission on issues of navigability and public trust values, the Arizona Court of Appeals in its decision in *Hassell* found that the State must undertake a “particularized assessment” of its “public trust” claims but expressly recognized that such assessment need not take place in a “full blown judicial” proceeding.

We do not suggest that a full-blown judicial determination of historical navigability and present value must precede the relinquishment of any state claims to a particular parcel of riverbed land. An administrative process might reasonably permit the systematic investigation and evaluation of each of the state’s claims. Under the present act, however, we cannot find that the gift clause requirement of equitable and reasonable consideration has been met.

Id., 172 Ariz. at 370, 837 P.2d at 172.

The 2001 *Hull* court, although finding certain defects in specific aspects of the statute then applicable, expressly recognized that a determination of “navigability” was essential to the State having any “public trust” ownership claims to lands in the bed of a particular watercourse:

The concept of navigability is “essentially intertwined” with public trust discussions and “[t]he navigability question often resolves whether any public trust interest exists in the resource at all.” Tracy Dickman

Zobenica, *The Public Trust Doctrine in Arizona's Streambeds*, 38 Ariz.L.Rev. 1053, 1058 (1996). In practical terms, this means that **before a state has a recognized public trust interest in its watercourse bedlands, it first must be determined whether the land was acquired through the equal footing doctrine. However, for bedlands to pass to a state on equal footing grounds, the watercourse overlying the land must have been "navigable" on the day that the state entered the union.**

199 Ariz. at 418, 18 P.3d at 729 (also citing *O'Toole*, 154 Ariz. at 45, 739 P.2d at 1362 (emphasis added)).

The Legislature and the Court of Appeals in *Hull* have recognized that, unless the watercourse was "navigable" at statehood, the State has no "public trust" ownership claim to lands along that watercourse. Using the language of *Hassell*, if the watercourse was not "navigable," the "validity of the equal footing claims that [the State] relinquishes" is **zero**. *Hassell*, 172 Ariz. at 371, 837 P.2d at 173. Thus, if there is no claim to relinquish, there is no reason to waste public resources determining (1) the value of any lands the State **might own if** it had a claim to ownership, (2) "equitable and reasonable considerations" relating to claims it might relinquish without compromising the "public trust," or (3) any conditions the State might want to impose on transfers of its ownership interest. See *Hassell*.

V. BURDEN OF PROOF

The Commission in making its findings and determinations utilized the standard of the preponderance of the evidence as the burden of proof as to whether or not a stream was navigable or nonnavigable. A.R.S. § 37-1128A provides as follows:

After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was navigable. **If the preponderance of the evidence fails to establish that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was nonnavigable.** (Emphasis Added)

This statute is consistent with the decision of the Arizona courts that have considered the matter. *Hull*, 199 Ariz. at 420, 18 P.3d at 731 ("... a 'preponderance' of the evidence

appears to be the standard used by the courts. See, e.g., *North Dakota v. United States*, 972 F.2d 235-38 (8th Cir. 1992)"); *Hassell*, 172 Ariz. at 363, n. 10, 837 P.2d at 165, n. 10 (The question of whether a watercourse is navigable is one of fact. The burden of proof rests on the party asserting navigability"); *O'Toole*, 154 Ariz. at 46, n. 2, 739 P.2d at 1363, n. 2.

The most commonly used legal dictionary contains the following definition of "preponderance of the evidence":

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proven is more probable than not. *Braud v. Kinchen*, La.App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the onus, unless it overbears, in some degree, the weight upon the other side.

Black's Law Dictionary, 1064 (5th ed. 1979).

The "preponderance of the evidence" standard is sometimes referred to as requiring "fifty percent plus one" in favor of the party with the burden of proof. One could imagine a set of scales. If the evidence on each side weighs exactly evenly, the party without the burden of proof must prevail. In order for the party with the burden to prevail, sufficient evidence must exist in order to tip the scales (even slightly) in its favor. See, generally, *United States v. Fatico*, 458 U.S. 388, 403-06 (E.D. N.Y. 1978), *aff'd* 603 F.2d 1053 (2nd Cir. 1979), *cert. denied* 444 U.S. 1073 (1980); *United States v. Schipani*,

289 F.Supp. 43, 56 (E.D. N.Y. 1968), *aff'd*, 414 F.2d 1262 (2nd Cir. 1969); *State of North Dakota Board of University and State Lands v. U.S.*, 972 F.2d 235 (8th Cir. 1992). ⁴

VI. STANDARD FOR DETERMINING NAVIGABILITY

The statute defines a navigable watercourse as follows:

“Navigable” or “navigable watercourse” means a watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

A.R.S. § 37-1101(5).

The foregoing statutory definition is taken almost verbatim from the U.S. Supreme Court decision in *The Daniel Ball*, 77 U.S. (10 Wall) 557, 19 L.Ed. 999 (1870), which is considered by most authorities as the best statement of navigability for title purposes. ⁵ In its decision, the Supreme Court stated:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for

⁴ In a recent Memorandum Decision of the Arizona Court of Appeals, the Defenders of Wildlife and others through their representative, Arizona Center for Law in the Public Interest, attacked the constitutionality of the burden of proof for navigability determination by the Commission specified in A.R.S. § 37-1128(A). In that case, the Defenders claimed that the burden of proof specified in the statute conflicts with federal law and should be declared invalid because it is contrary to a presumption favoring sovereign ownership of bedlands. In discussing and rejecting *Defenders* position the Court stated: “. . . In support of this argument, Defenders cite to our decision in *Defenders*, see 199 Ariz. At 426, ¶ 54, 18 P.3d at 737, and to *United States v. Oregon*, 295 U.S. 1, 14 (1935). But neither of these decisions held that the burden of proof in a navigability determination must be placed on the party opposing navigability. Moreover, this court has twice stated that the burden of proof rests on the party asserting navigability. *Hassell*, 172 Ariz. At 363 n. 10, 837 P.2d at 165 n. 10; *O'Toole*, 154 Ariz. At 46 n. 2, 739 P.2d at 1363 n. 2. We have also recognized that a ‘preponderance’ of the evidence appears to be the standard used by the courts” as the burden of proof. *Defenders*, 199 Ariz. At 420, ¶ 23, 18 P.3d at 731 (citing *North Dakota v. United States*, 972 F.2d 235, 237-38 (8th Cir. 1992)). Defenders have not cited any persuasive authority suggesting that these provisions in § 37-1128(A) are unconstitutional or contrary to federal law. We agree with this court’s prior statements and conclude that neither placing the burden of proof on the proponents of navigability nor specifying the burden as a preponderance of the evidence violates the State or Federal Constitutions or conflicts with federal law.” *State of Arizona v. Honorable Edward O. Burke* 1 CA-SA 02-0268 and 1 CA-SA 02-0269 (Consolidated); Arizona Court of Appeals, Division One, (Memorandum Decision filed December 23, 2004).

⁵ The *Daniel Ball* was actually an admiralty case, but the U.S. Supreme Court adopted its definition of navigability in title and equal footing cases. *Utah v. United States*, 403 U.S. 9, 91 S.Ct. 1775, 29 L.Ed.2 279 (1971) and *United States v. Oregon*, 295 U.S. 1, 55 S.Ct. 610, 70 L.Ed.2 1263 (1935).

commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

77 U.S. at 563.

In a later opinion in *U. S. v. Holt Bank*, 270 U.S. 46 (1926), the Supreme Court stated:

[Waters] which are navigable in fact must be regarded as navigable in law; that they are navigable in fact when they are used, or are susceptible of being used, in their natural and ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water; and further that navigability does not depend on the particular mode in which such use is or may be had—whether by steamboats, sailing vessels or flatboats—nor on an absence of occasional difficulties in navigation, but on the fact, if it be a fact, that the [water] in its natural and ordinary condition affords a channel for useful commerce.

270 U.S. at 55-56.

The Commission also considered the following definitions contained in A.R.S. § 37-1101 to assist it in determining whether this 500-mile reach of the Gila River was navigable at statehood.

11. "Watercourse" means the main body or a portion or reach of any lake, river, creek, stream, wash, arroyo, channel or other body of water. Watercourse does not include a man-made water conveyance system described in paragraph 4 of this section, except to the extent that the system encompasses lands that were part of a natural watercourse as of February 14, 1912.

5. "Navigable" or "navigable watercourse" means a watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

3. "Highway for commerce" means a corridor or conduit within which the exchange of goods, commodities or property or the transportation of persons may be conducted.

2. "Bed" means the land lying between the ordinary high watermarks of a watercourse.

6. "Ordinary high watermark" means the line on the banks of a watercourse established by fluctuations of water and indicated by physical characteristics, such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation or the presence of litter and debris, or by other appropriate

means that consider the characteristics of the surrounding areas. Ordinary high watermark does not mean the line reached by unusual floods.

8. "Public trust land" means the portion of the bed of a watercourse that is located in this state and that is determined to have been a navigable watercourse as of February 14, 1912. Public trust land does not include land held by this state pursuant to any other trust.

Thus, the State of Arizona in its current statutes follows the federal test for determining navigability and the Commission has followed the statutes in its proceedings.

VII. EVIDENCE RECEIVED AND CONSIDERED BY THE COMMISSION

Pursuant to A.R.S. § 37-1123, and other provisions of Title 37, Chapter 7, Arizona Revised Statutes, the Commission received, compiled, and reviewed evidence and records regarding the navigability and nonnavigability of the Gila River from the New Mexico border to its confluence with the Colorado River. Evidence consisting of studies, written documents, maps, newspapers and other historical accounts, pictures, and testimony were submitted. There were 28 separate documentary filings, including the material submitted and filed with the Commission under the prior law and the Preliminary and Final Report and Study prepared by SFC Engineering Company in association with George V. Sobel Consulting Engineers, J. E. Fuller/Hydrology and Geomorphology, Inc. and SWCA, Inc., Environmental Consultants, revised and updated in June of 2003 by J. E. Fuller/Hydrology and Geomorphology for the Upper Gila River from the New Mexico boarder to the Town of Safford; the Preliminary and Final Report and Study prepared by the Arizona State Land Department, Arizona Geological Survey and SWCA Environmental Consultants, updated and revised through June of 2003 by J. E. Fuller/Hydrology and Geomorphology, Inc. on the navigability of the Gila River from the Town of Safford to its confluence with the Colorado River; a memorandum from the City of Safford; a presentation on behalf of the Gila River Indian Reservation by Alan Gookin; a report with pictures and graphs by Dr. Stanley A. Schumm, Ph.D., P.G., entitled "The Geomorphic Character of the Lower

Gila River,” dated June 2004; a report entitled “Assessment of the navigability of the Gila River Between the Mouth of the Salt River and the Confluence of the Colorado River as of the Day of Statehood” by Dr. Douglas R. Littlefield, Ph.D. dated November 2005; land surveys and instructions and other documents relating to land surveys submitted by the Law Firm of Helm & Kyle; a report and presentation by Alan Gookin on the hydraulic history of the Gila River Indian Reservation; a report and other documents submitted by Barbara Tellman on behalf of the State Land Department relating to boating and navigation on the Gila River; a document entitled “Accounts of Historical Gila River Boating” presented by Rebecca Goldberg; an expert witness report by Jack August chronicling the views and opinions of people who lived along the river at or near the time of statehood; a report on the navigability along the natural channel of the Gila River by Hjalmar J. Hjalmarson; the deposition of Dr. Douglas R. Littlefield taken May 25, 2001; the deposition of Donald R. Jackson taken January 15, 2003 and the deposition of Hjalmar J. Hjalmarson taken January 16, 2003 in litigation regarding the Lower Salt River; confidential notes produced by Hjalmar J. Hjalmarson on the ability to navigate the Gila River under natural conditions below the confluence with the Salt River; Powerpoint presentations, copies of slides, etc. presented by John Fuller; Powerpoint presentation by D. C. Jackson; correspondence, documents and letters furnished by Candace Hughes, Noel Fitzgerald, Chuck Crans, Nancy Orr, Coby McIlroy and Jeanne Keller; a report containing information regarding navigability of selected U.S. watercourses (Exhibit No. 25 to the Lower Salt River Report) filed by Salt River Project; and documents and correspondence from numerous other individuals and organizations. The Commission also considered documents and papers submitted in connection with the hearings on the Upper and Lower Salt River, Greenlee County, Graham County, Gila County, Pinal County, Maricopa County and Yuma County insofar as they pertain to the issue of the navigability of the Gila River. The list of evidence, records, studies and documents submitted is attached as Exhibit “E.” Public

hearings were held in on October 15, 2003, in the City of Clifton, the county seat of Greenlee County, on October 14, 2003, in the City of Safford, the county seat of Graham County, on November 15, 2004, in the City of Globe, the county seat of Gila County, on March 9, 2004, in the City of Florence, the county seat of Pinal County, on November 16-17, 2005 in the City of Phoenix, the county seat of Maricopa County, and on January 24, 2005 in the City of Yuma, the county seat of Yuma County, and on May 24, 2006 in the City of Phoenix, the county seat of Maricopa County, for the public to present testimony and evidence on the issue of the navigability of the Gila River from the border with the State of New Mexico to its confluence with the Colorado River near Yuma. Seventeen witnesses appeared at the hearings in Phoenix on November 16-17, 2005, and gave testimony. At least 11 of these witnesses were acknowledged experts in the fields of hydrology, hydraulics, geomorphology and history. Others were well-informed individuals in the areas of environmental law, land use, development and surveying. The hearings were recorded by electronic recorder and, in addition, a transcript was made by a court reporter who attended the hearings held in Phoenix on November 16 and 17, 2005, and a transcript was made from the electronic recording of the hearing held on May 24, 2006 in Phoenix. These transcripts of testimony and what was said at the hearings in Phoenix is available for review and the Commission considered this testimony.⁶ The minutes of all of the hearings are attached hereto as Exhibit "C."

A. Prehistoric or Pre-Columbian Conditions on the Gila River Watershed

The archaeological evidence indicates that the Gila River and its tributaries have been a reliable source of water for a large portion of central and southern Arizona for as long as humans have been in the western hemisphere. The prehistoric cultural centers and settlements were all located close to the river and its source of water. The oldest

⁶ When a document in the record or a quote therefrom is referred to in this report, it will be referred to the number given it in Exhibit E, with the title, if appropriate, followed by the page number. The testimony of a witness given at the hearing will be designated as TR (Transcript of Record) followed by the page number and line numbers if necessary.

Paleo-Indian sites are characterized as the Clovis People who used a fluted projectile or spearpoint to hunt mammoths and other large megafauna which are now extinct. Two sites in southern Arizona, Naco and the Lehner Ranch, in which Clovis Points have been found with and embedded in mammoth bones, have been dated to 9500 B.C.-11,500 B.P.⁷ Clovis projectiles have also been found along Tonto Creek and at Gila Pueblo. Minor sites and evidence of Paleo-Indian occupation (primarily Clovis People) have been found along all reaches of the Gila River.

Some archaeologists believe there were Paleo-Indian people in Arizona prior to the Clovis People, although most pre-Clovis sites that have been identified are in other parts of the Americas. In Arizona and Southern California, the archaeologists who propose this have named this culture the Malapai People and claim to have found sites particularly along the lower Gila River evidenced by stone choppers, scrapers and other stone tools. These Malapai lithic scatter sites have been estimated to date from 22,000 to 25,000 years ago, but this age is questioned by other archeologists.

Evidence of the Archaic Period (6000-8000 B.C. to 300 B.C.-1 A.D.) sites have been identified along all three reaches of the Gila River, although site density is low and often occur away from the river. Sites that were near the river were probably obscured by flooding and later occupations. These archaic sites are characterized by large dense scatters of diverse lithic materials used for hunting and caring for and processing meat and other food and probably represent base camps or work areas. These archaic people have been characterized by various archaeologists as the Desert Culture and, particularly in southern Arizona, as the Cochise Culture. Some Folsom points, which are fluted but smaller than the Clovis points and were used by the archaic peoples in hunting the great bison and smaller game, have been found at some of these archaic sites. Between 300 B.C. and 300 A.D., the early or pre-classic periods of prehistoric

⁷ The Paleo-Indian period is generally considered to be between 9500 B.C. or 11,500 B.P. (Before Present) to approximately 6000 B.C. or 8000 B.P.

cultures began to develop and all of these traditions or cultures are represented at various points along the Gila River.

The development from the archaic to these pre-classic cultures is not well understood, but a recent excavation known as the Eagle River Site located east of Roosevelt Lake on a small ridge on the north side of the Upper Salt River has been determined to be one of the earliest documented ceramic or pottery sites in the area. It provides definitive evidence for an indigenous pre-Hohokam population which used the site between 300 B.C. and 100 A.D. The site contains evidence of maize (corn agriculture), wild plant gathering, and hunting, and data from this site shows similarities to the Hohokam, Mogollon, and Anasazi culture groups, suggesting that there was an early pan-southwestern culture at the same time the regional differentiation of the traditional cultures was emerging. This may be evidence of the transition from the archaic to the better-understood and defined pre-classical cultures or traditions.

The six classical cultures or traditions recognized by all archaeologists in southern and central Arizona are the Mogollon, Anasazi, Hohokam, Sinagua, Patayan, and Salado cultures. The Mogollon tradition was centered in the mountainous regions of western New Mexico and eastern Arizona, and there is much evidence of it along the upper Gila River and the mountains surrounding it. The earliest evidence of Mogollon sites occur between 1 A.D. and 200 A.D. By 200 A.D. the Mogollon had communities of pithouses, making pottery and growing corn and some other crops. They developed slowly but by A.D. 700 to 1000, the Mogollon tradition had developed masonry and cobble lined structures of more than one story.

On the middle Gila and around the Phoenix basin, the archaeological evidence indicates that approximately 2000 years ago a sedentary proto-agricultural society arose that has been denominated the Hohokam Culture. Prior to the Hohokam, and existing for a few hundred years contemporaneously with it, was the Archaic or Cochise Culture

which was primarily hunting and gathering. Although other archaeologists dispute the early date, the foremost expert on Hohokam Culture, Emil Haury, postulates that a group of people came from Mexico or Mesoamerica probably as early as 300 B.C. and began constructing canals and using the techniques they brought with them for irrigation agriculture. (See Emil W. Haury's Prehistory of the American Southwest, J. Jefferson Reid and David E. Doyel (Eds.), The University of Arizona Press, Tucson, 1986. They probably absorbed the local indigenous Cochise inhabitants, although there is evidence of separate Cochise-type settlements as late as the end of the first century A.D. No doubt there were subsequent infusions of groups from Mesoamerica into the Hohokam area, but they were apparently absorbed peacefully. During the pioneer and colonial period (600-950 A.D.), the Hohokam expanded and evidence of their tradition is found in the Tucson Basin, Verde Valley (where they mixed with other peoples, probably Anasazi, to form the Sinagua tradition), and the upper Gila River in the Safford valley (where they mixed with the Mogollon peoples).

The Patayan Tradition is found generally west of Gila Bend on the lower Gila River. Sites that date from A.D. 300 to A.D. 1400 have been located. Some influence from the Hohokam into the eastern Patayan area is evidenced after 700 A.D. during the period of Hohokam expansion.

The Anasazi tradition is centered in the Four Corners area, but during the severe drought periods, especially between 1275-1300 A.D., archaeologists have found evidence of migrations of the Anasazi from northern Arizona, particularly from the Kayenta area, into the Mogollon Rim area and even further south to the upper Gila River valley and the Tonto basin. Thus, between 1150 and 1450, in the eastern portion of the Gila River area, there seems to be a mixing of the Mogollon and Anasazi traditions with some Hohokam influence. Also during this period there is evidence of Anasazi from the Kayenta area migrating into the Phoenix basin where they established communities adjacent to existing Hohokam settlements.

Some archeologists believe that after 1100, there was a tradition of blending Mogollon and Anasazi traits in the East Central Arizona and Western New Mexico that is called the Western Pueblo tradition and is characterized by multi-room surface masonry structures enclosed in compounds with formal kivas. Others believe that this is merely a localized branch of the Mogollon culture adapted to the ravine and mountain environment. These sites are found mostly in the mountains to the north of the eastern portion of the study area.

In the latter part of the Classic Period, i.e. after 1200 A.D., a new culture or tradition known as the Salado has been identified, which is evidenced by much finer pottery, platform mounds, ball courts, and a higher grade of masonry construction. This culture was centered in the Tonto Basin and Globe area but spread into the upper Gila Valley, the Salt River Valley and Florence areas. Some archaeologists feel this was a new people who came into the area from Mesoamerica, but most are of the opinion that the Salado tradition was a revitalization of primarily the Hohokam culture with some influence from the Mogollon and Anasazi traditions, as well as Mesoamerica.

Although there is significant evidence of prehistoric irrigation, particularly in the Phoenix basin area and the middle Gila between Florence and the confluence with the Salt River, which was one of the most densely populated areas in the southwest with a population estimated at between 20,000 and 150,000 at their peak, there is no evidence of the use of the Gila River by prehistoric cultures for boating or travel on the water.⁸ Nor is there any evidence of attempted floating of logs for use in construction of pueblos, although logs that floated down during floods were probably utilized. In prehistoric times, all travel was exclusively by foot. At their peak (approximately 1100-1200 A.D.), the Hohokam irrigated an estimated 140,000 acres in the Phoenix basin and the Florence and Casa Grande area, with an irrigation system of canals exceeding 315

⁸ Some archeologists have speculated that the Hohokam may have used canoes or basket boats on the river when the flow was high, but there no physical evidence has been found to support this.

miles in length. In the Phoenix basin the system included at least ten separate canal systems, some as long as 16 miles, with most canals measuring 10 to 20 feet in width and three to twelve feet deep, and a maximum diversion capacity in an individual canal of approximately 240 cubic feet per second. Although the Hohokam culture was gone by the time early settlers arrived, many of the early farmers utilized existing Hohokam canals for their own irrigation purposes. Excavations also indicate that the Hohokam supplemented their diet with fish, probably taken from the Salt River and Gila River.

There was also a significant amount of canal irrigation in the Upper Gila River Valley near Safford and although there has been little archeological work done in that area, some archeologists have estimated that the population of the Upper Gila River Valley between 1100 and 1300 possibly exceeded the current population.

After approximately A.D. 1450 there was a significant reduction in the population along the Gila River. The cause for abandonment of major occupation sites is unknown, although explanations for the collapse of the Hohokam culture include population decimation by disease, environmental degradation, drought, soil alkalization, and overstressing of a complex and probably fragile social system. Tree ring studies have shown that the average flow of the rivers and presumably rainfall from A.D. 740 to 1370 was somewhat less than the modern average flows. There is also evidence of significant droughts during the late 1300's and early 1400's. Although the population was greatly reduced, the descendants of the Hohokam continued to irrigate their crops from the waters of the Gila River up to historical and present time, especially in the area between Florence and the confluence of the Salt River.

The present Papago or Tohono O'odham and Pima or Akimel O'odham Indians are thought to be the descendants of the Hohokam on the middle Gila River. The Yuman and Maricopa Indians are thought to be the descendants of the Patayan culture on the lower Gila River. Insufficient archaeological study has been made to determine

what occurred with the descendants of the Mogollon, Hohokam or other cultures in the upper Gila Valley.

Some time around A. D. 1500 the earlier Mogollon, Hohokam, Salado cultures were replaced by the Yavapai culture in the mountains to the north of the Gila River, but the area remained very sparsely populated. The Yavapais were a Yuman speaking people who probably descended from the Patayan or Cerbat Archaeological Culture that occupied Southern California and Northwestern Arizona south of the Colorado River from about 700 A.D. on. After 1300 A.D., the Cerbat Culture apparently evolved into the Historic Hualapai, Havasupai, Mohave and Yavapai tribes. The Yavapai people migrated to the central part of Arizona around 1450 A.D. to 1600 A.D. In the late 1600's and early 1700's the Athabascan speaking western Apaches migrated into the area, both north and south of the Gila River and extended into Mexico and to an extent displaced the Yavapai, although there was intermarriage between the two peoples. Both the Yavapai and Apache were relatively nomadic, living by hunting and gathering and occupying temporary sites consisting of brush wickiups and overhanging rocks. The Apaches exist today living on the Ft. Apache and San Carlos Indian Reservations to the north of the upper Gila River. The Yavapais are also an identified tribe living on a reservation to the east of Phoenix and are intermixed with the Apache. Also, they have a Reservation in and near Prescott, Arizona.

There is no evidence in archeological record that would indicate that any of the prehistoric cultures located in the study area along the Gila River used the Gila River as a means of transportation by boat or other watercraft and there has been no documented use of the river for commercial trade and travel or for regular flotation of logs. All travel along the Gila River during this period was by foot. The prehistoric Indians did not have horses, mules or oxen.

B. Early Historical Development of the Gila River Watershed

The first Europeans came into the area just prior to and with the Coronado Expedition of 1540. The route of the Coronado Expedition has been variously reconstructed and most authorities feel that he crossed the present border of Mexico on the east side of the Huachuca Mountains and traveled up the San Pedro River to a point where the river turns to the west. Coronado then crossed the upper end of the Sulphur Springs Valley and went through the pass between the Pinaleno Mountains and the Santa Teresa Mountains, crossing the Gila River somewhere between the present sites of Ft. Thomas and Bylas, Arizona, and then made his way up over the mountains and the Mogollon Rim into northeastern Arizona and northwestern New Mexico. Records of the Coronado Expedition indicate that the only native peoples encountered in Southern and Central Arizona were probably the Yavapais, since the Apache had not yet migrated into Central Arizona from the north and east. In northern Arizona and New Mexico, the Coronado Expedition did come into contact with Zuni, Hopi and Pueblo Indians. The first battle between Europeans and Native Americans was at the Zuni Village of Hawikku. Coronado was one of the last of the conquistadors who was trying to imitate Cortez and was searching for the seven (7) golden cities of Cibola. He failed and returned to Mexico in 1542 after exploring a good part of the American Southwest, including parts of New Mexico, Texas, Kansas and Colorado, as well as Arizona.

In support of the Coronado Expedition, a naval force of three (3) ships under the Command of Hernando de Alarcón, which contained supplies for Coronado's army, was sent north up the Sea of Cortez and found the mouth of the Colorado River and sailed up it to a point somewhat north where the Gila River runs into the Colorado River. He did encounter the Yuma and Cocopah Indians that lived there and left a marker should Coronado's people come looking for him. At that time, Coronado was a good 400 miles up the Gila River east of where Alarcón had landed. A scouting party

from Coronado under the command of Melchior Díaz was sent west and reached the lower end of the Colorado River and encountered the Indians that had seen Alarcón, but by this time Alarcón had given hope up of making contact and sailed back to New Spain.

After the Coronado Expedition, when the Spaniards began to colonize northern New Mexico, records begin to show the presence of other Native Americans, which were probably Apaches and Navajos, both Attabascan speaking peoples. In 1582, Antonio de Espejo led a party of soldiers and priests into Northern Arizona from the Rio Grande Valley, but did not go south to the Gila River. They did explore the Verde Valley and located some mineral deposits that later resulted in the copper and silver mines of Jerome. In 1604 Don Juan de Onate and a party marched west from the Rio Grande Valley across Arizona until they reached the Colorado River and then turned south passing by the mouth of the Gila River to the gulf where Alarcón had been anchored. They then turned around and marched back the same way they had come, having a better understanding of the geography of Arizona. In the late 1600's, Spanish missionaries, accompanied by soldiers, began to explore southern Arizona and even establish permanent settlements and missions. From 1687 until 1711, Father Eusebio Francisco Kino founded missions in Northern Sonora and Southern Arizona. In 1700, Father Kino founded the mission now visited by thousands of tourists known as San Xavier del Bac just south of Tucson; he also established the mission of Tumacacori north of Nogales.

One expedition led by Juan Batista de Escalante in 1697 made note of the number of major Indian ruins near Casa Grande and in the Phoenix valley. In 1699 Father Kino traveled up the Santa Cruz valley to the Gila River, visiting the Pima villages and noted that "all of its inhabitants are fisherman, and have many nets and other tackle with which they fish all year" in the river. He also noted that the Pima Indians used the river for irrigation by diverting water into canals and ditches through small diversion dams.

Father Kino also traveled in the Phoenix basin up the Salt River as far as the current location of Granite Reef Dam. Later visitors in the 17th and 18th centuries included Padre Luis Valverde in 1716, Pedro Ignacio Xavier Keller in 1737, Father Jacobo Settemeyer in 1744, Father Ignaz Pfefferkorn in 1763, and Father Francisco Garces in 1775, but none of them set up missions or made any permanent settlements. In 1775 a Spanish expedition led by Don Juan Batista de Anza traveled from Mexico through Tucson, which was officially established as a pueblo the next year, past the Casa Grande ruin to the Gila River and down the Gila River to California and up the coast to San Francisco which he established in 1776. The only permanent missions were one on the San Pedro River which was later abandoned, San Xavier del Bac near Tucson, and Tumacacori just north of Nogales, which were established by Father Kino in the early 1700's. These early explorers did comment that the Gila had a number of creeks, marshes, fields of reed grasses, and abundant growth of alders and cottonwood. At this time the river was generally thought to be a perennial stream. Other than the foregoing, Europeans did not explore or do much about the settlement of the area until the 1800's. In approximately 1800, Spaniards from the Rio Grande valley discovered silver and copper ore at Santa Rita del Cobre near present-day Silver City, New Mexico, and no doubt other Spaniards explored and prospected for valuable ores in the mountains of eastern Arizona but left no written records.

Mexico won its independence from Spain in 1821 and despite attempts to discourage incursions into its territory by citizens of the United States who were beginning to use the Santa Fe Trail to visit Santa Fe and Taos for trade, fur trappers began exploring the southwest in the mid-1820's. These mountainmen generally rode horseback or walked through the southwest and did not use canoes, rafts or other types of boats on any of the Arizona rivers except for the Colorado. In 1826 four groups of trappers came down the Gila River from the mines at Santa Rita (now Silver City) in New Mexico, trapping primarily beaver. The parties split and some traveled up the Salt

and Verde Rivers, and others went south on the San Pedro River. Records indicate there was abundant beaver for trapping and that the rivers flowed sufficiently to provide for beaver, fish, etc. Trapping on the Gila River and its tributaries continued through the late 1820's, 30's and 40's, but very few specific and definite records were left by these mountainmen.

In 1846 war broke out between the United States and Mexico which ended with the Treaty of Guadalupe Hidalgo in 1848 and the cession of the American southwest above the Gila River from Mexico to the United States. A number of military expeditions passed through southern Arizona during the Mexican-American War such as the Army of the West in 1846 led by General Stephen Watts Kearny down the Gila River through Arizona on their way to California. Also Capt. Philip St. George Cook led the Mormon Battalion from Santa Fe down the Rio Grande River and then crossed to the headwaters of the Gila River and down the Gila, crossing the Colorado and into California. One of his officers, Lt. George Stoneman, was charged with attempting to bring all of the wagons and supplies down the Gila from Gila Bend to Yuma. He tried to build rafts, consisting of two wagon beds lashed together, to float on the Gila River. The rafts did not work and were constantly running aground and had to be pushed by the soldiers to keep them going. Lt. Stoneman was ultimately forced to jettison a portion of the cargo and proceed on by horseback and mule. The experience of the Army of the West's and the Mormon Battalions' use of the Gila trail demonstrates that the Gila River was not practical for navigation.

Gold was discovered in California at Sutter's mill in 1848 and it is estimated that as many as 60,000 people used the Gila River trails to get to California and the gold fields. There are reports that some of these Forty-Niners attempted to float boats or rafts down the Gila to Yuma, but generally they were unsuccessful. In addition, a number of military surveying and mapmaking expeditions traveled along the river at this time and during the 1850's. The military surveys were conducted primarily to

locate railroad routes to cross the continent to California. None of these military surveyors or Forty-Niners traveled by boat or raft and, in fact, there is no record of any of them opining that the Gila River was navigable for commercial trade or travel.

Recognizing that the area north of the Gila River was mountainous and more difficult for railroads to traverse, the then Secretary of War Jefferson Davis, encouraged the government to purchase from Mexico land south of the Gila River on which a transcontinental railroad could be built. The result of these efforts was the Gadsden Purchase of 1853 which added to the United States the territory south of the Gila River to the present international border with Mexico.

In 1855, at the suggestion of Jefferson Davis, Secretary of War, Congress made an appropriation of \$30,000 to purchase camels for use in the Southwest. The first shipment of 30 dromedary camels from Egypt arrived in Texas in 1856. Lt. Edward Beal led the first caravan to California. This shipment was followed by others and by 1858 there were 130 camels at work in the American Southwest. Primarily due to the lack of experienced drivers and commencement of the Civil War, the camel experiment was abandoned. Some animals were sold but the majority were turned loose in the desert, many of them along the western sections of the Gila River. They were hunted by both Indians and whites and finally became extinct. The last authentic report of camels along the Gila River was in 1905, although sightings were reported much later.

In the first half of the 1860's the United States military presence in the southwest was greatly reduced and many forts and posts were abandoned due to the requirement for manpower to fight the Civil War in the east. The Union did keep Ft. Yuma manned at the mouth of the Gila River due to its strategic location. Until the Troops were again posted to the area following the War, some of the settlers took matters into their own hands and conducted vigilante-type operations against the Indians. A company of Confederates from the Texas Brigade under Captain Sherod Hunter took and held Tucson for a few months in the early part of the War but retreated back into New

Mexico after the encounter or meeting engagement with the lead elements of the Union California column at Picacho Pass (the westernmost battle of the Civil War). The California Column, made up of Union soldiers from California, marched from Ft. Yuma up the Gila River and retook Tucson from the Confederacy, then marched into New Mexico to help retake it for the Union.

C. Settlement and Development of Southern and Central Arizona

Following the Civil War, a number of military posts were established in southern Arizona, including Ft. Lowell in Tucson, Camp Verde near Cottonwood, Ft. Huachuca in the Huachuca Mountains, Ft. McDowell in the Salt River Valley above Phoenix, Ft. Bowie in Apache Pass in southeastern Arizona, Ft. Grant on the south slope of the Pinaleno Mountains, Ft. Thomas on the upper Gila River, and Ft. Whipple near Prescott. Military operations and campaigns during the late 1860's, 1870's and early 1880's resulted in the pacification of Arizona and removal of the Apache Indian threat. By 1880 most of the Indians were confined to reservations and, after the surrender of Geronimo in 1886, there was little if any Anglo/Indian fighting.

In 1867 a former Confederate soldier, Jack Swilling, and others formed the Swilling Irrigation and Canal Company and cleared out an old Hohokam canal above the present day city of Phoenix for carrying water to irrigated fields. Thus began modern irrigation and farming in the Salt River Valley. About the same time a group of farmers began digging canals and irrigating their farms along the Gila River to the west of the town of Florence around the site of Adamsville. In the 1870's Mormon settlers moved into the Mesa area, built a number of canals, and expanded the amount of irrigated acreage. Also, settlers from the Florence area and Mormon settlers from Utah moved into the upper Gila River valley near Safford and Pima and began irrigated farming. By 1912 up to 40,000 acres of land were under cultivation by irrigation in the upper Gila River valley. In addition many acres are irrigated on the San Carlos

Reservation along the Gila River and the San Carlos River. By 1912 more than 100,000 acres were under cultivation by use of irrigation along the river from Florence west.

As pointed out in the court opinions, by 1890 to 1912, all of the available water in the Salt River and in the Gila River to a point below the confluence where the Buckeye Irrigation District ends was being diverted for use in irrigation. In fact, by 1887 the farmers at Florence had diverted the entire flow of the river such that the downstream Pima Indians did not have enough water for their crops. In 1857 farming began on the lower Gila River near Wellton, Arizona, but due to the lack of consistency in flow, much of the water needed for farming was acquired by wells drilled in the river bottom. After World War II the Wellton-Mohawk Irrigation District was formed and 65,000 to 75,000 acres are farmed along the lower Gila River but most of the water is supplied by diversion from the Colorado River. Due to the construction of the Ashurst Hayden Diversion Dam above Florence and Coolidge Dam in 1929, a regulated supply of water is now available to the farmers below the dams, including the Indian Tribes. Irrigated land on the Pima Indian Reservation increased with the arrival of Colorado River water through the Central Arizona Project. With all this diversion of water and pumping, the water table fell many feet between 1920 and 1990 and severe land subsidence has resulted in the Florence, Casa Grande and Coolidge areas. In addition to farming, a large ranching industry was developed from the 1870's on, all along the course of the Gila River and the areas adjoining it. Water for ranching was to a great extent supplied by the waters of the Gila River and its subsidiaries.

Mining in the area surrounding the Gila River basin also developed following the Civil War. Many Forty-Niners, disillusioned with California, returned to Arizona to prospect for gold, especially in the Prescott and Wickenburg areas. Major mines developed in the Clifton-Morenci area along the San Francisco River, just a few miles from the upper Gila River, and also in Globe and Miami, which used water that would otherwise flow into the Gila and Salt River complex. Both before and since statehood

major mines have developed in Superior, Hayden, Kearny, and San Manuel, as well as in the Tucson mountains. Tombstone, Arizona, near the San Pedro tributary to the Gila River, had its heyday in the 1880's, and water from the San Pedro River was used by the mills at Charleston which processed the silver ore from Tombstone.

To finance the growth of Arizona, banks were established in many of the mining towns to take care of payrolls and in other towns to provide capital for farms and ranches in the 1880's and 1890's. The Gila Valley Bank and Trust established in 1899 in Solomon and Safford survived all of the recessions, depressions and financial problems of the early 1900's and became the Valley National Bank headquartered in Phoenix. It was ultimately merged into and is today J P Morgan/Chase Bank.

In addition to Coolidge Dam and the Ashurst Hayden Diversion Dam which diverted all of the water in the Gila River above them, Gillespie Dam north of Gila Bend was built in 1921 as a diversion dam for farmers growing cotton and alfalfa in that area, especially for the Paloma Ranch. The dam collapsed in the floods of 1993 and has not been rebuilt. In 1959 the U. S. Corps of Engineers built Painted Rock Dam to assist in controlling floods on the lower Gila River. San Carlos Lake behind Coolidge Dam has a storage capacity of between 866,600 to 1,033,600 acre feet, depending upon the position of the floodgates. Coolidge Dam also generates hydroelectric power. Painted Rock Reservoir has an estimated capacity of 2,492,000 acre feet.⁹ Most of the early settlers describe the Gila River as being perennial, but frequently it would in fact be dry, the flow having infiltrated or seeped into the ground, especially below Florence and Painted Rock Dam. The diversion of water for irrigated farming prior to statehood took all of the water out of the Gila and Salt River complex and left none for transportation on the river, even if persons had wanted to use the river for commercial transportation.

⁹ An acre foot of water is the amount of water required to cover one acre of land one foot deep or 325,851 gallons of water.

D. Conditions Around Statehood: Observations and Opinions of Pioneers Who Lived and Traveled in the Area.

The Navigable Stream Commission has been charged by the Legislature to determine whether the Gila River was navigable or susceptible to being navigable on the day Arizona became a state on February 14, 1912, almost 100 years ago (A.R.S. § 37-1101 5). Under the statute, the Commission is charged with looking at the river in its ordinary and natural condition on the date of statehood. As of 1912, the waters in the Gila River and its subsidiaries, especially its major subsidiary, the Salt River, had been diverted for some time for use in agriculture (Roosevelt Dam on the Upper Salt was completed in 1910, prior to statehood, and a number of other agriculture diversion dams on the Gila, as well as on the Salt, were in existence prior to statehood). Accordingly, it is necessary to look back to a time prior to 1912 to get a good idea of how the river flowed, but because of the flooding and erratic nature of the river, the testimony of people living along the river in the latter part of the 1800's and early part of the 1900's is certainly relevant. The Commission heard testimony at the hearings and considered reports, correspondence and studies from various historians and others who in turn had received information from ancestors, relatives and others who lived near the time of statehood as to their opinions and observations on the navigability of the Gila River.

Other than Coronado, the first explorer to cross the Gila River was Don Juan de Onate in 1604, who reached the Gila River near the confluence of the Colorado River and crossed the Gila. His records do not reflect what he observed as to the flow of the river. In 1697, Juan Batista de Escalante led an expedition into the Casa Grande/Florence region and into the Phoenix valley. He crossed the river to look at Indian ruins, but does not comment on whether or not it might have been navigable.

Later, in 1775-76, Don Juan Bautista de Anza led a colonizing expedition from Tucson to San Francisco. Father Pedro Font, who apparently irritated Anza greatly, nevertheless kept the best diary of this historic expedition which followed the Santa

Cruz to the Gila, then down to its confluence with the Colorado River. The Gila River portion of the journey, which lasted from October 30 to November 28, 1775 and covered 231 miles, brought forth noteworthy observations of the Gila's flow. According to Font, there were Indian agricultural systems diverting water, dry stretches, and occasional deep reaches that coursed slowly down the streambed. In effect, the Gila, in the fall of 1775, was intermittent and erratic, and in many reaches, dry. References to the Gila from the period of the Mexican Revolution (1810-1821) and through the Mexican period (1821-1848) vary little from the accounts of anemic flow with occasional destructive flooding and spring freshets.

The military expeditions conducted by the Army of the West led by Gen. Stephen Watts Kearney and the Mormon battalion led by Capt. Philip St. George Cooke traveled down the Gila River during the American-Mexican War. The Mormon battalion attempted to boat down the river by tying two wagon beds together but the effort was unsuccessful in that it kept running aground on sand bars and had to be pushed by the soldiers to keep it going. Lt. Stoneman, in charge of the expedition, ultimately had to jettison a portion of his cargo and proceed on by horseback and mule.

William H. Emory, who served with the Boundary Commission following the war with Mexico, noted that the channel of the Gila River changed frequently and was filled with sand bars. While originally he thought it might be navigable during high flow, he later changed his mind when nine years later he served on the Commission charged with surveying the new boundary following the Gadsden Purchase. He wrote that the U.S. territory on the north side of the new boundary line is bounded by the Gila River, which is not navigable, but in flood discharges a large volume of water. Emory also stated the Gila does not always run in the same bed; whenever it changes, the boundary must change (this would be before the Gadsden Purchase) and no survey or anything else can keep it from changing. He stated that the subsequent survey of that river, therefore, as it fixes nothing, determines nothing, is of minor importance.

During the 1850's, after gold was discovered in California, many people crossed the Arizona desert following the Gila Trail to get to California. The number of people that used this trail has been variously estimated at between 30,000 and 60,000 people. There were a number of attempts to use rafts and other boats to float down the river, especially the Lower Gila, from Maricopa Wells or Gila Bend to the Colorado River, but generally speaking, they were not successful. One such attempt by the Edward Howard party reported that a child was born on the raft, which was in route down the Gila, and was named Gila Howard. In his book, The Gila River of the Southwest, Edward Corley states that the international boundary was in the middle of the river after the Treaty of Guadalupe Hidalgo and although the river often shifted its main channel, it was impossible to identify an inconstant and ever changing boundary. The Howard baby arrived on one side or the other of the imaginary line down the middle of the river and his parents totally unconcerned whether their son was born in Mexico or the United States, promptly named him Gila. He is probably the only child ever delivered on the river, which for navigation, proved utterly impractical. Very few immigrants even attempted to flatboat from the Pima villages to Ft. Yuma, although the Howards, a doctor, and a clergyman tried it and apparently made it. [The Gila River of the Southwest, p. 176]

Another military observer, Lt. Mike Michler, with the Boundary Commission, also confirmed in his report that the Gila River was not navigable. Still another military observer, Lt. Sylvester Mowry, in a speech before the American Geographical and Statistical Society, in march of 1859, stated that only the Colorado, of the rivers in the southwest, was navigable and the Gila River was clearly not navigable. In 1863, the Territory of Arizona was carved out of the Territory of New Mexico. In 1865, in its second session, the Arizona Territorial Legislature, passed a memorial asking Congress for an appropriation to improve the navigation of the Colorado River. In it, it stated that the Colorado River is the only navigable water in this territory.

In his decision on March 31, 1892, Judge Joseph H. Kibbey, in the case captioned *M. Wormser, et al., Plaintiffs v. Salt River Valley Canal Co., et al., Defendants*, No. 708 District Court of the Second Judicial District of the Territory of Arizona, in and for the County of Maricopa, was deciding the rights of downstream water users and canal companies in the Salt River Valley against upstream appropriators for the purpose of enjoining them from diverting water from the Salt River in derogation of the rights of the downstream users who claimed prior appropriation. The Plaintiffs alleged in their complaint, which was amended three times, that the Salt River was a natural nonnavigable stream. Judge Kibbey decided that the Spanish system of prior appropriation water law would hold over the common law system of riparian water rights and noted that from 1848, when the United States acquired this land, until 1863, when the territory of Arizona was established, that Arizona was a part of New Mexico which had express laws governing the appropriation and use of water for irrigation.

Judge Kibbey also discussed the Act of 1866 relating to the disposal of public lands containing valuable minerals and the Desert Land Act of 1877, both of which gave priority to the use of water on lands to be conveyed under those acts. Most of the homesteads located at both the Salt River and Gila River areas had passed into private ownership at the time of his decision, pursuant to the Desert Land Act. The Desert Land Act provides in part as follows:

[T]he right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon a bona fide appropriation: and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights.

Act of March 3, 1877, 19 Stat. 377, 43 United States Code §321 (emphasis added). Judge Kibbey decided that the territorial laws could grant a person the right to appropriate water but that such right of appropriation was subject to restrictions, and he went on to

apply the law of prior appropriation to decide the dispute in principal between users of the water but does not attempt to settle the rights of individual consumers. He does find "... that the right of appropriation of water for the cultivation of land becomes permanently appurtenant to that land, for without it the land is worthless; without the land the appropriation could not have been made."

Eighteen years later, Chief Justice Kent, sitting as a district judge, on March 1, 1910, while Roosevelt Lake was filling, wrote an opinion in the case of *Patrick T. Hurley, Plaintiff, The United States of America, Intervenor, vs. Charles F. Abbott and 4,800 Others, Defendants*, No. 4564, District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa. The Kent decree logically followed the Kibbey decree inasmuch as the Kibbey decree set forth rights to water from the Salt River between the various canal companies that were parties to the action but did not attempt to define the rights of the individual landowners, which the Kent decree does. Justice Kent also described the Salt River as a nonnavigable stream and notes that the actual maximum normal flow of the Salt River in miner's inches is considerably less than the total practical carrying capacity of all of the various canals that divert water from the river. He also observes in his opinion that for the past years, prior to his decision, more land in the Valley has been attempted to be cultivated than the water available and the normal flow of the river would supply. He then divided the normal flow of the river by miner's inches to the owners of property using legal descriptions of the property making practical use of the same in order of priority of appropriation.¹⁰

The findings of these two judges, Judge Kibbey and Justice Kent, show that both of them considered the Salt River, which is similar to and the largest tributary of the Gila River and carries more water than the Gila River, as being nonnavigable.

¹⁰ The measurement of a miner's inch is 1/40 part of one cubic foot of water flowing per second of time.

A number of oral histories and interviews of pioneers who themselves and their ancestors lived along the Gila River was furnished in the final report on the navigability study furnished by the Arizona State Land Department, updated and revised through June of 2003. One of these was of Donald C. Pace who grew up pre-statehood in the region of Solomonville, Safford and Thatcher. He stated that his family came in from Utah and other places and settled in Pima first, then came up to Central and then settled across the river at Bryce and Eden. He remembers his family telling him that when they got down to the Gila River, it was flooding and they could not get across. He also remembers swimming in the reservoir and in the river, but never said it was navigable.

Ralph W. Bilby, Sr., father of a U.S. District Court Judge of the same name, stated that he and his family crossed the river a hundred times. It was not a big stream. It would be knee-deep for horses and he remembers when they got down to Solomonville in the Gila Valley on the first day of June, 1890.

Daniel Wilford Colvin, a native of Eden, Arizona, in the Upper Gila Valley below Safford stated:

As a boy, I saw no commercial use of the Gila River between San Jose and Sunnyside. The biggest [sic] reason was the diversion dams. The second biggest [sic] reason was the lack of water. During the dry months of the year, the river would dry up and leave only sand and gravel in the river bed just as it does today. The only boat that I ever saw on the river was the hand made boat of David Colvin's. He used the boat one year during a flood to ford the river. He had to haul the boat up the river whenever he wanted to cross . . . During a flood, people on the North side of the river would cross either by swimming or on horse back, but they did not do it very often. It wasn't until 1915 that the first bridge was built in Bryce. It made the crossing much easier . . . In my 90 years of living in Eden, I have seen a lot of things but the use of the Gila River for navigation was not one of them. Commercial fishing for Razorback Sucker fish was another thing that did not happen in the area where I grew up . . . (E-4, p. V-3)

Most of the interviewees reported in their oral histories of floods. Hazel Shepard lived with her family in Phoenix and her father worked as a carpenter in Florence. During the flood of 1915, it was necessary for her father to be transported across the

Gila River by boat. The boat landing was about ½ mile upstream of Florence, the boats were put in the river, would catch the current and cross to the other side. These boats were used to carry not only passengers, but lumber and other supplies. The boats were small wooden, flat bottomed, rowed by two men. Mrs. Shepard recalls seeing Indians crossing the Gila River in boats in the area of Ashurst-Hayden Dam in the 1920's.

Juan Gutierrez lived in Florence since the age of 13. He stated his father worked on the boats ferrying passengers and supplies across the Gila River in 1971. The boats were small rowboats, a fee was charged to cross and the boat landing was at the extension of Main Street in Florence.

Violet White recalls small boats being used as ferries to transport passengers and supplies for a fee across the Gila River at Florence around 1916-1917.

LaVena Coffen's stated her parents came to Yuma in 1906. They lived out near Dome, above Yuma, and in 1914, they had a big flood and water was from mountain to mountain across the valley. She stated that evidently the riverbed had been up there at one time and the water was high. She thinks it was on Christmas Day; the water was coming down in torrents with trees and everything. She recalls her father telling her mother "Etta, when the water gets up to our door sill, we're getting out of here!." The water did come up to the door sill and then started to recede. They got through it, but moved across the river and her father built up high, next to the railroad track in 1915. Then they had another flood with the water coming up the mountain to their home.

Following the end of the Mexican War in 1848, federal officials were anxious to determine the value of what the United States had gained in the vast territory it had taken from Mexico. It was desirable to determine where cross-country railroads could be built and also to prepare the region for orderly occupation of American settlers in order to solidify control of the new territory. The government undertook formal surveys through the General Land Office. A series of manuals containing instructions for the surveyors was issued starting with the 1851 edition, which instructed that

surveys were to be performed in the same manner as surveys had been made of earlier federal territories. The law had been enacted by the Continental Congress in 1787 and later adopted by the Congress in 1789 after the Constitution was adopted (Ordinance of 1787, the Northwest Territorial Government, Article 4, 1 Statute 50). Thus, all land was to be surveyed and divided into townships and ranges. Each township being six miles square and containing 36 sections of 640 acres each. In Arizona, the base was established on a hill just above the confluence of the Gila and Salt River and was known as the Gila and Salt River Base and Meridian. All townships and ranges were to be counted from that point. The first survey performed in Arizona was by the Mexican Boundary Commission in 1851 as a location of the U.S./Mexico border prior to the Gadsden Purchase in 1853, which established the present boundary between the United States and Mexico. A subsequent survey of the U.S./Mexican border was required because of the Gadsden Purchase.

Dr. Douglas Littlefield, an acknowledged expert on history of the American West, in particular water rights and river-related issues, who performed a number of navigability studies on the Salt River, the Verde River and the Gila River, testified and presented his report on the Gila River.¹¹ He described the various survey manuals issued by the U.S. General Land Office starting with 1851 and supplemented or replaced by manuals of 1855 and 1864. Later manuals were issued in 1881, 1890, 1894 and 1902. The instructions to surveyors in these manuals uniformly held that navigable rivers and lakes were to be meandered by the federal surveyor, although the manuals did not specify the definition of navigability, but left it to the discretion and opinion of the individual surveyor. The net result of all of these manuals was that a navigable stream was to be meandered on both banks and other notes were to be kept regarding

¹¹ "Assessment of the Navigability of the Gila River between the mouth of the Salt River and the confluence with the Colorado River prior to and on the date of Arizona statehood, February 14, 1912" by Dr. Douglas R. Littlefield, Ph.D, November 3, 2005. (E-12)

the stream. Nonnavigable streams less than three chains in width were to be meandered on one bank only. Nine federal surveyors mapped the lands lying along the Gila River between the Salt River and the Gila's confluence with the Colorado River from 1867 to 1912. All found the Gila River to be nonnavigable. Indeed, while these surveys were conducted under different survey manuals, all concluded in their field notes and plats that they did not consider the Gila River to be navigable.

While the surveyors' opinions as shown by their action and reports are not determinative of the issue of navigability, their actions and opinions are probative and support the position that the watercourses were not navigable. *Lykes Bros., Inc. v. United States Army Corps of Engineers*, 64 F.3d 630 (11th Cir. 1995).¹² The field notes of G. P. Engles on June 22, 1868, reveal he encountered the Gila River at ten different places and set no meander corners as he would have been required to do under the 1864 surveying instructions if it were navigable. He mentioned a rapid current and a sandy bottom, but not much more. Fifteen years later, R. C. Powers, in his survey notes, indicated he did not consider the Gila to be navigable. He stated that the stream was shallow and maintained a rapid current. Also, his notes indicated that roads ran parallel to the stream on both banks suggesting that all commerce and communication was conducted by land and not water.

Following the later issued 1890 manual, James H. Martineau surveyed far down the river near Yuma. He indicated that in some places the river was wide and deep but

¹² "The Corps also contends that in 1871 public land survey performed by a disinterested surveyor, J.C. Tannehill, shows that there was a well-defined channel through Cowbone Marsh because, in mapping the area, Tannehill drew a solid line through his depiction of Cowbone Marsh. However, the line Tannehill drew is accompanied by "meander" readings on one side. Surveyors were required to meander both sides of what they concluded were navigable rivers, and to meander one bank of what the surveyor thought were well-defined natural arteries of "internal communication." Because Tannehill only meandered one bank of Fisheating Creek, the district court found that Tannehill had determined Fisheating Creek to be nonnavigable. Given the instructions under which Tannehill operated, his meandering of only one bank of Fisheating Creek is probative of whether Fisheating Creek was navigable in 1871." 64 F.3d at 635. See, also *Denison v. Stack*, 997 F.2d 1356, 1364-65 (11th Cir. 1993) (Although we recognize that surveyors do not settle questions of navigability, the surveyors' actions are probative).

he did not consider it navigable. He set meander corners on both banks in accordance with the 1890 manual instructions directing surveyors to meander both banks of nonnavigable bodies of water, if on an average day they were less than 3 chains wide. He also commented about the presence of a road from Yuma to Gila City on the north side and the Southern Pacific Railroad on the south side, both of which parallel the stream as evidence of his conclusion of nonnavigability.

Surveyor, R.C. Powers, in 1883, and John F. Hess, in 1907, in connection with their surveys, arrived at the same conclusion as the other surveyors.

In 1878, John L. Harris noted the presence of an old bank on the river which suggested significant channel changes, most likely due to flooding, which would make it unreliable for commercial transport. These federal surveys, done over a 45 year period, were performed at varying times during the year and in different years, and each of the individuals described the river as being a nonnavigable stream.

The surveys undertaken by the U.S. General Land Office, beginning in 1868, were primarily for the purpose of facilitating homesteading and creating accurate legal descriptions of the property on which homesteaders would want to settle. This was to carry into effect the intent of the original Homestead Act of 1862.¹³ In his report and testimony, Dr. Littlefield listed some 95 separate patents to private individuals issued by the federal government that touched or overlay the Gila River. None of the applicants or witnesses or officials approving the applications for patents indicated that the river was navigable and, therefore, not available to be homesteaded since if it were navigable, the bed of the river would belong to the State of Arizona. Some of the patents, or at least the applications, stated that the land for which entry was made lay in the bed of the river. Dr. Littlefield also considered and listed 60 instances in which the State chose to sell lands which lay in the river bed, which land it acquired from its

¹³ An Act to Secure Homesteads to Actual Settlers on the Public Domain, 12 Stat. 392 (1862).

apportions given to it by the federal government in the Enabling Act. Because much of the land in Southern Arizona was relatively devoid of vegetation, Congress enacted the Desert Land Act in 1877 which allowed individuals to apply for homesteads on larger blocks of land, i.e. 640 acres, rather than the maximum of 160 acres allowed under the original Homestead Act.¹⁴

The Desert Land Act of 1877 specifically required that water to irrigate lands granted under that act must come from nonnavigable streams. The history of patents issued by the federal government under the original Homestead Act or the Desert Land Act and patents issued by the State of Arizona to private individuals from land it acquired from the federal government clearly indicate that none of the parties to any of the transactions thought that the Gila River was navigable. Also, of the land granted by the federal government to the State of Arizona, none was taken by the State in lieu of other lands because it had already acquired title under the Public Trust Doctrine.

In 1872, the U.S. Government sent George M. Wheeler to the West to obtain topographical information on Arizona and Nevada to assess the region's resources, climate and other qualities that might affect settlement. In his report, Wheeler mentions several streams in Arizona, including the Gila, Salt and Verde. None of these, however, were described as being navigable, although navigability was certainly a characteristic Wheeler would have discussed given his detailed characterization of the Colorado River. He stated that river transportation in the West was to a great extent a failure as beyond the Colombia and Colorado Rivers, no streams of considerable magnitude exist; river transportation even in this age, loses its great power when pitted against railroads. In 1888, the Director of the Geological Survey, John Wesley Powell, issued his 11th Annual Report to the Secretary of Interior devoted solely to the Gila River basin. This report stated:

¹⁴ An Act to provide for the sale of desert lands in certain states and territories, 19 Stat. 377 (1877)

In this basin are found rivers most difficult and dangerous to examine and control, differing in character and habit from those of the North as widely as in geographic position. In place of the regularly recurring annual floods of spring and early summer, so strongly marked on the discharge diagrams of other basins, these rivers show conditions almost the reverse, being at that season at their very lowest stages – even dry – and rising in sudden floods at the beginning of and during the winter. These floods are of the most destructive and violent character, the rate at which the water rises and increases in amount is astonishingly rapid, although the volume is not always very great. . . . From this it will be recognized that the onset of such a flood is terrific. Coming without warning, it catches up logs, boulders [sic] in the bed, undermines the banks, and, tearing out trees and cutting sand-bars, is loaded with this mass of sand, gravel, and driftwood - most formidable weapons for destruction.

All parties agree that the weather and climate on the Gila River water shed has not changed dramatically since the date of statehood, although there have been dry and wet cycles. The Gila River was not listed in or covered in the Rivers and Harbors Act of 1899, which applies to navigable rivers and other navigable waters in the United States and prohibits, among other things, bridges and other obstacles being placed on the navigable rivers without consent of Congress. 33 U.S.C. § 401, et seq., *Economy Light & Power Co. v. U.S.*, 256 U.S. 113, 41 S.Ct. 409, 65 L.Ed. 847 (1921).

The 1910 Enabling Act, which allowed Arizona to take steps to join the Union, prevented the State from selecting parcels valuable as hydroelectric power sites as part of the acreage granted to Arizona by Congress from the public domain. The General Land Office appointed E. C. Murphy to conduct an investigation to locate these hydroelectric power sites so the United States could retain them and decide what it wanted to do with them. Part II of Murphy's report dealt with the Gila River. He observed that the Gila had a very small runoff, except during very wet periods.

On account of the erratic character of the precipitation, the use of the water for irrigation, and the depth and porosity of the valley fill the minimum flow in the valleys along the Gila is very small and uncertain. In all these valleys there is no surface flow at certain places during the low water period of dry years. Though the surface flow may be 0 at one place there may be several second feet at some distance below due to seepage

from irrigated lands, or a reduction in cross section of the ground water channel.¹⁵

Regarding the Gila's water supply, Murphy added further detail about the nature of that stream, explaining that the river was:

Partly an underground stream rising and sinking according to local formations. There is abundant evidence of this fact from Clifton, New Mexico, to Gila Bend, Arizona. In each of the valleys between those places the Gila is dry for a few days nearly every year and at a point a few miles below there is flowing water in the stream. . . . In 1903 there was a flood on the San Francisco that reached a stage of 30 feet above low water at Clifton. By the time this flood reached the mouth of Salt River, 175 miles distant, it had almost entirely disappeared. With the exception of a small part that passed into irrigation ditches and some that passed off in evaporation, this flood went into the ground storage.¹⁶

The foregoing very clearly shows that the Gila River could not be relied upon for commercial transportation. Also, due to topography, only Coolidge Dam was decided to be a favorable source for a dam to generate hydroelectric power on the Gila River and it and San Carlos Lake that backs up behind it, is entirely on the San Carlos Indian Reservation, so there was no basis for the State claiming land under Coolidge Dam or San Carlos Lake.

The U.S. Geological Survey published a number of water supply papers covering the period 1888 to 1938, a 50-year period embracing statehood. These papers include records of gauging stations and note the erratic state of the river in dry years sometimes being dry and other times carrying large floods. They bear out the theme that the Gila River was nonnavigable. E. C. Murphy, a U.S. Geological Survey employee who conducted a study in 1915 of potential hydroelectric power sites in Arizona depicted the Gila River as nonnavigable at statehood. This was based on data accumulated prior to statehood. He stated that the Gila had a very small runoff at its mouth, except during wet periods. And stated that because of the erratic character of the precipitation, the use

¹⁵ E.C. Murphy, "Water Power Utilization in Arizona," April 1915, Part II, p. 3, Salt River Project Archives, Phoenix, Arizona.

¹⁶ E.C. Murphy, "Water Power Utilization in Arizona," April 1915, Part II, p. 8, Salt River Project Archives, Phoenix, Arizona.

of the water for irrigation and the depth and porosity of the valley fill, the flow in the valleys along the Gila is usually very small and uncertain. At times, there is no surface flow at all in the riverbed. While the surface flow may be zero at one place, there may be several second feet of flow some distance below due to seepage from irrigated lands. Murphy explained that the river was partly an underground stream rising and sinking according to local formations. There is abundant evidence of this fact from Clifton to Gila Bend, Arizona. In each of the valleys between those places, the Gila is dry for a few days every year. The stream flows through a broad, flat valley and a broad, sandy channel. It is dry for a month or longer each year at Florence and below Gila Bend it is dry all the time, except for large and long continued floods. He concluded that the Gila River was an erratic, unreliable and unpredictable stream at statehood and in no way susceptible to commercial navigation.

In a report about the time of statehood, the University of Arizona Agricultural Department described the Gila River as a comparatively small and irregular stream due to its arid water shed and uncertain rainfall, although occasionally it carries enormous floods. The runoff of the Gila is difficult to estimate differing in respect from the Salt and Colorado Rivers, which confined to rocky beds in their upper courses can be quite definitely and completely measured at established gauging stations. The Gila flowing in a pervious bed of low gradient is in varying proportions an underground river and rising and sinking as it does according to local formations cannot be measured definitely by ordinary methods. It does have a limited and comparatively constant stream in the Upper Gila near the New Mexico line, but becomes increasingly variable and inconstant between San Carlos and Yuma. Below Ashurst Hayden Dam, the Gila flow or supply is so uncertain as to preclude satisfactory farming operations. The Gila River is not infrequently dry at Florence, sometimes several months at a time. At Yuma, the Gila River is even more variable than at Florence and the discharge has ranged, it is said, from nothing for a period of a year or more to as high as 3.6 million acre feet in

1905, a wet year with a number of large floods. Clearly, from all of the reports, the Gila River is an erratic and unreliable stream with unpredictable flows and a shifting channel. Such a stream can hardly provide a reliable means of water borne commerce.

Other agencies, such as the Bureau of Reclamation, also published reports and its report of 1902 in which it stated the sources from which water may be obtained for reclamation of the arid lands of Arizona are, taken as a whole, the most erratic and irregular in the entire country. There are comparatively few rivers that flow throughout the year. Most of the tributaries of the Gila River, beginning in the mountains as perennial streams, lose their water in the broad, open valleys. Mr. R. H. Forbes of the University of Arizona's agriculture experimental station, which is overseen by the Department of Agriculture, undertook a study that he completed in 1911. He discussed the railroad transportation system and compared it to the river system, and concluded that the only river having any type of regular navigation was the Colorado. He stated that the Gila was a comparatively small and irregular stream due to its arid watershed and uncertain rainfall, although occasionally it carries enormous floods.

Another witness that discussed the land patent situation of sale of lands by the federal government and in subsequent sale of lands acquired from the federal government by the State of Arizona was Dr. Jack L. August, a historian. (E-17) He stated that he reviewed the records pertaining to numerous federal and state patents of land lying in the bed of the Gila River and stated that none of them made any reference to the navigability of the Gila River. He concludes that literally hundreds of people, federal employees, patentees, witnesses, as well as applicants made judgments concerning no the Gila River's nonnavigability or susceptibility of navigability. In reviewing the Arizona State Land Department records, he found 60 instances in which Arizona chose to sell lands that lay in the riverbed, which they could not have done if the river were navigable. All of this, he states, leads to the conclusion that the federal

government and the state government in these transactions considered the Gila River nonnavigable. In summing up his report and testimony, Dr. August stated that he had reviewed the federal and state records of land sales to individuals, transfers from the federal government to the State under the Enabling Act, surveys conducted by federal surveyors and by county and local surveyors, plus their field notes and the plats, he could find no evidence that anyone ever thought the Gila River was, in fact, navigable or susceptible of navigability.

The reports of the U.S. Geological Survey, Reclamation Service and Department of Agriculture referred to above labeled the Gila River as erratic, unreliable and undependable with shifting channels, sandbars and sand islands, and subject to severe floods. In his opinion, the river was clearly not navigable, nor was it susceptible of navigability.

E. Regional Transportation

From time immemorial, the Gila River has been a corridor of travel for people desiring to cross what is now the State of Arizona. Archeological remains show that for at least the past 2,000 years, Native Americans lived along side the Gila River bed diverting water to farm their fields and would no doubt travel from one settlement to the next one by walking along the river bed. Shells of various sea creatures have been found in archeological ruins in Central Arizona, which indicate that trips must have been made down the Gila to its confluence with the Colorado and then on down the Colorado to the ocean or, perhaps, the shells were obtained from Indians living at the Colorado in exchange for other trade goods. All of this travel was done on foot. The Pre-Columbian Indians did not have beasts of burden such as horses or donkeys and to go anywhere they would have had to walk. There is no evidence of any of these Pre-Columbian Indians having utilized a boat or attempting to float on the Gila River.

Horses were introduced by the Spaniards after the Coronado expedition of 1540. The Spanish Fathers who established missions in Southern Arizona and came up the

tributaries to the Gila from the south and no doubt traveled along the Gila River, did mostly by horse, mule or on foot. The expedition of Captain Juan Bautista de Anza in 1775, which traveled the Gila River from Maricopa Wells to the Colorado, was by foot or horse or mule. There is no report of any usage or attempted usage of boats on the Gila River.

The mountainmen and beaver trappers who came into the area from the Santa Rita Mines of New Mexico near Silver City, crossed the Gila River around Duncan Arizona and then moved on down trapping beaver on the Gila and on its tributaries, such as the San Francisco, Bonita Creek, San Carlos, San Pedro, Santa Cruz, Salt and Verde Rivers, all traveled by horse, mule or foot and left no records of having used or attempted to use boats on the river. The first attempted boating of the Gila River occurred during the Mexican American War in December of 1846 and 1847 by members of the Mormon battalion and other attempts made by European Americans are chronicled in the boating section of this report. The Gila Trail, as the corridor along the Gila River became known, was traveled extensively by Forty-Niners on their way to California to try their luck in the gold fields from 1849-50. While some tried to float boats, most of this travel was by wagon, mule, horseback or on foot.

In the late 1850's, camels were introduced with a view toward using them for transportation of mail and freight in the Southwest. This experiment was abandoned with the commencement of the Civil War and the camels were sold or turned loose in the Arizona desert.

The first regular stage mail route was established in 1857 for transporting of persons and mail between San Antonio and San Diego. This stage line entered Arizona at Steins Pass, which is on Interstate 10 at the state line east of Bowie, Arizona. It then traveled through Apache Pass between the Dos Cabasas and Chiricahua Mountains and on south of what is now Wilcox to the San Pedro River near Benson and on west to Tucson. From Tucson, the stage route ran northwesterly through the Picacho Pass to

Maricopa Wells and from there across country to Gila Bend and then down the river corridor to Yuma where it crossed the river by ferry into California. In 1858, the contract was amended and awarded to the Butterfield Overland Mail, which ran a stage semi-weekly in each direction with the east terminal at St. Louis and the west terminal at San Francisco. The route looped way south and followed the Gila river, crossing the Colorado River at Yuma. The Butterfield Overland Mail was discontinued in March of 1861 due to the Civil War. After the war, in 1867, service was re-established along the old Butterfield route and in 1875, the Texas and California Stage Company commenced operation on the same route through Arizona. By this time, there were a number of local stage lines operating within the Arizona Territory.

The first railroad to enter Arizona was the Southern Pacific Railroad Company, which entered from the west through Yuma. The first bridge constructed across the Colorado River, which spanned 667 feet, was started in 1877. There was some delay due to making arrangements through the Secretary of War for boat travel on the Colorado, but after this was cleared up, the railroad worked its way east and reached Casa Grande on May 19, 1879 and Tucson in March of 1880. By 1883, the railroad was completed across Arizona and into New Mexico at Steins Pass. Generally speaking, the railroad followed the same route as the old Butterfield Stage Line, but in Cochise County, it did not go through Apache Pass, but skirted Dos Cabasas Mountain on the north side in an area less rough for construction called Railroad Pass. The cities of Wilcox, Bowie, Dagoon, Benson, Gila Bend and the small settlements along the Lower Gila River were established because the railroad passed through them. Tucson was the only exception as it dated from 1776 as a Spanish pueblo and presidio. A second railroad entered Arizona from New Mexico known as the El Paso and Southwestern Railroad, which went south of the Southern Pacific route through Douglas, Arizona and then up to Benson and on to Tucson. A branch of that railroad went south into Mexico to the mines located there.

In the 1880's and 1890's, branch lines from the Southern Pacific were constructed from Las Cruces, New Mexico to Clifton, Arizona, and from Bowie, Arizona through Safford and on to the mines in Globe and Miami. Other short lines went to other primarily mining towns in Arizona. Later, Tucson was connected by rail with Nogales, which became a major port of entry from Mexico. Also, a branch line from the Southern Pacific was built that ran to Phoenix, Arizona and eventually a railroad went north from there up through Prescott and then north, connecting to the Santa Fe Railroad at Ashfork.

The highways were improved after enactment of the National Highway Act in 1927 and were further improved by the Interstate Defense and Highway Act of 1957. The main thoroughfares across Southern Arizona at this time are Interstate 10, which follows the old railroad path from New Mexico to Tucson and then to Phoenix. Splitting off from it at Casa Grande is Interstate 8, which follows the old railroad to Yuma and then to San Diego. Interstate 19 begins at Nogales and goes to Tucson where it connects to Interstate 10. Interstate 17 branches off Interstate 10 from Phoenix and goes north to Flagstaff. Unlike other states where major settlement occurs near rivers and seaports, the settlement pattern in Arizona has been dictated in part by the source of water, but also because of ground transportation, including railroads and later highways. While the Colorado River was from the 1850's to the early 1900's a major corridor for water transportation as far as the Bill Williams River and perhaps even a little further north, there was no boat or water transportation available into the interior of Arizona.

Although people have used the Gila Trail or the Gila Corridor for transportation across southern Arizona, it was done on land and the river was never a satisfactory highway for commerce or susceptible to being a highway for commerce.

F. Boating on the Gila River

Although the Gila River flows for some 500 miles across Arizona, flowing through six counties and three Indian Reservations, there are relatively few historical accounts of boating or attempted boating on the Gila River. The reports and studies updated by J.E. Fuller and submitted by the State Land Department contain only 13 historical boating events between 1846 and 1909. There is no archeological evidence of the Pre-Columbian Indians living along side the river having ever attempted to use or using any kind of watercraft on the river. Likewise, the mountainmen who traveled the river trapping beaver between 1820 and 1845 left no accounts of boating. They traveled strictly by horse, mule or foot. In December of 1846 through January of 1847, during the Mexican-American War, the Mormon battalion commanded by Capt. Philip St. George Cooke traveled down the Gila River to the Colorado River and did attempt to float supplies by means of a raft constructed from two wagon beds from Gila Bend to Yuma. The raft ran aground on numerous occasions and the officer in charge, Lt. George Stoneman, was forced to jettison a portion of the cargo and physically tow the raft over the sandbars.

The next report was of the Edward Howard party en route to the gold fields of California in 1849 attempting to navigate the river but found that the main channel was constantly shifting and the river was impractical for navigation. Very few other immigrants to California attempted to float down the Gila River, but did use it as a land route to California. An anonymous traveler wrote to the New York Daily Tribune in 1850 stating that a number of Gila Trail travelers reached the Colorado River by building small boats but cited no examples.

In February of 1881, two men by the name of Cotton and Bingham were reported in the Arizona Gazette to be planning a trip to Yuma via the Salt and Gila Rivers in an 18-foot flat bottom boat. The results were not reported, but in November of 1881, three men, including Bucky O'Neill, departed Phoenix for Yuma in a 20-foot long, 5-foot wide

boat, called the "Yuma or Bust." It was later reported they were seen wading in the water for the greater part of the trip and pushing their craft ahead of them. In January of 1895, G.W. Evans and Amos Adams boated from Clifton down the Gila River to Riverside. They had a difficult and tortuous time going through the deep canyons with rapids and boulders that damaged the boat, which they repaired and then had a train haul the boat from Sacaton to Tempe. After re-provisioning and repairing the boat, they launched again at Tempe on the Salt River and proceeded to Yuma. This occurred when there was high flow on the rivers and they were quoted as saying they would not attempt to make the trip through the hazardous waters again.

There is no history of floating logs down the Gila River although there were attempts to float logs on the Salt and Verde Rivers, subsidiaries of the Gila River. These attempts were unsuccessful.

In 1867, it was reported in a magazine that Henry Morgan began operating Morgan's Ferry near Maricopa Wells and he reportedly operated it at various times during the year for the next 25 years. A number of ferries were built to allow people to cross the river during this period of time. The flood on the Gila River in the late winter and spring months of 1905 was so large that it prevented ferries with hand-driven side propellers to cross the river because the current was too swift. In the month of December 1905, the railroad bridge crossing the Gila River near Florence was washed out. In 1909, a man by the name of Stanley Sykes is reputed to have canoed the entire length of the Gila River. Details regarding this trip were not found.

All of the forgoing related incidents of boating or attempted boating were for recreational purposes and none of them, except the very earliest, during the Mexican-American War and the passage of the Forty-Niners had any commercial intent at all.

Barbara Tellman, a fellow of the Water Resources Center of the University of Arizona, filed, on behalf of the State Land Department, a summary of the history of

boating in Arizona and concluded that although there were few boats and canoes available, recreational travel occurred as early as 1880, but that even the recreational travel did not gain much ground until after the Second World War when materials such as fiberglass, neoprene and rubber rafts became available.

Certain portions of the Gila River have become popular recreational boating areas in recent years, particularly in the Gila Box area, a lush desert oasis where the San Francisco River and the Bonita Creek run into the Gila River above Safford. This recreational rafting began after World War II when rubber or neoprene rafts became available to the public. Currently, in the Gila Box area there are some commercially operated boating expeditions where people may sign up with a rafting company for a two to five day trip, with hiking and camping overnight. The Central Arizona Paddlers Club is an organization of boaters that sponsors such rafting trips for its members. The Gila Box area has also received some publicity from the Arizona State Parks Department publications and the Arizona Highways Magazine. All of these trips are purely recreational in nature, primarily to view the scenery and wildlife. These rafting trips generally occur during a high water period of winter and early spring, but the summer monsoons may provide enough water for them in the late summer or early fall since the canoes or boats used draw very little water.

It should be noted that while there were kayaks and possibly rafts that could have made these types of trips in 1912, the technological advances and the types of materials, such as rubber or neoprene rafts and even stronger material for kayaks which were not available in 1912 make the modern trips possible and enjoyable from a recreational point of view. Individuals who have the equipment can go on these float trips individually without paying a guide and a company to transport them. These float trips are strictly for recreational purposes to view the scenery and the wildlife, for the excitement of running rapids, if they are available, and possibly some fishing, but not for commercial purposes. Nor do the rafts carry any commercial goods for

transport and resale. The acknowledged definition of navigability as set forth by the Supreme Court in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 at 563, 19 L.Ed. 999 (1870), states:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. (emphasis added)

Arizona has codified *The Daniel Ball* definition in A.R.S. § 37-1101(5), which defines “navigable” or “navigable watercourse” as:

A watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary mode of trade and travel on water. (emphasis added)

“Highway for commerce” is defined as “a corridor or conduit within which the exchange of goods, commodities or property or the transportation of persons may be conducted.” A.R.S. § 37-1101(3).

In *The Daniel Ball* case, the U.S. Supreme Court held that Grand River was navigable because it supported the passage of a steamer that carried 123 tons of merchandise and passengers both upstream and downstream. 77 U.S. at 564-65.

Following the decision in *The Daniel Ball*, the Supreme Court premised its navigability decisions based upon whether the watercourse was used as a “highway for commerce” or was susceptible for such use. For example, evidence of using boats on a watercourse in the fur trade, in the ranching industry, and for the transportation of supplies, passengers, and freight have all satisfied the requirement of commercial activity under the federal test for navigability. See *Utah v. United States*, 403 U.S. 9, 11-12 (1971) (boats had been used on the Great Salt Lake to haul livestock in ranching business and other evidence indicated that boats were used to transport salt, passengers, freight, ore, and cedar posts); *Economic Light & Power Co. v. United States*, 256 U.S. 113, 117-18 (1921) (river was used extensively in the fur trade and for the

transportation of large amounts of supplies between Chicago and St. Louis using boats that could carry several tons); *The Montello*, 87 U.S. 430, 441-41 (1874) (finding the Fox River navigable where it had been used considerably in the fur trade and as a route for interstate commerce).

Thus, for a river to be considered navigable or susceptible of navigability, there must be a showing of commercial activity for the river to be used as a “highway for commerce” or susceptible to such use. *United States v. Utah*, 283 U.S. 64, 81-82 (1931) (portions of river held navigable where there was extensive evidence of various boats that carried passengers and supplies, in exploring, prospecting, surveying and mining operations, and for recreational purposes, both before and after Utah’s statehood). Likewise, the Ninth Circuit Federal Court of Appeals has found that commerce is a requisite to determining that a watercourse was susceptible to navigation as of statehood. *Alaska v. Ahtna, Inc.*, 891 F.2d 1401, 1405 (9th Cir. 1989). As the Ninth Circuit found, guided fishing and sightseeing tours for nearly twenty years was commercial activity where “[a] substantial industry of such transportation for profit emerged in the lower Gulkana, which industry today employs approximately 400 people.” *Id.*

In *United States v. Oregon*, 295 U.S. 1, 21 (1935), the Court found that five lakes were non-navigable because the only “boating which took place in the area involved no commercial aspects and was of such a character as to be no indication of navigability. Boating evidence was primarily limited to seasonal trapping and duck hunting. Other cases in which the courts have found no evidence that a watercourse was a “highway for commerce” are *Harrison v. Fite*, 148 F. 781, 784 (8th Cir. 1906) (“mere depth of water, without profitable utility, will not render a watercourse navigable in the legal sense . . . nor will the fact that it is sufficient for pleasure boating or to enable hunters or fishermen to float their skiffs or canoes”); *Monroe v. State*, 175 P.2d 759, 761 (Utah 1946) (no evidence that the lake was used for transportation of goods or that “it is likely ever to develop as a valuable means of public commercial transportation”); *Proctor v. Sim*,

236 P. 114, 116 (Wash. 1925) (principal use of nonnavigable lake included recreational boating, fishing, swimming, and skating).

The only evidence submitted regarding boating on the Gila River is one of recreational use, whether personal or commercial, in order to view the scenery and wildlife, enjoy the excitement of white water rapid running and perhaps do some recreational fishing, in late winter and spring. These facts do not satisfy the federal test for navigability or susceptibility of navigability.

G. Geology, Geomorphology and Hydrology of the Gila River

Prior to statehood, especially in the 1860's and before, the Gila River was described as a perennial stream and was thought to flow year round, although the flow varied from very low, sometimes less than 100 cubic feet per second, to annual floods estimated as high as 20,000 cubic feet per second. On occasion, there would be very large floods that exceeded 100,000 cubic feet per second and were very destructive to the land and property around it. Frequently the flow of the Gila River is characterized by periods of drought and there would be no water in the river at all, particularly in the plain below Florence where the very minor flow would seep or infiltrate into the ground. Thus, the river has been described as extremely erratic, unstable and unpredictable in its disposition.

The Gila River is a very long river traveling over 500 miles after crossing the New Mexico border to its confluence with the Colorado River just above Yuma. It flows through many different geological land forms. It crosses six (6) counties, Greenlee, Graham, Gila, Pinal, Maricopa and Yuma and three (3) Indian Reservations, the San Carlos Indian Reservation, Gila River Indian Reservation and the Gila Bend Reservation. Arizona is comprised of two (2) great geological regions, the Colorado Plateau Province in the north, the Basin and Range Province in the south and a transition zone or Central Mountain Province dividing them. The Upper Gila drains primarily the Central Mountain region, which may be extended eastward to the

Continental Divide in New Mexico. The Upper Gila River also drains a portion of the Basin and Range Province in Southern Arizona and Southwestern New Mexico. The Central Mountain region is characterized by mountains of Precambrian, igneous, metamorphic rocks capped by remnants of quaternary and late tertiary volcanoes. Regional uplift of the entire state, including the Central Mountains, is thought to have occurred during the Laramide Orogeny in the late Cretaceous or early Tertiary Period, 65-75 million years ago. Volcanic activity along the river has generally occurred 29 million years before the present, during the Tertiary Period. The Upper Gila is located mostly within relatively narrow canyons of the Central Mountain Province controlled by bedrock outcroppings in between broad alluvial flood plains. This is generally true above the Gila Box area in Graham County and below the Gila Box in the Safford Valley, both of which are broad alluvial plains where the river may spread out and is subject to rapid shifting of channels in response to floods. At the west end of the Safford Valley, San Carlos Lake is located, which is backed up behind Coolidge Dam. From Coolidge Dam down to the Pinal County line, the river is entrenched in steep canyons, which have riffles, rapids and even some waterfalls in its natural condition. From Winkleman to Calvin and onto Twin Buttes, the river is influenced by bedrock, but it does open into a narrow flood plain, which allows it to spread out. As the river comes out between North and South Buttes just east of Florence, it enters the southern margin of the Phoenix Basin, where it flows over deep alluvium and loses much of its flow to infiltration. This alluvial flow remains the same through the Gila River Indian Reservation until the Gila River's confluence with the Salt River. This area is characterized by sand bars and braided channels. One observer described it during a flood as a mile wide and an inch deep. The broad alluvial plain condition remains to Dome Valley, except for two narrows, the one where Gillespie Dam was constructed at the lower end of the Arlington Valley and Painted Rock Dam between the Gila Bend Mountains and Painted Rock Mountains. As it exits this mountainous area, the Gila

River flows past Oakman Flat, Centennial Plain, Palomas Plain and generally following the railroad and Interstate 8 crosses into Yuma County and enters the Welton Mohawk Valley near Texas Peak. The Welton Mohawk Valley and the area above it is a deep, broad alluvial plain, which is farmed heavily. The Gila River exits the Welton Mohawk Valley and enters the Dome Valley and passes between two mountain ranges, the Laguna Mountains and Gila Mountains where it enters the Lower Gila Valley and flows into the Colorado River just above Yuma.

The mountainous regions through which the Gila River flows, except for the Gila Box, are deep canyons not easily accessible and with a natural flow that could be quite swift and would have riffles, rapids and waterfalls. In the other venue, the broad alluvial plains, the river tends to spread out and is braided and shallow compared to its width when it does flow. As pointed out above, the alluvial plains, especially from the buttes to the Colorado River, are subject to much infiltration that absorbs the flow of the river.

The flow of the river is difficult to characterize, partly because there were few records kept until the 1880's to 1900. Also, there are a number of major tributaries to the Gila River at the different points that would add to its flow. For example, on the north side of the river, the San Francisco River, Eagle Creek, Bonita Creek, San Carlos River, Salt River, Agua Fria River and Hassayampa River are all fairly major tributaries. From the south side of the river, there are the San Simon River, San Pedro River and Santa Cruz, as well as many other minor washes. Each of these contributes, particularly during seasons of high precipitation, to the flow of the Gila River below their junction and must be considered from that point down river. Likewise, due to the large area of the Gila watershed (66,000 square miles), heavy precipitation can fall at one point and create a flood below it, but not affect the flow at other points of the river. Major floods that have been documented in historical times occurred in 1833 and 1868, which altered the river considerably by cutting new channels and new beds for the river. Also, large

floods occurred in 1891, 1893, 1905, 1910, 1914 and 1916. These floods were bigger on some parts of the river than on others, but all of them caused a considerable change in the character of the river, especially in the broad alluvial plains.

The building of Coolidge Dam in 1928 tended to ameliorate the effect of large floods if the precipitation occurred above San Carlos Lake. Also, Painted Rock Dam, which was only completed in 1959, should help considerably with regard to flooding on the lower Gila River. Precipitation occurs on the Gila River watershed during two (2) major seasons: in the mid- to late summer monsoon season, intense localized orographic thunderstorms originating to the southeast in the Gulf of Mexico and in winter as large scale cyclonic storms which originate over the Pacific Ocean move east through California. The winter storms tend to produce the largest in terms of peak and volume flows with over 90% of the large storms and floods having occurred in winter months. Following the winter storms, which bring snow to the higher elevations, other than late spring and early summer flow from snowmelt, the summer months usually have a very low average annual discharge.

The climatic conditions in weather in Southern and Central Arizona have been fairly consistent over the past few hundred years. From 1826, when the mountainmen first came through the Southwest to the present day, we have at least some records of rainfall and flow. By using dendrochronology, or the tree ring method, archeologists have been able to confirm that the weather has remained fairly constant in terms of rainfall since at least 760 A.D. and some authorities have projected the weather back even further. The pattern seems to be consistent that there were occasional floods, sometimes quite heavy, interspersed with periods of drought. Also, there might be periods of years in which the average rainfall was greater, in other words, wet cycles that were followed by dry cycles. Over the long period of time, however, these cycles would be fairly consistent and regularly follow each other. For example, it appears that

the period between 1890 and 1920 was generally wetter than the period between 1920 and 1940.

Computing the flow of the Gila River is extremely difficult with the use of estimated average annual flows and estimated mean average annual flows for the reasons mentioned above. Also, any average will take into account the very low flow during the dry periods and the very high flow during extremely large floods. The flow is unpredictable and unreliable. Diversion of water for irrigation in the Upper Gila Valley (Safford Valley and above) started quite early with the first ditch being built in 1874. Numerous other ditches were built after that. A total of approximately 40,500 acres are irrigated from the Safford Valley upstream to the New Mexico border. Because of the heavy use of water for irrigation, gauges were installed on the river and a fairly good record of the flow has been kept since 1889. Considering all of these gauges, it appears that the average annual discharge for the Upper Gila River varies from about 200 cubic feet per second to 430 cubic feet per second. The minimum monthly average flow ranges from 15 to 100 cubic feet per second. The Gila River Decree (Globe Equity No. 59) was the first formal water adjudication decree for this study reach. It has been amended many times since it was entered by the U. S. District Court on June 29, 1935. It governs the use of the Gila River from the head of the Duncan Virden Valley to the confluence with the Salt River. Under the decree, the discharge of the Gila River in the governed reach is fully appropriate. It is the job of the Gila Water Commissioner to apportion flow to water users in the Safford and the Duncan Virden Valleys when there is flow in the Gila River. When the river flows are insufficient to meet the entire demand, water rights are exercised on senior priority. The Gila River Decree limits the rate of diversion to one cubic foot per second for each eighty (80) acres. The decree also limits the total diversion to six (6) acre feet per acre per irrigation season or year. The total amount of water governed by the decree is approximately 1.25 million acre feet for the entire area to the confluence with the Salt

River and is distributed at the rate of 2,580 cubic feet per second for all irrigation areas along the upper and middle reaches of the river, but not all at one time. It is allocated as available on the basis of priority under the prior appropriation law.

The U.S. Geological Survey began putting gauging stations on the Gila River in 1889. One of the early workable gauging stations was installed at the San Carlos Coolidge Dam site in 1899. It reported that during the period prior to statehood, the average monthly flow was 272 cubic feet per second and the maximum estimated flow was 150,000 cfs, which occurred on November 18, 1905. Going down stream, the gauging station at Kelvin was established in 1901 and reported that during the period prior to statehood, the average monthly flow was 739.4 cfs and the maximum estimated flow was 190,000 cfs, which occurred on November 28, 1905. A gauging station at the Twin Buttes dam site was established in 1889 and reports that the average monthly flow for the period prior to statehood was 630.2 cfs and the maximum reported flow was 102,000 cfs that occurred on February 22, 1891. Lastly, the gauging station at Dome was established in 1903 and reported that prior to statehood the average monthly flow was 1,277 cfs and the maximum recorded flow was 95,000 cfs that occurred on March 20, 1905, and again on November 29, 1905. Following statehood, Dome gauging station reported an average monthly flow of 455 cfs, with a maximum flow of 200,000 cfs, which occurred on January 22, 1916. The other gauging stations established on the river at various times, mostly after statehood, reported similar figures. Obviously, the flow averages and maximum flood flows were changed due to the construction of Coolidge Dam and Hayden Ashurst Diversion Dam in 1928.

The navigability study prepared by the Arizona State Land Department and updated through June of 2003 by J. E. Fuller contains a detailed chapter on the historical geomorphology of the Gila River with numerous quotes from Dr. Gary Huckleberry of the Arizona Geological Survey. (E-4, Ch. VII, p. 1-13) In the pioneer period, there was, during a good deal of the time, a single channel stream with moderate flow in the upper

Gila Valley. The large floods of the 1890's and early 20th Century changed the river significantly, such that afterwards it showed a wide sandy flood plain with several branching channels. The consecutive floods would maintain the wide, braided conditions on the alluvial reaches of the river. The gauges and other flow data show a relatively low, although consistent, flow of this portion of the river. The report also describes the river as it splits the gap between north and south buttes east of Florence and enters the southern margins of the Phoenix basin. In this area, it flows over deep alluvium and loses much of the flow to infiltration. There are no pristine records of annual stream flow in the early days; by the time gauging stations were established, water was already being diverted for irrigation. Also in this area, even though the Hohokam civilization had failed around 1450, the descendants of the Hohokam continued to farm the area and divert water from the Gila River. Accordingly, there is no period of time when the river ran in its so-called ordinary and natural condition without diversions for irrigation. Likewise, in this area, the floods of the 1890's and early 1900's caused a great deal of channel and bank cutting and transformed the Gila River into a wide, braided channel with very little depth when it did flow. Different observers at different times of the year, under different stream flow conditions, would describe the river in a totally different manner. A rancher who observed the river near Powers Butte between Buckeye and Gillespie Dam in 1889 stated the Gila River was 100 yards wide and flowed gently along the sandy bottom. The water was clear and in some places five or six feet deep and contained many fish. Other descriptions described the river as a braided, sandy stream and it does appear from both Graf and Ross, as well as Burkham that the channel configuration was greatly altered by the major floods. In the lower Gila River below Gila Bend, the river was described as shifting its channel position significantly and Ross described the river during the 1880's as a desolate expanse of silt and sand dotted with thickets of mesquite and the channels have banks of three to ten feet in height. In summary, this report states that:

The Gila River is a classic example of a dryland river that seldom seeks an equilibrium form. [Graf, 1988; Knighton, 1984, Stevens and others, 1975] Unlike rivers in humid regions that have more stable channels adjusted for more continuous stream flow with less variance in discharge, the dryland rivers are inherently more unstable and more prone to changes in channel configuration. In such unstable fluvial systems, channel configuration depends much upon the history of previous flood events. Periods of high flood frequency are likely to correlate with periods of increased channel instability. . . . Consequently channel plan form and geometry of the lower Gila River in 1912 can also be characterized as mostly shallow and braided. . . . [T]he premise of this study is that the Gila River responds to secular climatic variability by radical changes in channel configuration and that periods of increased large flood frequency correlate with unstable, braided channel conditions. (E-4, Ch. VII, pp. 8-9)

In his testimony on November 17, 2005, before the Commission, Mr. Huckleberry stated that the Gila River was a very dynamic river because the discharge is so fluctuating and thus is similar to other rivers in dry lands and deserts. He stated that the character of the river had been significantly changed by the very large floods, particularly those of 1891, 1893, 1905, 1906 and 1916. In the upper Gila River Valley near Safford, the flood channel particularly was widened and his estimate was that in 1912, it was a wide, braided flood channel. (TR, Nov. 16, 2005, p. 57) The middle Gila River between Twin Buttes and the confluence with the Salt River in 1912 also had a wide, braided flood channel. (TR, Nov. 16, 2005, p. 58) In the lower Gila River from the confluence with the Salt River to Yuma, he describes as follows:

. . . That unlike the middle and the upper Gila River, there is probably a series of channel changes occurring in 1891 and that was a very large flood, particularly on the Salt. Much of the water coming out of the Salt and escaping along the bank and widening it at that time further maintained by the floods of 1905, 1906 and 1916, so my best estimate is that at least certainly for the alluvial reaches of the lower Gila River, we have a wide, braided flood channel in 1912. (TR Nov. 16, 2005, p. 59)

While Mr. Huckleberry did not specifically give his opinion as to whether the Gila River was navigable or nonnavigable, his description of it as of the date of statehood as being wide, braided and prone to changes in channel configuration would indicate that the river was not navigable, primarily because of the large, natural floods

that had occurred in the 1890's and early 1900's, and not because of the withdrawals or diversions from irrigation.

The U.S. District Court for the District of Alaska, in a case involving the Gulkana River, stated "the requirement for title navigability be determined at the time of statehood means only that when making a navigability determination, the *Daniel Ball* test is to be applied to the physical dimensions and physical configuration existing at the time of statehood." *Alaska v. United States*, 662 F.Supp. 455, 463 (D. Alaska 1987); *affirmed* 891 F.2d 1401 (9th Cir. 1989), *cert. denied* 495 U.S. 919 (1990). The Ninth Circuit, in a subsequent Alaska case regarding the Kukpowruk River stated "the key moment for determination of title is the instant when statehood is created." *Alaska v. United States*, 213 F.3d 1092, 1097 (9th Cir. 2000), quoting *Utah v. United States* 482 U.S. 193, 196 (1987).

The Commission was also impressed by the testimony, report and exhibits furnished by Dr. Stanley Schumm, a former geomorphologist for the U.S. Geological Survey and for 30 years a professor at Colorado State University and the author of numerous scientific papers and books on the geomorphology of rivers. He described the Gila River as being characterized by inherent instability and frequent and destructive channel migration. He also quotes Graf in stating that the lower Gila River is a typified, braided stream, variable in channel configuration and dimensions. He also states that there is no historical evidence that any profitable commercial enterprises were conducted using the Gila River for trade and travel as of the time of statehood. In commenting on the large floods, "All the evidence indicates that the 1905-1906 floods dramatically widened the Gila River and rendered it unfit for navigation."¹⁷ Dr. Schumm states that the lower Gila River before the floods of 1891, 1905 and 1906 had a relatively narrow and deep channel that was bordered by trees and brush. It appeared

¹⁷ Geomorphologic character of the Lower Gila River, Dr. Stanley Schumm, PhD PC of Mussetter Engineer (E-6, June 2004, p. 12)

to be relatively stable, but according to Burkham, the major floods were the cause of the dramatic channel changes prior to statehood. Burkham summarized the changes and plotted the channel area in the reach between San Simone and Pima and the upper Gila for the period between 1875 through 1970. In discussing the effect of these floods, Dr. Schumm states in his report

During the floods of 1905-1906, the Geological Survey had difficulty maintaining their gauging stations. For example, the gage at Dome was established in 1903, but in 1905, the river had shifted one mile north (U.S. Geological Survey, 1906, p. 164). Further description of the river in 1905 revealed that its channel was not amenable to navigation. For example, "The Gila carries an enormous amount of mud and sand. At times, the waives of sand . . . are so large, the current is so swift, and the stream to [sic] shallow, that the water is broken into a uniform succession of waves two feet high and over. During 1905, there have been 10 floods. At every flood, the channel shifts." (U.S. Geological Survey, 1906, p. 164) (E-6, p. 10)

* * *

"There was no historical evidence identified for this study that any profitable commercial enterprises were conducted using the Gila River for trade and travel as of the time of statehood." (E-6, p. 12)

* * *

All of the evidence indicates that the 1905-1906 floods dramatically widened the Gila River and rendered it unfit for navigation. (E-6, p. 12)

Although his report is titled "The Lower Gila River," it contains information and data on the upper and middle Gila River. In his conclusions, Dr. Schumm states:

The large, long-duration floods, especially those of 1905 and 1906 converted the relatively stable lower Gila River into a braided channel that was wide and shallow and unsuitable for navigation;

The General Land Office surveys pre- and post-statehood, where available, reveal the dramatic alteration of the channel;

Geomorphic and hydrologic evidence demonstrates that on February 14, 1912, the lower Gila River was not navigable. (E-6, p. 16)

In his testimony before the Commission, he added to and explained the comments in his report. He quoted the description of the Gila River by Anne Chin who

is a geomorphologist and Will Graf, a geologist and geomorphologist who worked extensively through the Southwest from his position at Arizona State University.

The Gila River is characterized by inherent instability and frequent and destructive channel migration, and there are reaches of relative stability and instability. For example, during the flood in 1941, the channel shifted" a half mile "near Buckeye. According to Graf . . . the lower Gila River 'typified braided streams,'" variable . . . "'variable channel configuration and dimensions.' According to Ross," - - who is a geologist, a geological survey in early part of the century - - "the river in 1917 was a interrupted stream, that is, one that has local reaches of flow while most of the river was dry." (TR, Nov.17, 2005, pp. 9-10)

Dr. Schumm stated that he agreed with everything that Dr. Huckleberry and Dr. Fuller said about this river, specifically, that it was unstable in 1912, at the time of statehood, and was a wide, characteristically braided river.

Q. So are you opining that the entire reach of the Gila River is non-navigable? Is that your opinion, Dr. Schumm?

A. My opinion is that the probability of navigation on this lower reach of the Colorado is very low.

Q. So - -

A. Because the river is highly variable and for a short reach you might say, "Well, we can put a boat in here and go half a mile,; but certainly not more than that, and that's what the historical documents seem to indicate.

Q. And you said that's in regards to the lower reach. Is that correct?

A. Well, that's the title of my report, but the data and information that I have from Huckleberry and Burkham show that the river was - - the entire river increased in width during that time. So my assumption is it's wide, it's shallow, steep, braided river. And that type of river without the vast quantities of water in the Nile and Brahmaputra, would likely be [un]susceptible to navigation. (TR, Nov. 17, 2005, pp. 19-20)

* * *

Q. So, Dr. Schumm, is it your opinion that the entire length of the Gila River through Arizona is non-navigable?

A. I would have to say yes, that's my conclusion. (TR, Nov. 17, 2005, p. 21)

Another expert, Hjalmar W. Hjalmarson P.E., furnished a comprehensive report and testified that his opinion was that the Gila River from the confluence of the Salt River to the mouth of the Colorado River was susceptible to navigation at the time of Arizona statehood in its ordinary and natural condition.¹⁸

He used some studies to construct a numerical model developed to simulate groundwater flow, stream aquifer connection and evapotranspiration for the entire Gila River in Arizona. He concluded that at the confluence of the Gila and Salt Rivers, the average annual discharge, in its ordinary and natural condition, would be 1.6 million acre feet, or 2,330 cubic feet per second. From this, he estimated the median annual flow to be approximately 1,265,000 acre feet or 1,750 cubic feet per second. These figures are comparable to the amount of water distributed by the Gila River Decree (Globe Equity No. 59), but it is pointed out that they were strictly averages and that they take into account base flows as low as 170 cubic feet per second and floods, which sometimes exceed 200,000 cfs. Thus, averages do not have a great deal of meaning as it would be a very rare day to have that exact amount of water flowing and the extremes show the unpredictability and undependability of the flow in the river. In using the above figures, he calculated that "the typical natural channel, like the natural channel of the Gila River, is approximately parabolic in shape." (E-23, p. 19) This is a singularly unusual conclusion in view of the testimony of so many parties as to the braided condition of the river and the sand islands, sand bars and other obstacles reported by others. He does not state that the river was navigable, but that it was susceptible of navigability. His report states:

Navigability was independent of undesirable conditions, such as temporary braiding of the river channel following floods, low flow from severe droughts and flow variable because the characteristics are related to how the river might have been used for navigation, rather than navigability. (E-23, p. 6)

¹⁸ "Navigability Along the Natural Channel of the Gila River" by Hjalmar W. Hjalmarson PE, Oct. 25, 2002. (E-23)

He states that there are other factors of an economic and commercial status that may be less obvious (affecting navigability). These non-hydraulic facts while important to the actual performance of navigation are not included in this assessment of navigability. He states:

It is my opinion, based on this analysis, the natural flow of the Gila River was perennial across the desert of central Arizona to the Colorado River. During the typical year the base flow was at least 290 cfs in the upper reach below the confluence with the Salt River and at least 170 cfs at the mouth of the Gila River. The difference in base flow through the reach is mostly because of losses of inflowing water to evapotranspiration. During a typical year the mean annual flow was about 2,330 cfs below the confluence with the Salt River. Flow typically was at least 1,750 cfs for 50% of each year. (E-23, p. 15)

In his testimony, he states that he did not consider the historical accounts or observations of persons living along the river in connection with determining susceptibility to navigation. He stated:

. . . I approached it from a hydrology engineering standpoint, and as I discussed here, it was based on the hydrology and the morphology and the hydraulics, all of which I'm well-versed in. I did the assessment independent of historic accounts. (TR, Nov. 17, 2005, p. 260)

Mr. Hjalmarson's opinion of the mean annual flow is an estimate taken from USGS surveys on the Salt River Indian Reservation on the Salt River and the Pima Indian Reservation on the Gila River and taking the totals and putting them down river to the junction of the Gila and Salt Rivers. (TR, Nov. 17, 2005, pp. 312-13) These figures do not agree with the figures obtained from the gauging stations and other evidence in the State Land Department's report. Also, it does not give adequate consideration, if any, to the infiltration on the middle and lower reaches of the Gila River.

Another document authored by Hjalmar Hjalmarson PE, entitled "Confidential Notes on the Ability to Navigate the Gila River Under Natural Conditions" was introduced into evidence. (E-25) This document was apparently a first draft of his official assessment and contained a number of statements in conflict with and which

were left out of the official report. For example, in this document, Mr. Hjalmarson states:

Q. For example, in the very first sentence of this document you say, "My limited research on the history of navigability of the Gila River suggests it was not used on a regular basis for any kind of water transportation of bulk commodities such as furs or covered wagons or people."

A. Yeah, but I'm not a historian. (TR, Nov. 17, 2005, p. 276)

He goes on to discuss the use of the U.S. Geological Survey maps and states:

Q. . . . "Two of the sites that were selected because there were braided channels that represented a worst case condition for navigability."

A. That's right. . . . (TR, Nov. 17, 2005, p. 278)

* * *

Q. The very next sentence, though, you wrote – as of July 2001 you wrote, "It is unknown if the braided conditions were representative of natural conditions."

A. That's right. I didn't know at that time. That's right.

* * *

Q. Look at the bottom of 35, next to the last paragraph, second sentence says, "Following very large floods the channel may have become destabilized and reaches may have developed multiple channels of braids."

A. That can happen after large floods, yes. . . .

* * *

Q. Next paragraph, first sentence says, "There may have been channel braiding in places along the Gila River as suggested by the oldest available USGS topographic maps."

A. That's true.

* * *

Q. Next sentence, "There was also at least one historic account of multiple channels." Is that right? . . .

A. Yes.

(TR, Nov. 17, 2005, p. 278-280)

* * *

Q. For example, the second paragraph talks about "Navigability of the Gila River below Gillespie Damsite was limited by areas with multiple (braided) channels because flow was divided among two or more channels."

A. Right.

* * *

Q. The next sentence says, "Low flow navigation would be unlikely in these areas of split flow about one month or perhaps 5 or 6 weeks of a typical year."

A. Yes. Given the water – given the unnatural channel, yes.

* * *

Q. Next sentence says, "Navigability during high flows, as with all natural rivers, was also limited," right? Is that right?

A. Yeah. That's true of every river.

* * *

Q. So your conclusion, . . . "As with most rivers, navigability would have been restricted during both high and low flow periods." Is that right?

A. Yeah, it would be more difficult, yes.

(TR, Nov. 17, 2005, p. 282-285)

In his testimony, Mr. Hjalmarson admitted that this was the only navigability study that he had ever performed. (TR, Nov. 17, 2005, p. 312) He stated that in making his report and preparing for his testimony, he made certain assumptions as to what he thought the river should have looked like in 1860 and then applied various empirical tests to it to see if his assumption was correct. He also admitted that if the assumptions and the tests did not conform to actual conditions as reported by observers on the river, there could be a problem with his conclusions. (TR, Nov. 17, 2005, pp. 301-302) While his report was impressive, its credibility was not high.

Dr. D. C. Jackson, PhD was also called as an expert witness. He testified that his opinion was that the lower Gila River was susceptible to navigability under the federal

test. And he used as a basis for his opinion, primarily the work done by Hjalmarson, as well as some of the historical incidents that had previously been testified to. He did not opine that the lower Gila River was in fact navigable or had ever been consistently navigated as a highway for commerce, but that it was susceptible of navigability in its ordinary and natural condition before diversions of water for irrigation and dams were built on the Salt and the upper Gila.

Evidence was submitted by SRP of federal or state court decisions in which navigability of a river was actually determined using the *Daniel Ball* test. Four of the 21 water courses listed in the document were found to be navigable in whole or in part by a federal or state court. Of these four navigable rivers, the lowest average annual flow was 2,277 cfs for the great Miami River of Ohio, which was found navigable in part and non-navigable in part. The other three water courses found navigable had average annual flows of 7,316 cfs, 6,930 cfs and 4,066 cfs, all of which are much higher than the estimated average annual flow computed for the Gila River at the confluence of the Salt River. (Exhibit E-23, Lower Salt River Report) Considering all of the flow information and configuration of the river with its braided condition, sand islands, sandbars, etc., the evidence does not support a finding of navigability or susceptibility of navigability, but in fact tends to support a finding of non-navigability.

Mr. John Fuller, the expert hired by the State Land Department to update the two reports on the Gila River testified explaining the contents of those reports and answering questions on them. In cross-examination, he expressed an opinion as to navigability on a small portion of the Gila River.

Q. . . . I realize that the reports that you have done, John, for the commission both on the Gila and all the others don't express any opinion as to whether the report has a conclusion on navigability. . . .

A. That's correct.

Q. Have you formed an opinion regarding whether the Gila is navigable.

A. . . . My role in preparing the report is to present factual information. I'm just presenting information, and you folks, it's your job to make that decision. And you're asking me this question because you know that the case is near and dear to your heart. That after these reports were prepared the first time, I was retained as a potential witness for the reach that is downstream of Salt River, basically Painted Rock, and in that case, my opinion was that the river was navigable.

Q. So you have an opinion yourself based on the studies that you have done that – what I'll call the lower Gila below the confluence where the Salt is in fact – or was in fact navigable or susceptible to navigation at the time of statehood.

A. Let me clarify. That is not the objective of these reports. The reports don't draw any conclusion, but as I looked at the evidence, yes.

Q. That is your opinion and that's based on what we call the Federal Standards for Navigation?

A. Yes.

MR. HELM: I Don't have any other questions.

COMMISSION COUNSEL JENNINGS: Following up on that question, can you define the specific area of the river about which you were just testifying?

MR. FULLER: Yeah. The reach of the river that I was involved with extended from the Salt River confluence down to Painted Rock Dam.

* * *

Q. Mark McGinnis on behalf of SRP.

Did you testify that you had been retained by somebody in the Gillespie Dam case?

A. Yes.

(TR, Nov. 16, 2005, pp. 120-122)

The record seems clear from the preponderance of the evidence showing that the Gila River was never used in either prehistoric or historic times as a highway for commerce or for any significant transportation on the water of goods or people. While in early pioneer times (1860-1880) it is reported to have been a perennial stream with a single channel, there is some doubt about this. While it appears that there was never sufficient water to actually use the river as an avenue for transportation or highway for

commerce, regardless of its condition prior to 1880, it is very clear that the natural major floods of the 1890's and early 1900's changed the riverbed completely so that by 1912, it was a braided stream with sand islands and sandbars and other obstructions and that it alternated between no flow at all, in part through infiltration, and large floods. (TR, Nov. 17, 2005, pp. 95-96, 99) Throughout its history, it has been an erratic, unreliable, unstable and unpredictable watercourse. It was not navigable or susceptible of navigability in 1860 and before, when white settlers began to divert water for irrigation, but even if it had been, the great floods of the 1890's and early 1900's so changed the character of the river that it was clearly not navigable or susceptible of navigability on the day of statehood. There is no history of floating of logs down the Gila River and the few attempts at using a raft or boat proved generally not successful. It was not ever navigable in fact because it was never used or susceptible of being used in its ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary modes of trade and travel on water. It is a typical dry land or desert river as described by Huckleberry, *supra*.

Among the rivers of the western United States, which are most comparable to the Gila River is the Rio Grande River in New Mexico. It runs completely across the State of New Mexico in a north-south direction just as the Gila River flows across Arizona in an east-west direction. In its opinion in the case of *United States v. Rio Grande Dam and Irrigation Co, et al.*, 174 U.S. 690, 19 S.Ct. 770, 43 L.Ed. 1136 (1899), the U.S. Supreme Court held the Rio Grande not navigable in the State of New Mexico. In its opinion, the Court states:

... it is clear to us that the Rio Grande is not navigable within the limits of the territory of New Mexico. The mere fact that logs, poles, and rafts are floated down a stream occasionally and in times of high water does not make it a navigable river. It was said in *The Montello*, 20 Wall, 430, 439, 'that those rivers must be regarded as public navigable rivers in law which are navigable in fact; and they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.' And

again (page 442): "It is not, however, as Chief Justice Shaw said 9[*Rowe v. Bridge Corp.*] 21 *Pick.* 344), 'every small creek in which a fishing skiff or gunning canoe can be made to float at high water which is deemed navigable, but, in order to give it the character of a navigable stream, it must be generally and commonly useful to some purpose of trade or agriculture."

Obviously, the Rio Grande, within the limits of New Mexico, is not a stream over which, in its ordinary condition, trade and travel can be conducted in the customary modes of trade and travel on water. Its use for any purposes of transportation has been and is exceptional, and only in times of temporary high water. The ordinary flow of water is insufficient.

[174 U.S. at 698-99; 19 S.Ct. at 773]

The same can be said for the Gila River in Arizona.

H. The Gila River at the Confluence of the Colorado

The Colorado River is defined as a navigable river and is listed in the Rivers and Harbors Act of 1899. Between 1852 and 1909 steamboats, paddlewheels, and other river boats were used for transportation and commerce on the Colorado River as far up as the mouth of the Virgin River. There is some evidence that these boats traveled a short distance up the Gila River that would be an indication of navigability for a portion of the Gila River near its confluence with the Colorado. However, the era of steamboats, paddle boats, and other river boats on the Colorado River, and the short distance reported on the Gila at its mouth, was over before statehood in 1912.

The evidence presented indicates that the discharge rate from the Gila River into the Colorado at the confluence is normally about 200 cfs. The evidence presented further shows that most of this water for the past fifty years was and is a result of return flow from the irrigated acreage within the Wellton-Mohawk Irrigation and Drainage District, inasmuch as the river was generally dry at Texas Hill above the Wellton-Mohawk Irrigation and Drainage District. Other evidence indicates that a flow of approximately 20 cfs was regularly found in the Gila River upstream of the confluence and below the point where groundwater returns and surface agricultural returns add to the Gila River flows. Of course, during floods and heavy release of water from Painted

Rock Dam, the flow in the lower Gila River could be much greater, but we are dealing with ordinary and normal river flows.

It is noted that the flow of the Colorado River varies depending upon the time of year and the precipitation, including snow pack on the upper Colorado watershed. These facts, together with releases from upstream dams have a significant impact on the flow of the Colorado. Based on the history of flows down the Colorado River, an ordinary high flow or high watermark for the Colorado River and an ordinary low flow or low watermark for the Colorado River, which excludes floods and other unusual events, has been established. Since there is no significant addition of water flow down the Gila River, the water near the confluence of the Gila and Colorado River, and even up the Gila River, is a result of backwater upstream of the confluence of the Gila River associated with the ordinary high or low flow of the Colorado River. Based upon the criteria established by Stantec Consulting, Inc. in its report submitted through the State Land Department to the commission, it appears that during periods of ordinary low flows on the Colorado River the backwater from the Colorado River would extend only one-tenth of a mile up the Gila River. However, during periods of ordinary high flows on the Colorado River, the backwater associated with the Colorado River flow could extend as far as 2.5 miles up the Gila River. Attached hereto as Exhibit "F" is a map showing the limits of backwater in the Gila River associated with the ordinary high and low flows of the Colorado River. Even during seasonal periods of high flow, the water in the river is not contributed by the Gila River flow, but is solely backwater from the Colorado River, and being created by the Colorado may be considered as part of the flow of the Colorado.

As pointed out above, the Colorado River is a navigable river and under the criteria determining its navigability, the State of Arizona has sovereign title to the bed of the river from the center of the river (the boundary between California and Arizona) to the ordinary high watermark on the east bank of the river. This ordinary high

watermark is a point or level agreed upon by California, Arizona, and the federal government acting through the Bureau of Reclamation and the Army Corps of Engineers. According to the Stantec study, this ordinary high watermark is a point before overtopping occurs near Laguna Dam in this reach of the Colorado River upstream of the confluence with the Gila and can be identified on dikes and levees downstream to the confluence. The point at which the Gila enters the Colorado is lower than the adjacent dikes and levees because of the scouring action of occasional floods on the Gila and, accordingly, the ordinary high watermark for the Colorado River is found approximately 2.5 miles up the bed of the Gila River. The elevation at this point is 128.5 feet above mean sea level, compared with an elevation of 120.2 feet at the downstream mouth of the Gila when the Colorado is at its ordinary low water level--a difference in elevation of 8.3 feet. This backwater from the Colorado creates a cove of the Colorado, or one could say the Colorado is wider at this point. Since the Colorado River is deemed navigable and sovereign title is in the State of Arizona up to the ordinary high watermark of the Colorado River, the Commission limits its findings to that area above the point on the Gila River constituting the ordinary high watermark of the Colorado River. Any boating or travel on the Gila River prior to statehood would have been within the area below the ordinary high watermark of the Colorado River.

VIII. SUMMARY AND CONCLUSION

The Commission conducted a "particularized assessment" of potential public trust claims on the part of the State of Arizona of the Gila River as required in Arizona Revised Statutes § 37-1101 to § 37-1129 and *Center for Law v. Hassell, supra.* and in doing so considered all of the evidence available as to the issue of navigability, including archeology of the Gila River and prehistoric and pre-Columbian history, history and development of the Gila River from the time Europeans first came into the area, the views and opinions of people who lived at or about the time Arizona became a state, the geology, geomorphology and hydrology of the Gila River, the actual attempts at

boating or use of the river as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel over water. The Gila River is one of the longest rivers in Arizona stretching for over 500 miles from the New Mexico border on the east to its confluence with the Colorado River just above Yuma and crosses six (6) counties and three (3) Indian Reservations. The Gila is Arizona's largest watershed covering over half the state's land area. It drains most of southern Arizona, parts of western New Mexico, a part of northern Mexico, with a total area of 66,020 square miles. It crosses through many geological features and has numerous tributaries, the most important of which is the Salt River, which joins the Gila River just to the west of Phoenix.

Because of the length of the river and the fact that it flows through or near a number of population centers in the state, a good deal of interest in the hearings was generated. A great deal of material and evidence was received, compiled, reviewed and considered by the Commission, which included testimony, studies, documents, papers, correspondence and other matters. Hearings were held in the county seats of all six (6) of the counties through which the river flows and a 3-day hearing was held in Phoenix, Maricopa County, where evidence and testimony was submitted to the Commission. After the hearings were concluded, the Commission invited post-hearing briefs and memoranda to be filed by anyone who desired. Sixteen (16) post-hearing memoranda were filed by the parties who appeared before the Commission and were considered by the Commission. A final hearing was held in Phoenix on May 24, 2006 and the Commission again considered all of the evidence and testimony submitted and the post-hearing memoranda filed by the parties, as well as comments and oral arguments presented by the parties. The Commission thereafter, voting unanimously, found and determined in accordance of A.R.S. § 32-1128 that the Gila River from the New Mexico border to its confluence with the Colorado River above Yuma was not navigable as of February 14, 1912, nor was it susceptible of navigability on that date.

The archeological evidence indicated that Paleo Indians visited the area as early as 9500 B.C., although some estimate that there were people using the Gila River area much earlier than this. A great pre-Columbian civilization known as the Hohokam established an advanced and large irrigation society in the Phoenix basin and area around Florence between 300 B.C. and 1 A.D. This civilization declined and virtually collapsed around 1450 A.D. but descendants of this early culture continued to irrigate the area between Hayden Ashurst diversion dam and the confluence with the Salt River up to the present time. There is no evidence that any of these prehistoric Indians made use of the Gila River for purpose of transportation. They had no draft animals and all transportation in the area prior to European explorers was by foot.

In the 16th, 17th and 18th centuries, Spanish explorers visited the area and crossed the Gila River and even constructed missions and small settlements in some of the tributaries to the south of the Gila such as the Santa Cruz and San Pedro Rivers. Between the 1820's and 1840's American mountainmen came into the Gila River Valley from New Mexico trapping for beaver. There are no reports of the Spanish explorers or priests and the mountainmen or trappers having used any kind of boats or watercraft on the Gila River or any of its tributaries. The United States acquired the area of Arizona as far south as the Gila River in the war with Mexico in 1848 and further acquired the land to the south of that to the present border with Mexico as a result of the Gadsden Purchase in 1853. In the war with Mexico, and in our subsequent civil war of 1860 to 1865, a number of military expeditions crossed the territory following the Gila Trail along the Gila River, but none of them successfully utilized boats or watercraft, but traveled by horse, mule or wagons. Even the many travelers in the late 1840's and early 1850's crossing Arizona to reach the gold fields of California rarely attempted to use a boat on the Gila River. The mines that were established in the mountains on either side of the river were supplied by wagon or pack mule.

As the Apache Indians were pacified and located on reservations, the area opened up for homesteaders and others to establish ranches, as well as farms, which utilized the water from the Gila and its tributaries. Some of these homesteads were in the bed of the Gila River, but none of the homesteads or patents granted by the federal or state government indicate that a part was being withheld due to navigability. Likewise, surveyors of land on the Gila River following federal survey manuals indicated by their actions that the river was not navigable. None of the early settlers or homesteaders were of the opinion that the Gila River was navigable as a highway for commerce. The mode of transportation by people during the period between 1860 and 1912 was primarily by foot, horseback, mule or wagon until the railroads were built in the 1880's. The Gila River was not listed in the Rivers and Harbors Act of 1899.

The evidence presented to the Commission indicated that there were few attempts prior to statehood of boating and floating logs down the Gila River or its tributaries and these were generally not successful. A review of the historical accounts of boating on the Gila River and its tributaries supports the proposition that the river was not suitable for navigation and there was never any sustained, successful use of a watercraft on the river or use of the river for floating logs or otherwise as a highway for commerce. Since the 1950's, using modern neoprene rubber boats, individuals and organizations have conducted float trips on portions of the Gila River primarily the Gila Box Riparian National Conservation Area above Safford and the deep bedrock white water canyons below Coolidge Dam. These trips are strictly recreational in nature in order to view the scenery and wildlife, enjoy the excitement and danger of white water rapid running and perhaps do some recreational fishing. These trips occur primarily in late winter and spring and were not use of the river as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water as of February 14, 1912. Most of the witnesses and documentary evidence with regard to geology, geomorphology and hydrology of the Gila River

stated that while a perennial or intermittent stream flowed prior to statehood, it was a very erratic, unstable, unpredictable and undependable stream because the flow rates varied from very low, sometimes 200 cfs or even dry, to annual floods estimated at between 13,000 and 20,000 cfs with some periodic floods exceeding 100,000 cfs or more. Also, even under the best of conditions, the river lost a good portion of its flow in the middle reaches from Hayden Ashurst Dam down to the Colorado through infiltration.

There was some evidence presented, somewhat questionable, of a median annual flow of 1,750 cfs and an annual average flow of 2,330 cfs at the confluence of the Gila and Salt Rivers. These, however, were averages and influenced by the very low or zero flow and the extremely high flood flow. None of the witnesses testified that the river was, in fact, navigable but some opined that with this large a flow the river might be considered as susceptible of navigability. The experts disagreed as to the type of river, i.e. single channel or braided in the early pioneer period before 1860 and some attributed the condition of the riverbed in 1912 to the diversion of water for irrigation. While this diversion certainly affected the river flow, the most credible expert witnesses testified that the very large floods that occurred in the 1890's and early 1900's scoured out the river and cut into the banks and widened the river such that it became, through natural effect of the floods, a braided river in the early 1900's with many sandbars, sand islands and other obstructions that rendered it nonnavigable and not susceptible to navigability.

By 1912, in part because of upstream diversions and partly because of infiltration and changes in the channel due to the very large floods, the river channel was dry a portion of the time and even when it flowed, it was a braided configuration with shifting sandbars and sand islands, and interspersed with periodic, very large floods.

In *The Daniel Ball*, *supra*, the Court stated that:

Those rivers must be regarded as public navigable rivers in law, which are navigable in fact and they are navigable in fact when they are used or susceptible of being used in their ordinary condition as highways for

commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

77 U.S. at 568. *See also, U.S. v. Holt Bank, supra.*, and *Muckleshoot Indian Tribe v. FERC*, 993 F.2d 1428 (9th Cir. 1993). The evidence submitted to the Commission did not show that the Gila River is navigable in fact under the federal test as set forth in *The Daniel Ball* and other U.S. Supreme Court decisions. Therefore, the Gila River may not be considered as navigable in law nor is it susceptible of navigability.

The standard of proof for findings by the Commission is a preponderance of the evidence. A.R.S. § 37-1128(A), *Defenders of Wildlife v. Hull, supra.* and *North Dakota v. United States, supra.* The burden of proof rests on the party asserting navigability. *Arizona Center for Law v. Hassell, supra.*, and *Land Department v. O'Toole, supra.* Clearly, the preponderance of evidence supports a finding that the Gila River was not navigable on February 14, 1912, and further, was not susceptible of navigability in its ordinary and natural condition. Put another way, the proponents of navigability did not meet their burden of proof by showing with a preponderance of the evidence that the Gila River, or any part of it, was navigable or susceptible to navigability in its ordinary and natural condition on the date of statehood, February 14, 1912.

IX. FINDINGS AND DETERMINATIONS

Based upon all of the historical and scientific data and information, documents and other evidence produced, including oral testimony, and considered by the Commission, the Commission finds that the Gila River from the New Mexico border to the confluence with the Gila River is erratic, unstable, undependable and unpredictable, characterized by periodic floods, sometimes extreme, in its ordinary and natural condition. The reaches that go through deep bedrock canyons upriver of Safford near the New Mexico border and below Coolidge Dam have rapids, waterfalls and other obstacles that prevent them from being considered navigable or susceptible of navigability as a highway for commerce. Those portions of the river which lie in the broad alluvial plains, in particular below Safford to Coolidge Dam and Twin Buttes to

the confluence with the Salt River and from there down to the Colorado, except for narrows at Gillespie Dam site and Painted Rock Dam site, were a braided stream of two or more channels interspersed with sandbars, sand islands and other obstacles, which shifted with floods and high flow of water, and as such, had a configuration that would be impossible to be considered navigable or susceptible of navigability as of statehood.

Accordingly, the Commission finds that the Gila River from the New Mexico border to its confluence with the Colorado River above Yuma , except for the end of the Gila River affected by the backwater of the Colorado River, was not navigable or susceptible of navigability or used or susceptible of use as a highway for commerce over which trade and travel was or may be conducted in the customary modes of trade and travel on water as of February 14, 1912.

DATED this ____ day of _____, 2008.

Earl Eisenhower, Chair

Dolly Echeverria, Vice Chair

James Henness, Member

Cecil Miller, Member

Jay Brashear
Deceased September 15, 2007

Staff Members:

George Mehnert
Executive Director

Curtis A. Jennings
Legal Counsel to the Commission

1945-0

EXHIBIT A1

AFFIDAVIT/PROOF OF PUBLICATION

THE COPPER ERA

PO Box 1357 Clifton, AZ 85533

Phone: (928) 428-2560 / Fax: (928) 428-5396

E Mail: mwatson@eacourier.com

Susan G. Curtis being duly sworn deposes and says:

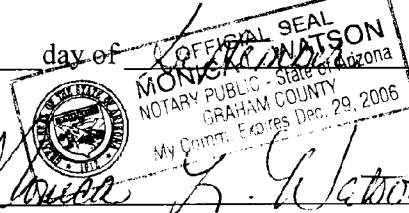
That she is the legal clerk of The Copper Era, a newspaper published in the Town of Clifton, Greenlee County, Arizona; that the legal described as follows:

Arizona Navigable Stream
Adjudication Commission
Statement of Intent

a copy of which is hereunto attached, was first published in said newspaper in its issue dated Aug 20, 2003 and was published in each 3 issue(s) of said newspaper for 3 consecutive weeks, the last publication being in the issue dated Sept 3, 2003.

Signed: Susan G. Curtis

Subscribed and sworn to before me this

3 day of August, 2003

Monica H. Watson

Notary Public

My Commission expires: December 29, 2006

RECEIVED

OCT 6 2003

BY: _____

STATEMENT OF INTENT

State of Arizona

Navigable Stream Adjudication Commission

Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse navigability hearing regarding the Gila River, Blue River, and the San Francisco River in Greenlee County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of the Gila River, Blue River, and the San Francisco River in Greenlee County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by October 1, 2003. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse hearing regarding the following watercourses in Greenlee County: Stove Wash, Strayhorse Creek, Thomas Creek 1 - Greenlee, Thomas Creek 2 - Greenlee, Tollgate Wash, Tule Creek, Turkey Creek 2, Tutt Creek, Wampoo Wash, Waters Wash, West Prong Creek, White Mule Creek, Whitefield Wash, Whitewater Creek, Willow Creek 1, Willow Creek 1 - Greenlee, Willow Creek 2 - Greenlee, and any other named or unnamed small and minor watercourses in Greenlee County.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is streams@mind-spring.com.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.

Req.: Arizona Navigable Stream Adjudication Commission

Published August 20, 27, September 3, 2003 in the Copper Era, Clifton, Arizona 85533.

AFFIDAVIT/PROOF OF PUBLICATION

EASTERN ARIZONA COURIER

301A East U.S. Hwy 70 Safford, AZ 85546

Phone: (928) 428-2560 / Fax: (928) 428-5396

E Mail: mwatson@eacourier.com

Susan G. Curtis being duly sworn deposes and says:

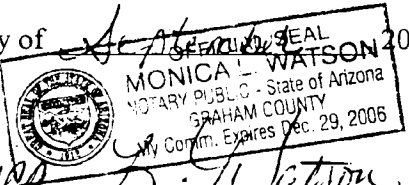
That she is the legal clerk of the EASTERN ARIZONA COURIER, a newspaper published in the City of Safford, Graham County, Arizona; that the legal described as follows:

Arizona Navigable Stream
Adjudication Commission
Statement of Intent

a copy of which is hereunto attached, was first published in said newspaper in its issue dated Aug 20, 2003 and was published in each 3 issue(s) of said newspaper for 3 consecutive weeks, the last publication being in the issue dated Sept 3, 2003.

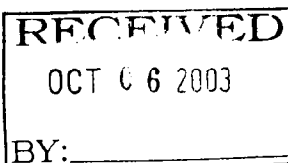
Signed: Susan G. Curtis

Subscribed and sworn to before me this

3 day of September, 2003

Monica L. Watson

Notary Public

My Commission expires: December 29, 2006



STATEMENT OF INTENT

State of Arizona

Navigable Stream Adjudication
Commission

Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse navigability hearing regarding the Gila River in Graham County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of the Gila River in Graham County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by October 1, 2003. All evidence submitted to ANSAC will be Telegraph Wash 2, Tidwell Wash, Tollgate Wash, Triplet Wash 1, Triplet Wash 2, Tule Creek, Turkey Creek - Pima, Turkey Creek 1 - Graham, Turkey Creek 2 - Graham, Twilight Creek, Two E Wash, Underwood Wash, WA Wash, Watson Wash, West Prong Creek, Whitlock Wash, Willow Creek - Graham, Willow Creek 1, Willow Spring Wash - Graham, Yuma Wash - Graham, and any other named or unnamed small and minor watercourses in Graham County.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is streams@mind-spring.com.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.

Req.: Arizona Navigable Stream Adjudication Commission

Published August 20, 27, September 3, 2003 in the Eastern Arizona Courier, Safford, Arizona 85546.

IN WITNESS THEREOF, the following incorporators have signed these Articles of Incorporation, at
US Highway 191, Safford, Arizona 85546; Arnette L. Thompson 10160 S. Highway 191, Safford, Arizona 85546

B



PAYSON ROUNDUP
P.O. Box 2520 - Payson, AZ 85547
708 N. Beeline Highway
(928) 474-5251 - Fax (928) 474-1893

STATE OF ARIZONA
COUNTY OF GILA

AFFIDAVIT OF PUBLICATION

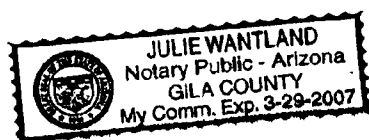
I, **Marge Hanscom**, acknowledge that the attached hereto was published in a newspaper of general circulation at Payson, Arizona, County of Gila on the following dates:

08/31/2004
09/07/2004
09/14/2004

Marge Hanscom
Signed

On this 5TH DAY OF NOVEMBER, 2004.

Julie Wantland
Notary Public



9327 8/31 9/07 9/14/04
STATEMENT OF INTENT
9327 8/31 9/07 9/14/04
STATEMENT OF INTENT
State of Arizona
Navigable Stream Adjudication Commission
Pursuant to A.R.S. §37-1101, et seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the Gila River, the Upper Salt River, and the Verde River in Gila County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1101, et seq., that interested parties are requested to file all documentary evidence they propose to submit to ANSAC by October 26, 2004. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.
Pursuant to A.R.S. §37-1101, et seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Gila County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of all small and minor watercourses in Gila County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by October 26, 2004. All evidence submitted to ANSAC will be the

Notary Public

Affidavit of Publication

STATE OF ARIZONA

COUNTY OF PINAL

ss.

STATEMENT OF INTENT State of Arizona

Arizona Navigable Stream Adjudication Commission

Pursuant to A.R.S. §37-1101, et seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the Gila River, the San Pedro River, and the Santa Cruz River in Pinal County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of the Gila River, the San Pedro River and the Santa Cruz River in Pinal County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by February 26, 2004. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection by appointment at the ANSAC offices during regular office hours.

Pursuant to A.R.S. §37-1101, et seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Pinal County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of all small and minor watercourses in Pinal County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by February 26, 2004. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

The list of small and minor watercourses includes:

Alder Wash - Pinal, Antelope Wash - Pinal, Aravaipa Creek - Pinal, Arnett Creek, Ash Creek - Pinal, Bachman Wash, Batamote Wash 2, Bear Springs Canyon, Bear Thicket Creek, Big Bertha Wash, Big O Wash, Big Wash - Pima/Pinal, Bitter Well Wash, Bloodsucker Wash, Bogart Wash, Booger Canyon St, Bowl Creek, Box O Wash, Bulldog Wash, Buzan Canyon Stream, Camp Grant Wash, Campaign Creek, Canada del Oro, Cabbage Wash, Carpas Wash, Catalina Wash, Cave Canyon Stream, Chalk Creek, China Wash, Chirreon Wash, Circle S Wash, Clark Wash, Comstock Wash, Connelly Wash, Copper Creek, Copper Creek - Pinal, Copper Hill Wash, Cottonwood Wash 1 - Pinal, Cottonwood Wash 2 -

Pinal, Cronley Wash, Cruz Wash, Deer Creek - Pinal, Deer Creek 1 - Graham/Pinal, Dodge Tank Wash, Dodge Wash, Dodson Wash - Pinal, Donnelly Wash, Drew Wash, Dripping Spring, Dry Camp Canyon, Eagle Wash, Eskiminzin Wash, Faraway Wash, First Water Creek, Flag Wash, Garden Creek, Greene Wash, Guild Wash, Gust James Wash, Hackberry Creek - Pinal, Hackberry Wash - Pinal, Hagen Canyon Stream, Haunted Canyon Creek, Hells Half Acre, Holy Joe Canyon, Horse Camp Canyon, Horse Foot Wash, Indian Bend Wash - Pinal, Indian Well Wash, Irene Wash, James Wash, Jim Thomas Wash, Kaka Wash, Kohatk Wash, La Barge Creek, Lemmon Creek, Little Ash Creek - Pinal, Little Gust Jame, Lyons Fork, Mammoth Wash, Margaret Wash, Mesa Wash - Pinal, Milk Ranch Creek, Milky Wash, Mineral Creek - Pinal, Mulberry Wash - Pinal, North Branch San, North Fork Clark, Oak Creek - Pinal, Paisano Canyon Spring, Palmer Wash, Parsons Canyon Spring, Peppersauce Wash, Peters Wash, Piper Springs Wash, Polecat Wash, Potters Wash, Putman Wash - Pinal, Queen Creek, Rainbows End Wash, Rancho Rio Creek, Ray Spring Wash, Redrock Canyon, Reeves Creek, Reymert Wash, Ripsey Wash, Roach Wash, Rock Creek 1 - Pinal, Rock Creek 2 - Pinal, Romero Wash, Santa Cruz Wash, Santa Rosa Wash, Scanlon Wash, Silver King Wash, Silver Reef Wash, Smelter Wash, Smith Wash - Pinal, South Fork Clark, Spencer Spring Creek, Steamboat Wash - Pinal, Swingle Wash, Sycamore Canyon, Tar Wash, Tat Momoli Wash, Threeway Wash, Tillmans Wash, Tipperary Wash, Tom Mix Wash, Tortilla Creek, Tucson Wash, Twentynine Wash, Twentyseven Wash, Vekol Wash, Virgus Canyon St, Weekes Wash, Well Canyon Stream, West Fork Pinto, Whitewash Canyon, Whitlow Canyon, Zapata Wash, and any other named or unnamed small and minor watercourses in Pinal County.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is streams@mindspring.com.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.

No. of publications: 3; dates of publications: Jan. 15, 22, 29, 2004.

DONOVAN M. KRAMER, SR. first being duly sworn deposes and says: That he is a native born citizen of the United States of America, over 21 years of age, that he is publisher of the Casa Grande Dispatch, a daily newspaper published at Casa Grande, Pinal County, Arizona, Monday through Saturday of each week; that a notice, a full, true and complete printed copy of which is hereunto attached, was printed in the regular edition of said newspaper, and not in a supplement thereto, for ~~THREE~~ XXXX issues the first publication thereof having been on the 15TH

day of JANUARY A.D., 2004

Second publication JANUARY 22, 2004

Third publication JANUARY 29, 2004

Fourth publication _____

Fifth publication _____

Sixth publication _____

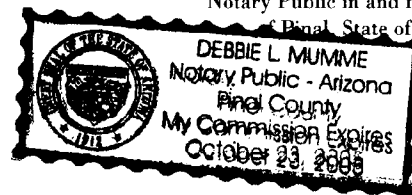
CASA GRANDE DISPATCH

By Don - Kramer
DONOVAN M. KRAMER SR., Publisher

Sworn to before me this 31st

day of January A.D. 2004
Debbie L. Mumme

Notary Public in and for the County
Pinal, State of Arizona



THE ARIZONA REPUBLIC

STATEMENT OF INTENT
 State of Arizona
 Navigable Stream
 Adjudication Commission
 Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the Gila River, the Verde River, and the Maricopa County Small and Minor Watercourses. These hearings will be held in Maricopa County. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Gila River, the Verde River, and the Maricopa County Small and Minor Watercourses. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by November 15, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.
 An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is streams@mindspring.com. Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.
 05557-September 1, 8, 15, 2005

STATE OF ARIZONA }
 COUNTY OF MARICOPA } SS.

Diana Chavez, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

September 1, 8, 15, 2005

Diana Chavez

Sworn to before me this
 15TH day of
 September A.D. 2005



Marilyn Greenwood
 Notary Public
Sharon M. ...

Publisher's Affidavit of Publication

oOo

STATE OF ARIZONA }
COUNTY OF YUMA }

STATEMENT OF INTENT
State of Arizona
Navigable Stream Adjudication
Commission

Pursuant to A.R.S. §37-1101, et seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold a watercourse navigability hearing in Yuma County regarding the Gila River. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of the Gila River. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by January 24, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstre-ambeds.com>. The e-mail address is streams@mindspring.com.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.
Daily December 17, 24, 31, 2004
#L29526

Julie Moreno or Lee Knapp, having been first duly sworn, deposes and says: that The Sun is a newspaper of general circulation published daily in the City of Yuma, County of Yuma, State of Arizona; that (s)he is the publisher or business manager of said paper; that the

STATEMENT OF INTENT

a printed copy of which, as it appeared in said paper, is hereto attached and made a part of this affidavit, was published in The Sun

For THREE issues; that the date of the first publication of said STATEMENT OF INTENT

was DECEMBER 17, 2004 and the date of the last publication being DECEMBER 31, 2004 and that the dates when said

STATEMENT OF INTENT

was printed and published in said paper were

DECEMBER 17, 24, 31, 2004

Lee Knapp

Subscribed and sworn to before me, by the said Julie Moreno or Lee Knapp

4th day of January, 2005

Virgen P. Perez Notary Public

My commission expires May 10, 2005

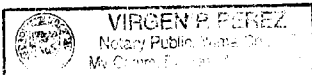


EXHIBIT A2

AFFIDAVIT/PROOF OF PUBLICATION

THE COPPER ERA

PO Box 1357 Clifton, AZ 85533

Phone: (928) 428-2560 / Fax: (928) 428-5396

E Mail: mwatson@eacourier.com

Susan G. Curtis being duly sworn deposes and says:
That she is the legal clerk of The Copper Era, a newspaper
published in the Town of Clifton, Greenlee County,
Arizona; that the legal described as follows:

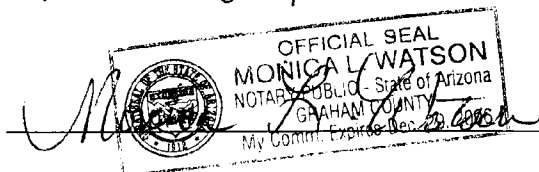
Arizona Navigable Stream
Adjudication Commission
Public Hearing

a copy of which is hereunto attached, was first published in
said newspaper in its issue
dated Sept 10, 2003 and was
published in each 1 issue(s) of said newspaper
for 1 consecutive weeks, the last
publication being in the issue
dated Sept 10, 2003.

Signed: Susan G. Curtis

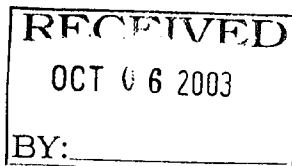
Subscribed and sworn to before me this

10 day of September, 2003



Notary Public

My Commission expires: December 29, 2006



NOTICE OF PUBLIC HEARING

notice by State of Arizona
Navigable Stream Adjudication
Commission

Pursuant to A.R.S. § 37-1126 (A),
notice is hereby given that the
Navigable Stream Adjudication
Commission will hold public hear-
ings to receive physical evidence and
testimony relating to the navigability
or nonnavigability of all watercours-
es in Greenlee County. The hearings
will be held in Greenlee County on
October 15, 2003. The hearings will
begin at 9:00 AM in an order estab-
lished by the chair at the Train Depot
100 North Coronado Boulevard,
Clifton, Arizona 85533. These are
presently the only hearings sched-
uled for the watercourses in Greenlee
County.

The list of watercourses in Greenlee
include the Gila River, Blue River,
and the San Francisco River and the
following small and minor water-
courses: Al Creek, Alder Creek -
Greenlee, Apache Creek - Greenlee,
Ash Creek - Greenlee, Bear Creek 1 -
Greenlee, Bear Creek 2 - Greenlee,
Bear Wallow Creek, Beaver Creek -
Greenlee, Beeler Creek, Benton Creek
- Greenlee, Bitter Creek - Greenlee,
Black River, Blue Creek, Buckalou
Creek, Bull Creek - Greenlee, Burro
Wash - Greenlee, Bush Creek,
Campbell Blue Creek, Canyon Creek
2, Castle Creek - Greenlee, Cat Creek,
Cave Creek - Greenlee, Centerfire
Creek - Greenlee, Chase Creek,
Chitty Canyon Creek, Cienega Creek,
Cienega Creek 1 - Greenlee, Clear
Creek - Greenlee, Coal Creek, Cold
Creek, Coleman Creek, Conklin

its hearings informally without
adherence to judicial rules of proce-
dure or evidence.

Evidence submitted in advance of
the hearing will be available for pub-
lic inspection during regular commis-
sion office hours of 8:00 a.m. to 5:00
p.m., Monday thru Friday, except on
holidays. The commission office is
located at 1700 West Washington
Street, Room 304, Phoenix, Arizona
85007.

Please call first to review evidence
at (602) 542-9214.

Individuals with disabilities who
need a reasonable accommodation to
communicate evidence to the com-
mission, or who require this informa-
tion in an alternate format may con-
tact the commission office at (602)
542-9214 to make their needs known.

Req.: Arizona Navigable Stream
Adjudication Commission
Published September 10, 2003 in the
Copper Era, Clifton, Arizona 85533.

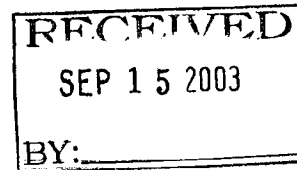
**State of Arizona
Navigable Stream Adjudication Commission**

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or nonnavigability of all watercourses in Greenlee County. The hearings will be held in Greenlee County on October 15, 2003. The hearings will begin at 9:00 AM in an order established by the chair at the Train Depot 100 North Coronado Boulevard, Clifton, Arizona 85533. These are presently the only hearings scheduled for the watercourses in Greenlee County. The list of watercourses in Greenlee include the Gila River, Blue River, and the San Francisco River and the following small and minor watercourses: Al Creek, Alder Creek, Greenlee, Apache Creek, Greenlee, Ash Creek, Greenlee, Bear Creek 1, Greenlee, Bear Creek 2, Greenlee, Bear Wallow Creek, Beaver Creek, Greenlee, Beeler Creek, Benton Creek, Greenlee, Bitter Creek, Greenlee, Black River, Blue Creek, Buckalou Creek, Bull Creek, Greenlee, Burro Wash, Greenlee, Bush Creek, Campbell Blue Creek, Canyon Creek 2, Castle Creek, Greenlee, Cat Creek, Cave Creek, Greenlee, Centerfire Creek, Greenlee, Chase Creek, Chitty Canyon Creek, Cienega Creek, Cienega Creek 1, Greenlee, Clear Creek, Greenlee, Coal Creek, Cold Creek, Coleman Creek, Conklin Creek, Corduroy Creek, Greenlee, Cottonwood Creek, Greenlee, Coyote Wash, Greenlee, Crabtree Creek, Degrhead Creek, Dix Creek, Double Cienega Creek, Dromedary Creek, Dry Prong Creek, Dutch Blue Creek, Eagle Creek, East Eagle Creek, Fall Creek, Greenlee, Fish Creek, Greenlee, Fishhook Creek, Foote Creek, Grant Creek, Greenlee, Greaser Wash, Hannagan Creek, Hannah Springs Creek, Harden Cienega Creek, Harris Wash, Heller Branch Be, Horton Creek, Greenlee, Indian Creek, Greenlee, Jackson Creek, Juan Miller Creek, K P Creek, Kaywood Wash, Largo Creek, Left Prong Dix Creek, Limestone Gulch, Linden Creek, Little Blue Creek, Little Sand Wash, Lop Ear Creek, Malay Creek, McKittrick Creek, Middle Prong Creek, Nolan Creek, North Bull Creek, North Corral Creek, North Fork Bear, Oak Creek, Greenlee, Pace Creek, Panther Creek, Pat Creek, Pigeon Creek, Greenlee, Pipestem Creek, Rainville Wash, Raspberry Creek, Right Fork Foote, Right Prong Dix, Rousensock Creek, Salt House Creek, Sand Wash, Greenlee, Sanders Wash, Sandia Wash, Sardine Creek, Sheep Wash, Greenlee, Silver Basin Creek, Silver Creek, Greenlee, Skully Creek, Snake Creek, South Fork Bear, Squaw Creek, Greenlee, Steeple Creek, Stove Wash, Strayhorse Creek, Thomas Creek 1, Greenlee, Thomas Creek 2, Greenlee, Tollgate Wash, Tule Creek, Turkey Creek 2, Tutt Creek, Wampoo Wash, Waters Wash, West Prong Creek, White Mule Creek, Whitefield Wash, Whitewater Creek, Willow Creek 1, Willow Creek 1, Greenlee, Willow Creek 2, Greenlee, and any other named or unnamed watercourse within Greenlee County.

Interested parties may submit evidence to the commission office prior to the hearing. During the public hearing, the commission will receive additional evidence including testimony. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence. Evidence submitted in advance of the hearing will be available for public inspection during regular commission office hours of 8:00 a.m. to 5:00 p.m. Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to review evidence at (602) 542-9214.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

AFFIDAVIT OF PUBLICATION



THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

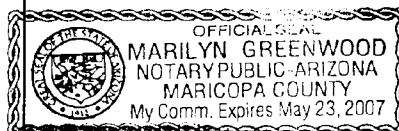
Melissa Daams, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

Septmeber 5, 2003

Melissa Daams

Sworn to before me this
5TH day of
September A.D. 2003



Marilyn Greenwood
Notary Public

AFFIDAVIT/PROOF OF PUBLICATION

EASTERN ARIZONA COURIER

301A East U.S. Hwy 70 Safford, AZ 85546

Phone: (928) 428-2560 / Fax: (928) 428-5396

E Mail: mwatson@eacourier.com

Susan G. Curtis being duly sworn deposes and says:

That she is the legal clerk of the EASTERN ARIZONA COURIER, a newspaper published in the City of Safford, Graham County, Arizona; that the legal described as follows:

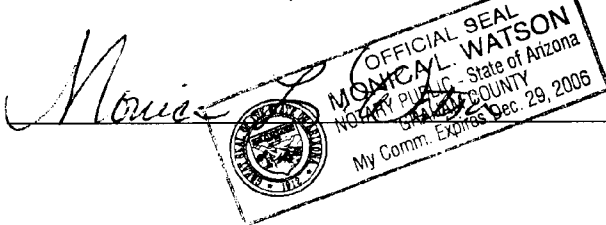
Arizona Navigable Stream
Adjudication Commission
Notice of Public Hearing

a copy of which is hereunto attached, was first published in said newspaper in its issue dated Sept 7, 2003 and was published in each 1 issue(s) of said newspaper for 1 consecutive issue the last publication being in the issue dated Sept 7, 2003.

Signed: Susan G. Curtis

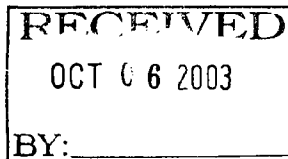
Subscribed and sworn to before me this

7 day of September, 2003



Notary Public

My Commission expires: December 29, 2006



NOTICE OF PUBLIC HEARING
State of Arizona
Navigable Stream Adjudication
Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or nonnavigability of all watercourses in Graham County. The hearings will be held in Graham County on October 14, 2003. The hearings will begin at 1:00 PM in an order established by the chair at the Graham County Health Department 826 West Main Street, Safford, Arizona 85546. These are presently the only hearings scheduled for the watercourses in Graham County.

The list of watercourses in Graham include the Gila River and the following small and minor watercourses: Apache Wash - Graham, Aravaipa Creek - Graham, Ash Creek 1 - Graham, Ash Creek 2 - Graham, Ash Creek 3 - Graham, Bar-X Wash, Bass Canyon, Bear Wallow Creek, Big Creek, Bigler Wash, Billingsley Creek, Black River, Black Rock Wash - Graham, Bobcat Creek, Bollen Wash, Bonita Creek - Graham, Box Spring Creek, Brushy Creek - Graham, Burton Wash, Carland Wash, Chesley Wash, Cienega Creek - Graham, Clover Creek - Graham, Copper Creek, Coyote Wash - Graham, Crazy Horse Creek, Crazy Horse Wash, Day Mine Wash, Deer Creek 1 - Graham, Deer Creek 1 - Graham/Pinal, Dial Wash, Dry Creek - Graham, Dry Prong Creek, Eagle Creek, Elwood Canyon Creek, Fine Wash, Fish Creek, Fivemile Wash - Graham, Fourmile Creek, Freezeout Creek, Fresno Wash - Graham, Frye Creek, Garden Creek, Gardner Creek, Gibson Creek - Graham, Gillespie Wash, Gold Gulch, Goodwin Wash, Goudy Canyon Wash, Grant Creek - Graham, Grapevine Canyon - Graham, Hackberry Creek - Graham, High Creek, Hog Canyon Wash, Horton Creek - Graham, Hot Springs Wash, Hot Well Draw, Jacobson Creek, Jesus Canyon Wash, Johnny Creek, Kelly Gulch, Kennedy Falls Wash, Klondyke Wash, Left Branch Long, Left Fork Markha, Little Rocky Creek, Lone Star Wash, Long Creek, Long Hollow, Low Creek, Malay Creek, Marijilda Wash, Markham Creek, Martin Wash, Martinez Wash - Graham, Middle Prong Creek, Midnight Creek, Moonshine Creek, Mud Spring Wash, Ninemile Creek, Noon Creek, North Fork Ash Creek, North Oak Creek, Oak Creek 1 - Graham, Oak Creek 2 - Graham, Oak Creek 3 - Graham, Oak Craw, Owl Wash, Paddys River, Park Creek - Graham, Patterson Wash, Paymaster Wash, Peck Wash, Pistol Creek, Pitchfork Canyon, Point of Pines Creek, Post Creek, Rattlesnake Creek, ...

NOTICE OF PUBLIC HEARING
State of Arizona
Navigable Stream Adjudication Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or nonnavigability of all watercourses in Graham County. The hearings will be held in Graham County on October 14, 2003. The hearings will begin at 1:00 PM in an order established by the chair at the Graham County Health Department 826 West Main Street, Safford, Arizona 85546. These are presently the only hearings scheduled for the watercourses in Graham County.

The list of watercourses in Graham include the Gila River and the following small and minor watercourses: Apache Wash - Graham, Aravaipa Creek - Graham, Ash Creek 1 - Graham, Ash Creek 2 - Graham, Ash Creek 3 - Graham, Bear X Wash, Bass Canyon, Bear Willow Creek, Big Creek, Bigler Wash, Billingsley Creek, Black River, Black Rock Wash - Graham, Bobcat Creek, Bollen Wash, Bonita Creek - Graham, Box Spring Creek, Brushy Creek - Graham, Burton Wash, Cand Wash, Chesley Wash, Cienega Creek - Graham, Clover Creek - Graham, Copper Creek, Coyote Wash - Graham, Crazy Horse Creek, Crazy Horse Wash, Day Mine Wash, Deer Creek 1 - Graham, Deer Creek 1 - Graham/Pinal, Dial Wash, Dry Creek - Graham, Dry Prong Creek, Eagle Creek, Elwood Canyon Creek, Fine Wash, Fish Creek, Fivemile Wash - Graham, Fournile Creek, Freezeout Creek, Fresno Wash - Graham, Frye Creek, Garden Creek, Gardner Creek, Gibson Creek - Graham, Gillespie Wash, Gold Gulch, Goodwin Wash, Goudy Canyon Wash, Grant Creek - Graham, Grapevine Canyon - Graham, Hackberry Creek - Graham, High Creek, Hog Canyon Wash, Horton Creek - Graham, Hot Springs Wash, Hot Well Draw, Jacobson Creek, Jesus Canyon Wash, Kennedy Creek, Kelly Gulch, Kennedy Falls Wash, Klondyke Wash, Left Branch Long, Left Fork Markha, Little Rocky Creek, Lone Star Wash, Long Creek, Long Hollow, Low Creek, Malay Creek, Marjilda Wash, Markham Creek, Martin Wash, Martinez Wash - Graham, Middle Prong Creek, Midnight Creek, Moonshine Creek, Mud Spring Wash, Ninemile Creek, Noon Creek, North Fork Ash Creek, North Oak Creek, Oak Creek 1 - Graham, Oak Creek 2 - Graham, Oak Creek 3 - Graham, Oak Draw, Owl Wash, Paddy's River, Park Creek, Graham, Patterson Wash, Paymaster Wash, Peck Wash, Pistol Creek, Pitchfork Canyon, Point of Pines Creek, Post Creek, Rattlesnake Creek, Redfield Canyon, Right Branch, Long Right Fork Markha, Salt Creek - Graham, San Carlos River, San Simon River, Sand Wash - Graham, Sawmill Creek, Sevenmile Creek, Sheep Camp Wash, Sheep Wash 1 - Graham, Sheep Wash 2 - Graham, Shoot Tank Wash, Slick Rock Wash, Soldier Creek - Graham, Soldier Hole Creek, South Cienega Creek, South Fork Ash Creek 1, South Fork Ash Creek 2, South Fork Clark, South Oak Creek, South Taylor Wash, Squaw Creek 1 - Graham, Squaw Creek 2 - Graham, Squaw Creek 3 - Graham, Stockton Pass Wash, Stockton Wash, Swamp Springs Canyon, Sycamore Creek, Graham, Telegraph Wash 1, Telegraph Wash 2, Tidwell Wash, Tollgate Wash, Triple Wash 1, Triple Wash 2, Tule Creek, Turkey Creek - Pima, Turkey Creek 1 - Graham, Turkey Creek 2 - Graham, Twilight Creek, Two E Wash, Underwood Wash, WA Wash, Watson Wash, West Prong Creek, Whitlock Wash, Willow Creek - Graham, Willow Creek 1, Willow Spring Wash - Graham, Yuma Wash - Graham, and any other named or unnamed watercourse within Graham County. Interested parties may submit evidence to the commission office prior to the hearing. During the public hearing, the commission will receive additional evidence including testimony. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence.

AFFIDAVIT OF PUBLICATION

RECEIVED

SEP 15 2003

BY: _____

THE ARIZONA REPUBLIC

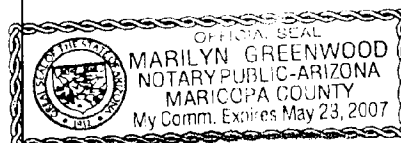
STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

Melissa Daams, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic


Septmeber 5, 2003

Sworn to before me this
5TH day of
September A.D. 2003



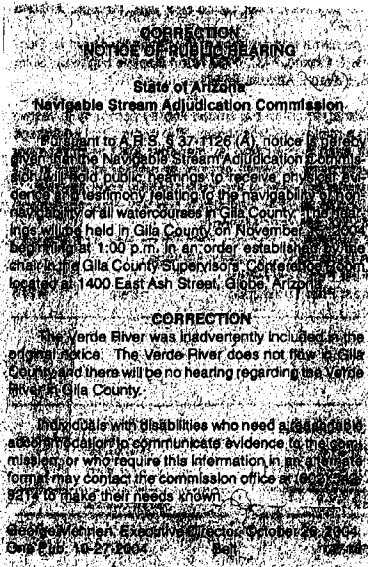
Melissa Daams

Marilyn Greenwood
Notary Public


OFFICIAL SEAL
JENNIFER ALVAREZ
NOTARY PUBLIC-ARIZONA
GILA COUNTY
 My Comm. Expires July 15, 2007

Affidavit of Publication

State of Arizona County of Gila



Ellen Kretsch, or her authorized representative, _____, being first duly sworn deposes and says: That she is the **publisher** of the Arizona Silver Belt, San Carlos Apache Moccasin, and the Gila County Advantage newspapers, located at 298 North Pine Street, Globe, Arizona 85501, or mail: P.O. Box 31, Globe, Arizona 85502.

The above stated newspapers are published weekly in Globe, in the State of Arizona, County of Gila and that the following described ☒ legal advertising; ☐ display or classified advertising; or an article ☐ was duly published:

Correction Notice of Public Hearing
State of Arizona Navigable Stream
Adjudication Commission. Hearing on
Nov. 15, 2004. Correction re: Verde River

A printed copy of said legal or advertising is attached hereto and was published in a regular weekly edition of said newspaper (and not a supplement thereof) for 1 weeks in the ☒ Arizona Silver Belt newspaper, and/or the ☐ San Carlos Apache Moccasin newspaper, and/or the ☐ Gila County Advantage. The dates of publication being as follows, to wit:

Oct. 27, 2004

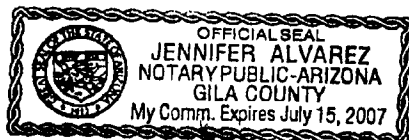
Ellen Kretsch, Publisher

State of Arizona
County of Gila

The foregoing instrument was acknowledged before me this

Oct. 28, 2004 (date)

by Ellen Kretsch



Jennifer Alvarez, Notary


My Commission Expires: July 15, 2007

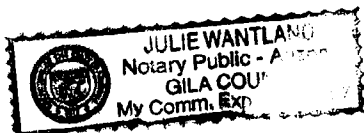
P.O. Box 2520 - Payson, AZ 85547
708 N. Beeline Highway
(928) 474-5251 - Fax (928) 474-1893

AFFIDAVIT OF PUBLICATION

10/08/2004

On this 11TH DAY OF OCTOBER, 2004.


Notary Public



Limited to
 Alder Creek - Gila West Creek
 Gila - Apple Creek - Gila West Creek
 Ash Creek - Gila Ash Creek
 Gila - Ash Creek - Gila Ash Creek
 Spading Wash - Bantam Wash
 Barry Creek - Gila - Bear Creek
 Gila - Bear Creek - Gila - Bear Creek
 West - Big Cherry Creek - Black
 Mountain Wash - Gila Black River
 Blackhawk Wash - Blevens Wash
 Bloody Tanks Wash - Gila Bonita
 Creek - Gila Boone Moore Wash
 Gray Creek - Brody Creek - Bronco
 Creek - Gila Buckhorn Creek
 Gila - Buena Vista Creek
 Bumblebee Creek - Butcher Creek
 Butte Creek - Gila - Cal Creek
 Callahan Creek - Cammerman
 Wash - Campbell Creek - Campbell
 Creek - Canyon Creek - Gila
 Canyon Creek - 1 - Canizo Creek
 Cassadore Creek - Cave Creek
 Gila - Cedar Creek - Gila - Cedar
 Creek - Center Creek - Champo
 Creek - Chase Creek - Gila Cherry
 Creek - 1 - Gila - Cherry Creek 2

Area of landing is 1602

State of Arizona
Navigable Stream
Adjudication Commission
Pursuant to A.R.S. § 37-1126
(A), notice is hereby given
that the Navigable Stream
Adjudication Commission
will hold public hearings to
receive physical evidence
and testimony relating to the
navigability or non-
navigability of all watercours-
es in Gila County. The hear-
ings will be held in Gila Coun-
ty on November 15, 2004 be-
ginning at 1:00 p.m. in an or-
der established by the chair
in the Gila County Supervi-
sors' Conference Room locat-
ed at 1400 East Ash Street,
Globe, Arizona. The follow-
ing are presently the only
hearings scheduled.

The Gila River, the Upper Salt
River, the Verde River, and
all of the small and minor wa-
tercourses in Gila County, in-
cluding but not limited to:

Alder Creek 1 - Gila, Alder
Creek 2 - Gila, Alpine Creek,
Amos Wash, Ash Creek 1 - Gila,
Ash Creek 2 - Gila, Ash
Creek 3 - Gila, Ash Spring
Wash, Banning Wash, Banty
Creek - Gila, Bear Creek 1 -
Gila, Bear Creek 2 - Gila, Bear
Wash, Big Cherry Creek,
Black Mountain Wash - Gila,
Black River, Blackhawk Wash,
Blevens Wash, Bloody Tanks
Wash - Gila, Bonita Creek - Gila,
Boone Moore Wash, Bray
Creek, Brody Creek, Brody
Creek - Gila, Buckhorn Creek
- Gila, Buena Vista Creek,
Bumblebee Creek, Butcher
Creek, Butte Creek - Gila,
Calf Creek, Callahan Creek,
Cammernan Wash, Cam-
paign Creek, Campbell
Creek, Canyon Creek - Gila,
Canyon Creek 1, Carrizo
Creek, Cassadore Creek,
Cave Creek - Gila, Cedar
Creek - Gila, Celler Creek,
Center Creek, Champion
Creek, Chase Creek - Gila,
Cherry Creek 1 - Gila, Cherry
Creek 2 - Gila, China Spring
Creek, Christopher Creek,
Chukar Wash, Cibola
Creek, Cienega Creek - Gila,
City Creek, Clover Creek - Gila,
Clover Wash, Connor
Wash, Coon Creek - Gila,
Cooper Forks Creek - Gila,
Creek 1, Corral Creek 2, Cot-
tonwood Creek 1 - Gila, Cot-
tonwood Creek 2 - Gila, Cot-
tonwood Wash - Gila, Crouch
Creek, Dagger Wash, Deep
Creek 1 - Gila, Deer Creek 1 -
Gila, Deer Creek 2 - Gila, Deer
Spring Creek, Del Shav
Creek, Dennis Creek, Devore
Wash, Dick Williams Creek,
Dinner Creek, Dripping
Spring, Dry Creek - Gila, Dry
Creek 1 - Gila, Dry Dude
Creek, Dry Pocket Wash,
Dude Creek, Eads Wash, East
Bray Creek, East Cedar
Creek, East Fork Canyon,
East Fork Horton, East Verde
River, Ellison Creek, Ellison
Creek - Gila, Finton Creek,
Fossil Creek, Fuller Creek, G
Wash, Gentry Creek, Geor-
ges Basin Creek, Gerald Wash,
Gibson Creek - Gila, Gilson
Wash, Gold Creek, Gordon
Canyon, Green Valley Creek,
Greenback Creek, Griffin
Wash, Gun Creek, Hix Wash,
Hackberry Creek - Gila,
Haigler Creek, Hardscrabble
Creek, Hardt Creek, Hauffer
Wash, Hicks Wash, Hill
Creek, Honey Creek, Horrell
Creek, Horse Camp Creek,
Horse Tank Creek, Horse
Tank Wash, Horseshoe Bend
Wash, Horton Creek - Gila,
House Creek, Houston Creek
1 - Gila, Houston Creek 2 - Gila,
Hunter Creek, Indian
Creek, Lambing Creek, Law-
rence Creek, Lewis Creek, Lit-
tle Campaign, Little Cherry
Creek, Little Trough Creek,
Little Turkey Creek, Lost
Mule Creek, Lyons Fork, Mail
Creek, Marsh Creek,
McFadden Creek, McMillen
Wash, Meddler Wash, Medi-
cine Creek, Mescal Creek - Gila,
Methodist Creek, Miami
Wash, Middle Cedar Creek,
Milky Wash, Mill Creek, Min-
eral Creek - Gila, Moore
Creek, Moore Wash, Mud
Spring Wash - Gila, Mule
Creek, Murphy Wash, Mur-
ray Wash, Nail Creek, Nash
Creek, Natanes Creek, Natu-
ral Corral Creek, Negro
Wash, New Creek, North Al-
der Creek, North Fork Coope,
North Fork Parke, North Sycam-
ore Creek, Nugget Wash -
Gila, Oak Creek 1 - Gila, Oak
Creek 2 - Gila, Oak Creek 3 -
Gila, P 8 Creek, Packard
Wash, Park Creek 1, Park
Creek 2, Parker Creek, Parley
Creek, Pigeon Creek - Gila, Pi-
nal Creek, Pine Creek, Pine
Creek - Gila, Pineasco Creek,
Pinto Creek, Pioneer Creek,
Pocket Creek, Poison Springs
Wash, Priebe Creek, Pimble
Wash, Pueblo Canyon,
Pyeatte Draw, Quail Springs
Wash, Ramboz Wash, Ranch
Creek, Red Canyon, Red-
mond Wash, Reno Creek, Rey-
nolds Creek, Rock Creek 1 -
Gila, Rock Creek 2 - Gila,
Rock Creek 3 - Gila, Rock
House Creek, Rocky Creek,

AFFIDAVIT OF PUBLICATION

THE ARIZONA REPUBLIC

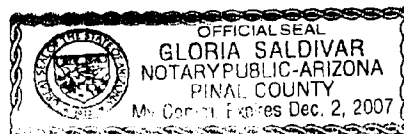
STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

TOM BIANCO, being first duly sworn, upon oath deposes and says: That he is the advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, a newspaper of general circulation in the State of Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper, named below, on the dates as indicated below:

The Arizona Republic

10/08/04

Sworn to before me this
8TH day of
October A.D. 2004



[Signature]

[Signature]

Notary Public
[Signature]

THE ARIZONA REPUBLIC

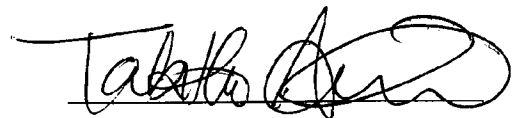
STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

CORRECTION
NOTICE OF PUBLIC HEARING
State of Arizona
Navigable Stream
Adjudication Commission
Pursuant to A.R.S. § 37-1126
(A), notice is hereby given
that the Navigable Stream
Adjudication Commission
will hold public hearings to
receive physical evidence
and testimony relating to the
navigability or non-
navigability of all watercours-
es in Gila County. The hear-
ings will be held in Gila Coun-
ty on November 15, 2004 be-
ginning at 1:00 p.m. in an or-
der established by the chair
in the Gila County Supervi-
sors' Conference Room locat-
ed at 1400 East Asp Street,
Globe, Arizona.
CORRECTION
The Verde River was inadver-
tently included in the origi-
nal notice. The Verde River
does not flow in Gila County
and there will be no hearing
regarding the Verde River in
Gila County.
Individuals with disabilities
who need a reasonable ac-
commodation to communi-
cate evidence to the commis-
sion, or who require this in-
formation in an alternate for-
mat may contact the commis-
sion office at (602) 542-9214
to make their needs known.
George Mehnert, Executive
Director, October 26, 2004.
04527-October 26, 2004

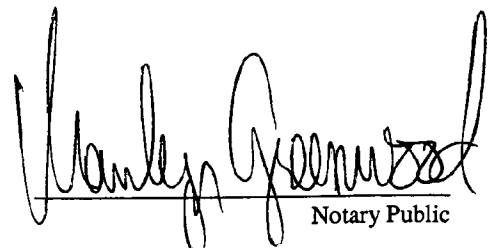
Tabitha Antoniadis, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

October 26, 2004



Sworn to before me this
26TH day of
October A.D. 2004


Notary Public

Affidavit of Publication

STATE OF ARIZONA

COUNTY OF PINAL

ss.

NOTICE OF PUBLIC HEARING

State of Arizona

Navigable Stream

Adjudication Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or non-navigability of all watercourses in Pinal County. The hearings will be held in Pinal County on March 9, 2004 at 10:00 a.m. in an order established by the chair in the Pinal County Supervisors' Conference Room, 31 N. Pinal Street, Building "A", Florence, Arizona 85232. These are presently the only hearings scheduled for the watercourses in Pinal County.

The list of watercourses in Pinal County include the Gila River, San Pedro River, and Santa Cruz River, and the following small and minor watercourses:

Alder Wash - Pinal, Antelope Wash - Pinal, Aravaipa Creek - Pinal, Arnett Creek, Ash Creek - Pinal, Bachman Wash, Batamote Wash 2, Bear Springs Canyon, Bear Thicket Creek, Big Bertha Wash, Big O Wash, Big Wash - Pima/Pinal, Bitter Well Wash, Bloodsucker Wash, Bogart Wash, Booger Canyon St, Bowl Creek, Box O Wash, Bulldog Wash, Buzan Canyon Stream, Camp Grant Wash, Campaign Creek, Canada del Oro, Caggage Wash, Carpas Wash, Catalina Wash, Cave Canyon Stream, Chalk Creek, China Wash, Chirreon Wash, Circle S Wash, Clark Wash, Comstock Wash, Connelly Wash, Copper Creek, Copper Creek - Pinal, Copper Hill Wash, Cottonwood Wash 1 - Pinal, Cottonwood Wash 2 - Pinal, Cronley Wash, Cruz Wash, Deer Creek - Pinal, Deer Creek 1 - Graham/Pinal, Dodge Tank Wash, Dodge Wash, Dodson Wash - Pinal, Donnelly Wash, Drew Wash, Dripping Spring, Dry Camp Canyon, Eagle Wash, Eskiminzin Wash, Faraway Wash, First Water Creek, Flag Wash, Garden Creek, Greené Wash, Guild Wash, Gust James Wash, Hackberry Creek - Pinal, Hackberry Wash - Pinal, Hagen Canyon Stream, Haunted Canyon Creek, Hells Half Acre, Holy Joe Canyon, Horse Camp Canyon, Horse Foot Wash, Indian Bend Wash - Pinal, Indian Well Wash, Irene Wash, James Wash, Jim Thomas Wash, Kaka Wash, Kohatk Wash, La Barge Creek, Lemmon Creek, Little Ash Creek - Pinal, Little Gust Jame, Lyons

Fork, Mammoth Wash, Margaret Wash, Mesa Wash - Pinal, Milk Ranch Creek, Milky Wash, Mineral Creek - Pinal, Mulberry Wash - Pinal, North Branch San, North Fork Clark, Oak Creek - Pinal, Paisano Canyon Spring, Palmer Wash, Parsons Canyon Spring, Peppersauce Wash, Peters Wash, Piper Springs Wash, Polecat Wash, Potters Wash, Putman Wash - Pinal, Queen Creek, Rainbows End Wash, Rancho Rio Creek, Ray Spring Wash, Redrock Canyon, Reavis Creek, Reymert Wash, Ripsey Wash, Roach Wash, Rock Creek 1 - Pinal, Rock Creek 2 - Pinal, Romero Wash, Santa Cruz Wash, Santa Rosa Wash, Scanlon Wash, Silver King Wash, Silver Reef Wash, Smelter Wash, Smith Wash - Pinal, South Fork Clark, Spencer Spring Creek, Steamboat Wash - Pinal, Swingle Wash, Sycamore Canyon, Tar Wash, Tat Momoli Wash, Thraeway Wash, Tillmans Wash, Tipperary Wash, Tom Mix Wash, Tortilla Creek, Tucson Wash, Twentynine Wash, Tucson Wash, Twentynine Wash, Virgus Canyon St, Weekes Wash, Well Canyon Stream, West Fork Pinto, Whitewash Canyon, Whitlow Canyon, Zapata Wash, and any other named or unnamed small and minor watercourses in Pinal County.

Interested parties may submit evidence to the commission office prior to the hearing. During the public hearing, the commission will receive additional evidence including testimony. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence.

Evidence submitted in advance of the hearing will be available for public inspection during regular commission office hours of 8:00 a.m. to 5:00 p.m., Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to review evidence at (602) 542-9214.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

George Mehnert, Executive Director, March 2, 2003.

No. of publications: 1; date of publication: Feb. 4, 2004.

DONOVAN M. KRAMER, SR.

first being duly sworn deposes and says: That he is a native born citizen of the United States of America, over 21 years of age, that he is publisher of the Casa Grande Dispatch, a daily newspaper published at Casa Grande, Pinal County, Arizona, Monday through Saturday of each week; that a notice, a full, true and complete printed copy of which is hereunto attached, was printed in the regular edition of said newspaper, and not in a supplement thereto, for ONE ~~XXXXXXXXXX~~ 4TH issue the first publication thereof having been on the _____

day of FEBRUARY A.D., 2004

Second publication _____

Third publication _____

Fourth publication _____

Fifth publication _____

Sixth publication _____

CASA GRANDE DISPATCH

By Donovan M. Kramer, Sr.
DONOVAN M. KRAMER SR., Publisher

Sworn to before me this 9th

day of February A.D. 2004

Debbie L. Mumme

Notary Public in and for the County

DEBBIE L. MUMME

Notary Public - Arizona

Pinal County

My Commission Expires

October 23, 2005

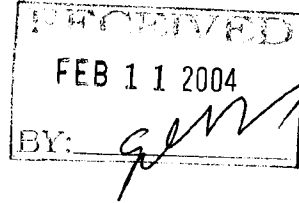


Navigable Stream Adjudication Commission
Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or nonnavigability of all watercourses in Pinal County. The hearings will be held in Pinal County on March 9, 2004 at 10:00 a.m. in an order established by the chair in the Pinal County Supervisors' Conference Room, 31 N. Pinal Street, Building "A", Florence, Arizona 85232. These are presently the only hearings scheduled for the watercourses in Pinal County.

The list of watercourses in Pinal County include the Gila River, San Pedro River, and Santa Cruz River, and the following small and minor watercourses:

Alder Wash - Pinal, Antelope Wash - Pinal, Aravaipa Creek - Pinal, Arnett Creek, Ash Creek - Pinal, Bachman Wash, Batamote Wash 2, Bear Springs Canyon, Bear Thicket Creek, Big Bertha Wash, Big O Wash, Big Wash - Pima/Pinal, Bitter Well Wash - Bloodsucker Wash, Bogart Wash, Booger Canyon St. Bowl Creek, Box O Wash, Bulldog Wash, Buzan Canyon Stream, Camp Grant Wash, Campaign Creek, Canada del Oro, Cabbage Wash, Carpas Wash, Catalina Wash, Cave Canyon Stream, Chalk Creek, China Wash, Chiricahua Wash, Circle S Wash, Clark Wash, Comstock Wash, Connelly Wash, Copper Creek, Copper Creek - Pinal, Copper Hill Wash, Cottonwood Wash 1 - Pinal, Cottonwood Wash 2 - Pinal, Cronley Wash, Cruz Wash, Deer Creek - Pinal, Deer Creek 1 - Graham/Pinal, Dodge Tank Wash, Dodge Wash, Dodson Wash - Pinal, Donnelly Wash, Drew Wash, Dripping Spring, Dry Camp Canyon, Eagle Wash, Eskiminzin Wash, Faraway Wash, First Water Creek, Flag Wash, Garden Creek, Greene Wash, Gullid Creek, Gust James Wash, Hackberry Creek - Pinal, Hackberry Wash - Pinal, Hagen Canyon Stream, Haunted Canyon Creek, Hells Half Acre, Holy Joe Canyon, Horse Camp Canyon, Horse Foot Wash, Indian Bend Wash - Pinal, Indian Well Wash, Irene Wash, James Wash, Jim Thomas Wash, Kaka Wash, Kohatk Wash, La Barge Creek, Lemmon Creek, Little Ash Creek - Pinal, Little Gust Jame, Lyons Fork, Mammoth Wash, Margaret Wash, Mesa Wash - Pinal, Milk Ranch Creek, Milky Wash, Mineral Creek - Pinal, Mulberry Wash - Pinal, North Branch San, North Fork Clark, Oak Creek - Pinal, Paisano Canyon Spring, Palmer Wash, Parsons Canyon Spring, Peppersauce Wash, Peters Wash, Piper Springs Wash, Pilecat Wash, Potters Wash, Putman Wash - Pinal, Queen Creek, Rainbows End Wash, Rancho Rio Creek, Ray Spring Wash, Redrock Canyon, Reeves Creek, Reymert Wash, Ripsey Wash, Roach Wash, Rock Creek 1 - Pinal, Rock Creek 2 - Pinal, Romero Wash, Santa Cruz Wash, Santa Rosa Wash, Scanlon Wash, Silver King Wash, Silver Reef Wash, Smelter Wash, Smith Wash - Pinal, South Fork Clark, Spencer Spring Creek, Steamboat Wash - Pinal, Swingle Wash, Sycamore Canyon, Tar Wash, Tat Momoli Wash, Threeway Wash, Tillmans Wash, Tipperary Wash, Tom Mix Wash, Tortilla Creek, Tucson Wash, Twenty-nine Wash, Twentyseven Wash, Vekol Wash, Virgus Canyon St, Weekes Wash, Well Canyon Stream, West Fork Pinto, Whitewash Canyon, Whitlow Canyon, Zapata Wash, and any other named or unnamed small and minor watercourses in Pinal County. Interested parties may submit evidence to the commission office prior to the hearing. During the public hearing, the commission will receive additional evidence including testimony. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence. Evidence submitted in advance of the hearing will be available for public inspection during regular commission office hours of 8:00 a.m. to 5:00 p.m., Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to review evidence at (602) 542-9214. Individuals with disabilities who need a reasonable accommodation to communi-

AFFIDAVIT OF PUBLICATION



THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Gloria Saldivar, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

February 6, 2004

Gloria Saldivar

Sworn to before me this
6TH day of
February A.D. 2004



Marilyn Greenwood
Notary Public

NOTICE OF PUBLIC HEARING

State of Arizona

Navigable Stream

Adjudication Commission

Pursuant to A.R.S. § 37-1126

(A), notice is hereby given

that the Navigable Stream

Adjudication Commission

will hold public hearings to

receive physical evidence

and testimony relating to the

following major watercourses

and all of the small and minor

watercourses in

Maricopa County: The Gila

River and the Verde River.

The hearings will be held in

Maricopa County commencing

on September 16, 2005 beginning

at 9:30 a.m. in an order

established by the chair

at the La Quinta Inn, 2510

West Greenway Road, Phoenix,

Arizona, (Northeast corner

of I-17 and West Greenway

Road). The following are

presently the only hearings

scheduled. The Gila River, the

Verde River and all of the small

and minor watercourses in

Maricopa County including but

not limited to:

Alder Creek - Maricopa,

Apache Wash - Maricopa,

Ash Creek - Maricopa, Beer

Bottle Wash, Bender Wash,

Big Maggie May Creek, Blue

Wash 1, Blue Wash 2, Boot-

legger Wash, Boulder Creek

1 - Maricopa, Boulder Creek

2 - Maricopa, Box Wash,

Browns Canyon Wash, Burnt

Corral Creek - Maricopa,

Camp Creek, Campaign

Creek, Canyon Creek -

Maricopa, Cave Creek -

Maricopa, Cemetery Wash,

Centennial Wash, Columbus

Wash, Copper Camp Creek,

Copper Wash, Corgett Wash,

Cottonwood Creek -

Maricopa, Coyote Wash 1 -

Maricopa, Coyote Wash 2 -

Maricopa, Grabtree Wash,

Daggs Wash, Daniels Arroyo,

Davenport Wash, Davis

Wash, Dead Horse Wash,

Deadman Wash - Maricopa,

Delaney Wash, Dickey Wash,

East Fork Bronco, East Fork

Sycamore, Enterprise Canal,

First Water Creek, Flemming

Wash, Flying E Wash,

Fourmile Wash, Fourth of

July Wash, Galloway Wash,

Grapevine Wash - Maricopa,

Grass Wash, Growler Wash,

Hartman Wash, Hickman

Wash, Hidden Waters, Indian

Bend Wash - Maricopa, Indi-

an Spring Wash, Ironwood

Wash, Jackrabbit Wash -

Maricopa, Jimmie Wash,

Kaka Wash, Kohatk Wash, La

Barge Creek, Lewis Creek,

Pranty, Little Creek, Little

Maggie Ma, Little San Domin,

Little Squaw Creek,

Loudermilk Wash, Luke

Wash, Lum Wash, Mattys

Fork, Mesquite Creek, Mes-

quite Wash, Midway Wash,

Mill Wash, Monarch Wash,

Morgan City Wash, North

Canyon Creek, Nottbusch

Wash, Old Camp Wash, Ox

Wash, Phillips Wash,

Picadilla Creek, Pine Creek 1 -

Maricopa, Pine Creek 2 -

Maricopa, Powerline Wash,

Pump Mine Wash, Quail

Spring Wash - Maricopa,

Quilotosa Wash, Rainbow

Wash, Red Cloud Wash -

Maricopa, Reeves Creek,

Rock Creek - Maricopa,

Rodger Creek, Rowe Wash,

San Domingo Wash, Sand

Tank Wash, Saucedo Wash,

Sentinel Wash, Seven

Springs Wash - Maricopa,

Sheep Creek, Sols Wash,

South Fork Sheep, Star

Wash, Sycamore Creek -

Maricopa, Syndicate Wash,

Tank Wash - Maricopa,

Tennile Wash, Tiger Wash -

Maricopa, Tortilla Creek,

Tournament Creek, Trilby

Wash, Tub Spring Wash,

Turtleback Wash, Vekol

Wash, Wagner Wash, Water-

man Wash, Weir Wash, West

Fork Sycamore, West Prong

Water, Willow Creek -

Maricopa, Willow Springs

Wash, Winters Wash, Wood-

chopper Wash, Woolsey

Wash - Maricopa, Yellow

Medicine, a - Seg 16

Maricopa, a - Seg 6

Pima/Maricopa/Yuma, b -

Seg 11 Maricopa, b - Seg 12

Maricopa, b - Seg 9 Marico, c

- Seg 10 Pima/Maricopa, d -

Seg 13 Pima/Maricopa.

Interested parties may submit

evidence to the commission

office prior to the hearing

and/or during the appropriate

public hearing. The commis-

sion will conduct its hearings

informally without adher-

ence to judicial rules of

procedure or evidence.

Evidence submitted in ad-

vance of the hearing will be

available for public inspection

during regular Commission

office hours of 8:00 a.m.

to 5:00 p.m., Monday thru Fri-

day, except on holidays. The

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Publisher's Affidavit of Publication

o0o

STATE OF ARIZONA }
COUNTY OF YUMA }

NOTICE OF PUBLIC HEARING
State of Arizona
Navigable Stream Adjudication
Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold a public hearing to receive physical evidence and testimony relating to the navigability or non-navigability of the Gila River. The hearing will be held in Yuma County on January 24, 2005 beginning at Noon/12:00 p.m., in the Yuma County Supervisors' Auditorium at 198 South Main, First Floor, Yuma, Arizona 85364. The only hearing scheduled at this meeting is a water-course navigability hearing on the Gila River.

Interested parties may submit evidence to the Commission office prior to the hearing and/or during the hearing. The Commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence.

Evidence submitted in advance of the hearing will be available for public inspection during regular Commission office hours of 8:00 a.m. to 5:00 p.m., Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to arrange to review evidence at (602) 542-9214.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

George Mehnert, Executive Director,
December 15, 2004.
Daily December 20, 2004 #L29570

Julie Moreno or Lee Knapp, having been first duly sworn, deposes
and says: that The Sun is a newspaper of general circulation
published daily in the City of Yuma, County of Yuma, State of Arizona;
that (s)he is the publisher or business manager of said paper; that the

NOTICE OF PUBLIC HEARING

a printed copy of which, as it appeared in said paper, is hereto attached
and made a part of this affidavit, was published in The Sun

For ONE issues; that the date of the first
publication of said NOTICE OF PUBLIC HEARING

was DECEMBER 20, 2004 and the date of the last publication
being DECEMBER 20, 2004 and that the dates when said

NOTICE OF PUBLIC HEARING

was printed and published in said paper were

DECEMBER 20, 2004

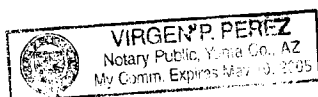
Lee Knapp

Subscribed and sworn to before me, by the said Julie Moreno or
Lee Knapp

3rd day of January, 2005

Virgen P. Perez Notary Public

My commission expires May 10, 2005



THE ARIZONA REPUBLIC

NOTICE OF PUBLIC HEARING
State of Arizona
Navigable Stream Adjudication Commission
Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold a public hearing to receive physical evidence and testimony relating to the navigability or non-navigability of the Gila River. The hearing will be held in Yuma County on January 24, 2005, beginning at Noon/12:00 p.m., in the Yuma County Supervisors' Auditorium at 198 South Main, First Floor, Yuma, Arizona 85364. The only hearing scheduled at this meeting is a watercourse navigability hearing on the Gila River. Interested parties may submit evidence to the Commission office prior to the hearing and/or during the hearing. The Commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence. Evidence submitted in advance of the hearing will be available for public inspection during regular Commission office hours of 8:00 a.m. to 5:00 p.m., Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to arrange to review evidence at (602) 542-9214. Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known. George Mehnert, Executive Director, December 15, 2004. 04635-December 20, 2004

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

TOM BIANCO, being first duly sworn, upon oath deposes and says: That he is the advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, a newspaper of general circulation in the State of Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper, named below, on the dates as indicated below:

The Arizona Republic

December 20, 2004

[Signature]

Sworn to before me this
20TH day of
December A.D. 2004



[Signature]
Notary Public



JANET NAPOLITANO
Governor

**STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION**

1700 West Washington, Room 404, Phoenix, Arizona 85007

Phone (602) 542-9214 FAX (602) 542-9220

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

**AGENDA AND NOTICE OF PUBLIC MEETING
TO BE HELD May 24, 2006 AT 10:00 A.M.
PHOENIX, ARIZONA**

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Navigable Stream Adjudication Commission and to the general public that the Navigable Stream Adjudication Commission will hold a meeting open to the public on May 24, 2006 at 10:00 A.M. at La Quinta Inn Phoenix North, 2510 West Greenway Rd, Phoenix, AZ 85023, in the Vista Room. I-17 and West Greenway Road, northeast corner.

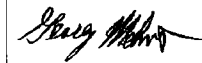
Pursuant to A.R.S. § 38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. ' 38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of April 11, 2006.
4. Determination of the navigability of the small and minor watercourses in Gila County, 04-010-NAV (discussion and action).
5. Determination of the navigability of the Gila River 03-007-NAV (discussion and action).
6. Determination of the navigability of the Upper Salt River 04-008-NAV (discussion and action).
7. Determination of the navigability of the Verde River 04-009-NAV (discussion and action).
8. Motion by the Attorney General in its Response Memorandum relating to the Verde River to strike from the record First American Title Insurance Company of Arizona's Joinder Memorandum to Salt River Project's Opening Memorandum and to Phelps Dodge's Opening Memorandum, on the basis of untimely filing (discussion and action).
9. Renewal of Attorney Contract to be effective July 1, 2006 through June 30, 2008, (discussion and action).
10. Budget/Funding condition and forecast.

11. Budget Supplemental Request for FY2006 regarding notice of intent to seek judicial review.
12. Call for Public Comment (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
13. Future agenda items and establishment of future meetings.
14. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.



Dated this 17th day of May, 2006, George Mehnert, Director, Navigable Stream Adjudication Commission

EXHIBIT B

Post Hearing Memorandums

Hearing No. 03-007NAV

Page No.

1

Arizona Navigable Stream Adjudication Commission**Gila River****Gila, Pinal, Maricopa, Greenlee, Graham, and Yuma Counties**

Entry Number	Date	Opening Memorandums	Entry By
1	02/06/06	State Land Departments Opening Memorandum.	George Mehnert
2	02/06/06	Gila River Indian Community's Opening Memorandum.	George Mehnert
3	02/06/06	Salt River Project's Opening Memorandum.	George Mehnert
4	02/06/06	Phelps Dodge Corporation's Opening Memorandum.	George Mehnert
5	02/06/06	Buckeye Irrigation Company and Buckeye Water Conservation and Drainage District's Opening Memorandum.	George Mehnert
6	02/06/06	Maricopa County's Opening Memorandum	George Mehnert
7	02/08/06	Arizona Center for Law in the Public Interest's Opening Memorandum.	George Mehnert
8	02/08/06	San Carlos Apache Tribe's Opening Memorandum	George Mehnert
Response Memorandums			
1	02/27/06	Salt River Project's Response Memorandum.	George Mehnert
2	02/27/06	Gila River Indian Community's Response Memorandum.	George Mehnert
3	02/27/06	Phelps Dodge Corporation's Response Memorandum.	George Mehnert
4	02/27/06	Buckeye Irrigation Company and Buckeye Water Conservation and Drainage District's Response Memorandum.	George Mehnert

**Post Hearing Memorandums-Continued from
Page 1**

Hearing No. 03-007NAV

Page No.

2

Arizona Navigable Stream Adjudication Commission

Gila River

Gila, Pinal, Maricopa, Greenlee, Graham, and Yuma Counties

Entry Number	Date	Entry	Entry By
5	02/27/06	Maricopa County's and the Flood Control District of Maricopa County's Response Memorandum	George Mehnert
6	02/28/06	Arizona Center for Law in the Public Interest's Response Memorandum.	George Mehnert
7	02/28/06	State Land Department's Response Memorandum.	George Mehnert
8	03/01/06	San Carlos Apache Tribes Response Memorandum.	George Mehnert

EXHIBIT C



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

Phone (602) 542-9214 FAX (602) 542-9220

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

**AGENDA AND NOTICE OF HEARING
TO BE HELD OCTOBER 15, 2003 AT 9:00 A.M.**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Navigable Stream Adjudication Commission and to the general public that the Navigable Stream Adjudication Commission will hold a meeting and hearing open to the public on October 15, 2003, commencing at 9:00 a.m., at the Train Depot, 100 North Coronado Boulevard, Clifton, Arizona.

Pursuant to A.R.S. § 38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. § 38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **APPROVAL OF MINUTES.**
 - A. **Minutes of September 23, 2003.**
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER IN GREENLEE COUNTY.**
5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE BLUE RIVER IN GREENLEE COUNTY.**
6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SAN FRANCISCO RIVER IN GREENLEE COUNTY.**
7. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN GREENLEE COUNTY:**

Al Creek , Alder Creek - Greenlee , Apache Creek - Greenlee , Ash Creek - Greenlee , Bear Creek 1 - Greenlee , Bear Creek 2 - Greenlee , Bear Wallow Creek , Beaver Creek - Greenlee , Beeler Creek , Benton Creek - Greenlee , Bitter Creek - Greenlee , Black River , Blue Creek , Buckalou Creek , Bull Creek - Greenlee , Burro Wash - Greenlee , Bush Creek , Campbell Blue Creek , Canyon Creek 2 , Castle Creek - Greenlee , Cat Creek , Cave Creek - Greenlee , Centerfire Creek - Greenlee , Chase Creek , Chitty Canyon Creek , Cienega Creek , Cienega Creek 1 - Greenlee , Clear Creek - Greenlee , Coal Creek , Cold Creek , Coleman Creek , Conklin Creek , Corduroy Creek - Greenlee , Cottonwood Creek - Greenlee , Coyote Wash - Greenlee , Crabtree Creek , Deerhead Creek , Dix Creek , Double Cienega Creek , Dromedary Creek , Dry Prong Creek , Dutch Blue Creek , Eagle Creek , East Eagle Creek , Fall Creek - Greenlee , Fish Creek - Greenlee , Fishhook Creek , Foote Creek , Grant Creek - Greenlee , Greaser Wash , Hannagan Creek , Hannah Springs Creek , Harden Cienega Creek , Harris Wash , Heifer Branch Be , Horton Creek - Greenlee , Indian Creek - Greenlee , Jackson Creek , Juan Miller Creek , K P Creek , Kaywood Wash , Largo Creek , Left Prong Dix Creek , Limestone Gulch , Linden Creek , Little Blue Cree , Little Sand Wash , Lop Ear Creek , Malay Creek , McKittrick Creek , Middle Prong Creek , Nolan Creek , North Bull Creek , North Corral Creek , North Fork Bear , Oak Creek - Greenlee , Pace Creek , Panther Creek , Pat Creek , Pigeon Creek - Greenlee , Pipestem Creek , Rainville Wash , Raspberry Creek , Right Fork Foote , Right Prong Dix , Rousensock Creek , Salt House Creek , Sand Wash - Greenlee , Sanders Wash , Sandia Wash , Sardine Creek , Sheep Wash - Greenlee , Silver Basin Creek , Silver Creek - Greenlee , Skully Creek , Snake Creek , South Fork Bear , Squaw Creek - Greenlee , Steeple Creek , Stove Wash , Strayhorse Creek , Thomas Creek 1 - Greenlee , Thomas Creek 2 - Greenlee , Tollgate Wash , Tule Creek , Turkey Creek 2 , Tutt Creek , Wampoo Wash , Waters Wash , West Prong Creek , White Mule Creek , Whitefield Wash , Whitewater Creek , Willow Creek 1 , Willow Creek 1 - Greenlee , Willow Creek 2 - Greenlee , and any other named or unnamed watercourse within Greenlee County.

8. CALL FOR PUBLIC COMMENT (comment sheets).

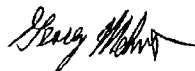
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

10. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 11th day of September, 2003



George Mehnert, Director
Navigable Stream Adjudication Commission



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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GEORGE MEHNERT
Executive Director

Meeting Minutes
Clifton, Greenlee County
October 15, 2003

COMMISSION MEMBERS PRESENT

Jay Brashear, Earl Eisenhower, James Henness, Cecil Miller.

COMMISSION MEMBERS ABSENT

Dolly Echeverria.

STAFF PRESENT

George Mehnert, Dir; Curtis Jennings, Legal Counsel.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 9:10 a.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES

A. Minutes of September 23, 2003.

Motion: To approve minutes of September 23, 2003.

Motion by: Cecil Miller. Second by: Jim Henness Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER IN GREENLEE COUNTY.

The following people appeared and gave testimony, other information, or asked questions on October 15, 2003: Cheryl Doyle, Philip Rommerub, Dixie Zumwalt, Steve Wene.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE BLUE RIVER IN GREENLEE COUNTY.

The following people appeared and gave testimony, other information, or asked questions on October 15, 2003: Cheryl Doyle, John Wallace, Philip Rommerub.

6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SAN FRANCISCO RIVER IN GREENLEE COUNTY.** The following people appeared and gave testimony, other information, or asked questions on October 15, 2003: Cheryl Doyle, John Wallace, Philip Rommerub, Bill Staudenmaier regarding evidence submitted previously by Cheryl Hodges-insure that this information is still part of the record.

The Chair requested of Cheryl Doyle of the State Land Department that she check with the State Parks Board and find out how the Parks Board determines the designations for recreational boating, and that she send a letter to the Commission regarding this information.

7. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN GREENLEE COUNTY.** The following people appeared and gave testimony, other information, or asked questions on October 15, 2003: Cheryl Doyle, John Wallace, Bill Staudenmaier.

Request by Bill Staudenmaier to postpone the closing of the record and extend by 10 days the due date for the close of receipt of evidence. The Chair clarified that the extension by 10 days of keeping the record open for taking evidence will also extend by 10 days the 30 days for submitting post hearing memorandums.

Motion: To extend the time for taking evidence by 10 days.

Motion by: Jim Henness. Second by: Jay Brashear Vote: All aye.

8. **CALL FOR PUBLIC COMMENT** (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

9. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**

Discussion. Business meeting in December and future dates for hearings. January hearing meeting for Pima County, including the San Pedro and San Francisco River. Cecil Miller cannot meet January 26, 15, or 14. Chair suggested January 22 or 23, 2003 for Pima County hearings.

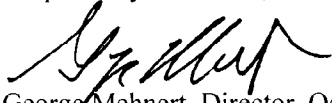
10. **ADJOURNMENT.**

Motion: To adjourn.

Motion by: Cecil Miller. Second by: Jim Henness Vote: All aye.

Adjourned at approximately 10:40 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Mehnert", written in a cursive style.

George Mehnert, Director, October 17, 2003.



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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GEORGE MEHNERT
Executive Director

**AGENDA AND NOTICE OF HEARING
TO BE HELD OCTOBER 14, 2003 AT 1:00 P.M.**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Navigable Stream Adjudication Commission and to the general public that the Navigable Stream Adjudication Commission will hold a meeting and hearing open to the public on October 14, 2003, commencing at 1:00 p.m., at the Graham County Health Department, 826 West Main Street, Safford, Arizona.

Pursuant to A.R.S. § 38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. § 38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER IN GRAHAM COUNTY.**
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN GRAHAM COUNTY:**

Apache Wash - Graham , Aravaipa Creek - Graham , Ash Creek 1 - Graham , Ash Creek 2 - Graham , Ash Creek 3 - Graham , Bar-X Wash , Bass Canyon , Bear Wallow Creek , Big Creek , Bigler Wash , Billingsley Creek , Black River , Black Rock Wash - Graham , Bobcat Creek , Bollen Wash , Bonita Creek - Graham , Box Spring Creek , Brushy Creek - Graham , Burton Wash , Carland Wash , Chesley Wash , Cienega Creek - Graham , Clover Creek - Graham , Copper Creek , Coyote Wash - Graham , Crazy Horse Creek , Crazy Horse Wash , Day Mine Wash , Deer Creek 1 - Graham , Deer

Creek 1 - Graham/Pinal , Dial Wash , Dry Creek - Graham , Dry Prong Creek , Eagle Creek , Elwood Canyon Creek , Fine Wash , Fish Creek , Fivemile Wash - Graham , Fourmile Creek , Freezeout Creek , Fresno Wash - Graham , Frye Creek , Garden Creek , Gardner Creek , Gibson Creek - Graham , Gillespie Wash , Gold Gulch , Goodwin Wash , Goudy Canyon Wash , Grant Creek - Graham , Grapevine Canyon - Graham , Hackberry Creek - Graham , High Creek , Hog Canyon Wash , Horton Creek - Graham , Hot Springs Wash , Hot Well Draw , Jacobson Creek , Jesus Canyon Wash , Johnny Creek , Kelly Gulch , Kennedy Falls Wash , Klondyke Wash , Left Branch Long , Left Fork Markha , Little Rocky Creek , Lone Star Wash , Long Creek , Long Hollow , Low Creek , Malay Creek , Marijilda Wash , Markham Creek , Martin Wash , Martinez Wash - Graham , Middle Prong Creek , Midnight Creek , Moonshine Creek , Mud Spring Wash , Ninemile Creek , Noon Creek , North Fork Ash Creek , North Oak Creek , Oak Creek 1 - Graham , Oak Creek 2 - Graham , Oak Creek 3 - Graham , Oak Draw , Owl Wash , Paddys River , Park Creek - Graham , Patterson Wash , Paymaster Wash , Peck Wash , Pistol Creek , Pitchfork Canyon , Point of Pines Creek , Post Creek , Rattlesnake Creek , Redfield Canyon , Right Branch Lon , Right Fork Markh , Salt Creek - Graham , San Carlos River , San Simon River , Sand Wash - Graham , Sawmill Creek , Sevenmile Creek , Sheep Camp Wash , Sheep Wash 1 - Graham , Sheep Wash 2 - Graham , Shoat Tank Wash , Slick Rock Wash , Soldier Creek - Graham , Soldier Hole Creek , South Cienega Creek , South Fork Ash Creek 1 , South Fork Ask Creek 2 , South Fork Clark , South Oak Creek , South Taylor Wash , Squaw Creek 1 - Graham , Squaw Creek 2 - Graham , Squaw Creek 3 - Graham , Stockton Pass Wash , Stockton Wash , Swamp Springs Canyon , Sycamore Creek - Graham , Telegraph Wash 1 , Telegraph Wash 2 , Tidwell Wash , Tollgate Wash , Triplet Wash 1 , Triplet Wash 2 , Tule Creek , Turkey Creek - Pima , Turkey Creek 1 - Graham , Turkey Creek 2 - Graham , Twilight Creek , Two E Wash , Underwood Wash , WA Wash , Watson Wash , West Prong Creek , Whitlock Wash , Willow Creek - Graham , Willow Creek 1 , Willow Spring Wash - Graham , Yuma Wash - Graham , and any other named or unnamed watercourse within Graham County.

5. CALL FOR PUBLIC COMMENT (comment sheets).

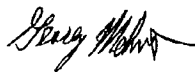
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

6. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

7. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 11th day of September, 2003



George Mehnert, Director
Navigable Stream Adjudication Commission



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
Executive Director

Meeting Minutes
Safford, Graham County
October 14, 2003

COMMISSION MEMBERS PRESENT

Jay Brashear, Earl Eisenhower, James Henness, Cecil Miller.

COMMISSION MEMBERS ABSENT

Dolly Echeverria.

STAFF PRESENT

George Mehnert, Dir; Curtis Jennings, Legal Counsel.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 1:05 p.m.

2. ROLL CALL.

See above.

3. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER IN GRAHAM COUNTY. Chair explained the need for signing in for guests who wish to speak. Chair indicated that witnesses will not be placed under oath unless the speaker wishes to be placed under oath.

The following people appeared and gave testimony, other information, or asked questions on October 14, 2003: Cheryl Doyle, Mark McGinnis, Bill Staudenmaier, Laurie Hachtel, Steve Wene.

Clarification of time lines were given by Curtis Jennings and the Chairman regarding the start of time for filing post hearing memoranda. Post hearing opening memorandums should be filed within 30 days following the close of taking evidence regarding the entire Gila River. Informational memorandums or other evidence, or written legal argument can be filed with the Commission up to the close of taking of evidence for the entire Gila River.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN GRAHAM COUNTY. The following people appeared and gave testimony,

other information, or asked questions on October 14, 2003: Cheryl Doyle, John Wallace, Bill Staudenmaier.

Request by Bill Staudenmaier to postpone the closing of the record and extend by 10 days the due date for the close of receipt of evidence. The Chair clarified that the extension by 10 days of keeping the record open for taking evidence will also extend by 10 days the 30 days for submitting post hearing memorandums.

Motion: To extend the time for taking evidence by 10 days.

Motion by: Jim Henness. Second by: Cecil Miller Vote: All aye.

5. CALL FOR PUBLIC COMMENT (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

6. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.


7. ADJOURNMENT.

Motion: To adjourn.

Motion by: Cecil Miller. Second by: Jim Henness Vote: All aye.

Adjourned at approximately 2:30 p.m.

Respectfully submitted,



George Mehnert, Director, October 16, 2003.



**STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION**

1700 West Washington, Room 304, Phoenix, Arizona 85007

Phone (602) 542-9214 FAX (602) 542-9220

JANET NAPOLITANO
Governor

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

**AGENDA AND NOTICE OF PUBLIC HEARINGS TO BE HELD
November 15, 2004, at 1:00 p.m. in Globe, Arizona
(FIRST AMENDED AGENDA)**

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public on November 15, 2004, at 1:00 p.m. in the Gila County Supervisors' Conference Room located at 1400 East Ash Street, Globe, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:


1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **APPROVAL OF MINUTES** (discussion and action).
A. September 16, 2004, Maricopa County.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**
5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE UPPER SALT RIVER 04-008-NAV.**
6. **HEARING REGARDING THE SMALL AND MINOR WATERCOURSES IN GILA COUNTY 04-010-NAV.**

The small and minor watercourses in Gila County include but are not limited to: Alder Creek 1 - Gila, Alder Creek 2 - Gila, Alpine Creek, Amos Wash, Ash Creek 1 - Gila, Ash Creek 2 - Gila, Ash Creek 3 - Gila, Ash Spring Wash, Banning Wash, Banty Creek - Gila, Bear Creek 1 - Gila, Bear Creek 2 - Gila, Bear Wash, Big Cherry Creek, Black Mountain Wash - Gila, Black River, Blackjack Wash, Blevens Wash, Bloody Tanks Wash - Gila, Bonita Creek - Gila, Boone Moore Wash, Bray Creek, Brody Creek, Bronco Creek - Gila, Buckhorn Creek - Gila, Buena Vista Creek, Bumblebee Creek, Butcher Creek, Butte Creek - Gila, Calf Creek, Callahan Creek, Cammerman Wash, Campaign Creek, Campbell Creek, Canyon Creek - Gila, Canyon Creek 1, Carrizo Creek, Cassadore Creek, Cave Creek - Gila, Cedar Creek - Gila, Celler Creek, Center Creek, Champion Creek, Chase Creek - Gila, Cherry Creek 1 - Gila, Cherry Creek 2 - Gila, China Spring Creek, Christopher Creek, Chukar Wash, Cibecue Creek, Cienega Creek - Gila, City Creek, Clover Creek - Gila, Clover Wash, Connor Wash, Coon Creek - Gila, Cooper Forks Creek, Corral Creek 1, Corral Creek 2, Cottonwood Creek 1 - Gila, Cottonwood Creek 2 - Gila, Cottonwood Wash - Gila, Crouch Creek, Dagger Wash, Deep Creek 1 - Gila, Deer Creek 1 - Gila, Deer Creek 2 - Gila, Deer Spring Creek, Del Shay Creek, Dennis Creek, Devore Wash, Dick Williams Creek, Dinner Creek, Dripping Spring, Dry Creek - Gila, Dry Creek 1 - Gila, Dry Dude Creek, Dry Pocket Wash, Dude Creek, Eads Wash, East Bray Creek, East Cedar Creek, East Fork Canyon, East Fork Horton, East Verde River, Ellison Creek, Ellison Creek - Gila, Finton Creek, Fossil Creek, Fuller Creek, G Wash, Gentry Creek, Georges Basin Creek, Gerald Wash, Gibson Creek - Gila, Gilson Wash, Gold Creek, Gordon Canyon, Green Valley Creek, Greenback Creek, Griffin Wash, Gun Creek, H-z Wash, Hackberry Creek - Gila, Haigler Creek, Hardscrabble Creek, Hardt Creek, Hauffer Wash, Hicks Wash, Hill Creek, Honey Creek, Horrell Creek,

Horse Camp Creek, Horse Tank Creek, Horse Tank Wash, Horseshoe Bend Wash, Horton Creek - Gila, House Creek, Houston Creek 1 - Gila, Houston Creek 2 - Gila, Hunter Creek, Indian Creek, Lambing Creek, Lawrence Creek, Lewis Creek, Little Campaign, Little Cherry Creek, Little Trough Creek, Little Turkey Creek, Lost Mule Creek, Lyons Fork, Mail Creek, Marsh Creek, McFadden Creek, McMillen Wash, Meddler Wash, Medicine Creek, Mescal Creek - Gila, Methodist Creek, Miami Wash, Middle Cedar Creek, Milky Wash, Mill Creek, Mineral Creek - Gila, Moore Creek, Moore Wash, Mud Spring Wash - Gila, Mule Creek, Murphy Wash, Murray Wash, Nail Creek, Nash Creek, Natanes Creek, Natural Corral Creek, Negro Wash, New Creek, North Alder Creek, North Fork Coope, North Fork Parke, North Sycamore Creek, Nugget Wash - Gila, Oak Creek 1 - Gila, Oak Creek 2 - Gila, Oak Creek 3 - Gila, P B Creek, Packard Wash, Park Creek 1, Park Creek 2, Parker Creek, Perley Creek, Pigeon Creek - Gila, Pinal Creek, Pine Creek, Pine Creek - Gila, Pineasco Creek, Pinto Creek, Pioneer Creek, Pocket Creek, Poison Springs Wash, Priebe Creek, Pringle Wash, Pueblo Canyon, Pyeatte Draw, Quail Springs Wash, Ramboz Wash, Ranch Creek, Red Canyon, Redmond Wash, Reno Creek, Reynolds Creek, Rock Creek 1 - Gila, Rock Creek 2 - Gila, Rock Creek 3 - Gila, Rock House Creek, Rocky Creek, Rose Creek, Russell Gulch, Rye Creek, Sag Creek, Salome Creek, Salt Creek Draw, San Carlos River, Sand Wash - Gila, Schoolhouse Wash, Sevenmile Wash, Sharp Creek - Gila, Sheep Wash - Gila, Shute Springs Creek, Silver Creek - Gila, Skunk Camp Wash, Slate Creek - Gila, Sloan Creek, Soldier Camp Creek, Soldier Camp Wash, Soldier Creek - Gila, Sontag Creek, South Fork Coope, South Fork Deer, South Fork Parke, Spring Branch, Spring Creek 1, Spring Creek 2, St Johns Creek, Stewart Creek, Stone Cabin Wash, Strawberry Creek, Sycamore Creek 1 - Gila, Sycamore Creek 2 - Gila, Sycamore Creek 3 - Gila, Sycamore Creek 4 - Gila, Sycamore Wash, Tank Creek - Gila, Tinhorn Wash, Tonto Creek, Tulapai Creek, Turkey Creek 1 - Gila, Turkey Creek 2 - Gila, Turkey Creek 3 - Gila, Walnut Creek - Gila, Warm Creek, Webber Creek, West Cedar Creek, West Fork Oak Creek, West Prong Gentr, West Webber Creek, Wet Bottom Creek, White River, Wildcat Creek - Gila, Willow Creek - Gila, Wilson Creek, Workman Creek, Zulu Wash, and all other named and unnamed small and minor watercourses in Gila County.

7. **STATUS OF CASES** (update and discussion).
8. **RULES** (discussion and action).
9. **BUDGET & TIMELINE-TIMETABLE AND COMMISSION SUNSET DATE** (discussion and action).
10. **ATTORNEY CONTRACT** (discussion and action).
11. **CALL FOR PUBLIC COMMENT** (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
12. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**
13. **ADJOURNMENT.**
The chair reserves the right to alter the order of the agenda.

Dated this 25th day of October, 2004



George Mehnert, Director
Navigable Stream Adjudication Commission



**STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION**

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JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

MEETING MINUTES

Globe, Arizona November 15, 2004

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

None.

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 1:05p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. September 16, 2004, Maricopa County.

Motion by: Cecil Miller Second by: Dolly Echeverria

Motion: To approve the minutes of September 16, 2004. Vote: All aye.

**4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER
03-007-NAV.**

Cheryl Doyle appeared on behalf of the State Land Department.

**5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE UPPER SALT
RIVER 04-008-NAV.**

Cheryl Doyle appeared on behalf of the State Land Department. Mark McGinnis spoke procedures.

**6. HEARING REGARDING THE SMALL AND MINOR WATERCOURSES IN GILA COUNTY
04-010-NAV.**

Cheryl Doyle appeared on behalf of the State Land Department. Jay Spehar, a resident of Gila County, and an employee of Phelps Dodge Miami.

Chairman Eisenhower closed the taking of testimony and other evidence except for Tonto Creek which will remain open until someone is available to answer questions at a future hearing relating to the Salt River.

7. STATUS OF CASES (update and discussion).

8. RULES (discussion and action).

The Commission discussed the rules regarding vote on navigability and adoption of the final report and no action was taken.

9. BUDGET & TIMELINE-TIMETABLE AND COMMISSION SUNSET DATE (discussion and action).

Discussion of the Land Department's need for funding to complete the Commission's work including funding for hiring experts to testify at hearings regarding reports submitted by the experts. The Director said that given the current budget and no appeals, the Commission can probably complete 22 hearings in FY2005, but the Land Department may not have the funding to provide their part. Cheryl Doyle indicated that the funds for the Commission work is requested separately and is not part of the Land Department lump sum funding.

10. ATTORNEY CONTRACT (discussion and action).

A. To extend the attorney contract.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To extend the attorney contract by one year. Vote: All aye.

11. CALL FOR PUBLIC COMMENT (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Sally Worthington, attorney representing Maricopa County: Ms. Worthington asked about the status of the Commission's Lower Salt River Report (which is not yet completed). Mr. Jennings and Chairman Earl Eisenhower explained that the evidence was voluminous, greater than 6,500 pages, and that the Commission Attorney, Curtis Jennings, was working on the report as diligently as he can, given his other obligations.

12. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

Chairman Eisenhower indicated there may be a business meeting in December 2004.

Discussion of calendars and of hearings and hearing locations (counties) occurred among the Commissioners, the Director, and attendees/guests. Assistant Attorney General Laurie Hachtel, representing the State Land Department, stated, relating to budget shortages, they do not know whether the Land Department will be able to provide report updates or expert witnesses at all hearings without additional funding, but that they will continue to do the best they can. The decision was made by Chairman Earl Eisenhower that the next hearing will occur in Yuma County, during January 2005, and it will include the only item remaining to be adjudicated in Yuma County and that is the Gila River. Chairman Eisenhower also indicated that the next hearing following the Yuma County hearing regarding the Gila River, will likely be in February 2005, and will be all of the watercourses in Yavapai County: (the Yavapai County small and minor watercourses, the Agua Fria River, the Hassayampa River, Burro Creek, the Santa Maria River and the Verde River). The Commission Chairman said that following the Yavapai County hearings, the next hearings will likely be in Phoenix, Maricopa County, and will include the Upper Salt River, the Verde River, and the Gila River. Much of the discussion related to establishing a timetable that is within the Land Department's (financial) ability to deliver updated reports, and expert witnesses to appear at hearings. Chairman Eisenhower asked Land Department representatives to inform the Commission Director of dates and times that are problems both for the experts' calendars (other commitments) and for budget purposes. Ms. Hachtel indicated that for the Commission to hold 22 hearings during FY05 will be a problem for the Land Department insofar as providing updated reports and the experts who write the reports at all hearings is concerned.

Considerable discussion occurred by Commissioners and parties regarding the unavailability of an expert witness to answer questions by the Commissioners and by parties, (regarding reports by experts).

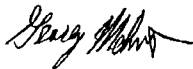
13. ADJOURNMENT.

Motion by: Cecil Miller Second by: Jay Brashear

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 2:47 p.m.

Respectfully submitted,



George Mehnert, Director

November 16, 2004



**STATE OF ARIZONA
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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF PUBLIC MEETING TO BE HELD

Meeting to be held March 9, at 10:00 a.m. in Florence, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public on March 9, 2004 at 10:00 A.M. in the Pinal County Supervisors' Conference Room located at 31 North Pinal Street, Building "A", Florence, Arizona 85232.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **APPROVAL OF MINUTES** (discussion and action).
A. January 27, 2004 Maricopa County.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**
5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SAN PEDRO RIVER 03-004-NAV.**
6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA CRUZ RIVER 03-002-NAV.**
7. **HEARING REGARDING THE SMALL AND MINOR WATERCOURSES IN PINAL COUNTY 04-007-NAV.**

The list of small and minor watercourses includes: Alder Wash - Pinal, Antelope Wash - Pinal, Aravaipa Creek - Pinal, Arnett Creek, Ash Creek - Pinal, Bachman Wash, Batamote Wash 2, Bear Springs Canyon, Bear Thicket Creek, Big Bertha Wash, Big O Wash, Big Wash - Pima/Pinal, Bitter Well Wash, Bloodsucker Wash, Bogart Wash, Booger Canyon St, Bowl Creek, Box O Wash, Bulldog Wash, Buzan Canyon Stream, Camp Grant Wash, Campaign Creek, Canada del Oro, Capgagge Wash, Carpas Wash, Catalina Wash, Cave Canyon Stream, Chalk Creek, China Wash, Chirreon Wash, Circle S Wash, Clark Wash, Comstock Wash, Connelly Wash, Copper Creek, Copper Creek - Pinal, Copper Hill Wash, Cottonwood Wash 1 - Pinal, Cottonwood Wash 2 - Pinal, Cronley Wash, Cruz Wash, Deer Creek - Pinal, Deer Creek 1 - Graham/Pinal, Dodge Tank Wash, Dodge Wash, Dodson Wash - Pinal, Donnelly Wash, Drew Wash, Dripping Spring, Dry Camp Canyon, Eagle Wash, Eskiminzin Wash, Faraway Wash, First Water Creek, Flag Wash, Garden Creek, Greene Wash, Guild Wash, Gust James Wash, Hackberry Creek - Pinal, Hackberry Wash - Pinal, Hagen Canyon Stream, Haunted Canyon Creek, Hells Half Acre, Holy Joe Canyon, Horse Camp Canyon, Horse Foot Wash, Indian Bend Wash - Pinal, Indian Well Wash, Irene Wash, James Wash, Jim Thomas Wash, Kaka Wash, Kohatk Wash, La Barge Creek, Lemmon Creek, Little Ash Creek - Pinal, Little Gust Jame, Lyons Fork, Mammoth Wash, Margaret Wash, Mesa Wash - Pinal, Milk Ranch Creek, Milky Wash, Mineral Creek - Pinal, Mulberry Wash - Pinal, North Branch San, North Fork Clark, Oak Creek - Pinal, Paisano Canyon Spring, Palmer Wash, Parsons Canyon Spring, Peppersauce Wash,

Peters Wash, Piper Springs Wash, Polecat Wash, Potters Wash, Putman Wash - Pinal, Queen Creek, Rainbows End Wash, Rancho Rio Creek, Ray Spring Wash, Redrock Canyon, Reeves Creek, Reymert Wash, Ripsey Wash, Roach Wash, Rock Creek 1 - Pinal, Rock Creek 2 - Pinal, Romero Wash, Santa Cruz Wash, Santa Rosa Wash, Scanlon Wash, Silver King Wash, Silver Reef Wash, Smelter Wash, Smith Wash - Pinal, South Fork Clark, Spencer Spring Creek, Steamboat Wash - Pinal, Swingle Wash, Sycamore Canyon, Tar Wash, Tat Momoli Wash, Threeway Wash, Tillmans Wash, Tipperary Wash, Tom Mix Wash, Tortilla Creek, Tucson Wash, Twentynine Wash, Twentyseven Wash, Vekol Wash, Virgus Canyon St, Weekes Wash, Well Canyon Stream, West Fork Pinto, Whitewash Canyon, Whitlow Canyon, Zapata Wash, and any other named or unnamed small and minor watercourses in Pinal County.

8. CALL FOR PUBLIC COMMENT (comment sheets).

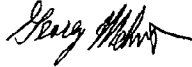
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

10. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 2nd day of February, 2004



George Mehnert, Director
Navigable Stream Adjudication Commission



STATE OF ARIZONA
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GEORGE MEHNERT
Executive Director

MEETING MINUTES
Florence, Pinal County, March 9, 2004

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

None.

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. **CALL TO ORDER.**

Chair Eisenhower called the meeting to order at approximately 10:00 a.m.

2. **ROLL CALL.**

See above.

3. **APPROVAL OF MINUTES** (discussion and action).

A. January 27, 2004 Maricopa County.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To approve the minutes of January 27, 2004. Vote: All aye.

4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**

Testimony or other information was presented by Cheryl Doyle representing the State Land Department and by Alan Gookin, Engineer and John Heston, Attorney, representing the Gila River Indian Community. Physical documentary evidence was submitted by Mr. Gookin. (Please refer to agenda item number 8 regarding the testimony of Mr. Gookin and Mr. Heston.)

5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SAN PEDRO RIVER 03-004-NAV.**

Testimony or other information was presented by Cheryl Doyle representing the State Land Department who stated her information would be the same as she had stated regarding item number 4 regarding the navigability or non-navigability of the Gila River.

At the end of the hearing regarding this matter Chairman Eisenhower announced that the taking of testimony and other evidence was closed.

6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA CRUZ RIVER 03-002-NAV.**

Testimony or other information was presented by Cheryl Doyle representing the State Land Department who stated her information would be the same as she had stated regarding item number 4 regarding the navigability or non-navigability of the Gila River.

At the end of the hearing regarding this matter Chairman Eisenhower announced that the taking of testimony and other evidence was closed.

7. **HEARING REGARDING THE SMALL AND MINOR WATERCOURSES IN PINAL COUNTY 04-007-NAV.**

Testimony or other information was presented by Cheryl Doyle representing the State Land Department who stated her information would be the same as she had stated regarding item number 4 regarding the navigability or non-navigability of the Gila River, and in addition discussed the small and minor watercourse report. In response to a question by Curtis Jennings Cheryl Doyle stated that the climatic and weather conditions at the time of the study were essentially the same as in 1912.

At the end of the hearing regarding this matter Chairman Eisenhower announced that the taking of testimony and other evidence was closed.

8. **CALL FOR PUBLIC COMMENT** (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Alan Gookin asked permission to speak regarding agenda item number 4, the Gila River. Mr. Gookin indicated he had arrived late and had missed the presentation regarding the Gila River. He asked the Commission's indulgence and that they return to the Gila River matter so he could provide testimony and other evidence. The chair agreed and Mr. Gookin presented testimony and documentary physical evidence.

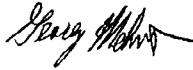
The Chairman restated that this is the final opportunity to submit testimony or other evidence regarding the navigability or non-navigability of the San Pedro and Santa Cruz Rivers.

9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

10. ADJOURNMENT.

Motion by: Cecil Miller Second by: Jim Henness
Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 10:55 a.m.

Respectfully submitted,



George Mehnert, Director
March 10, 2004



**STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION**

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

**November 16, 2005 at 9:30 a.m. in Phoenix, Arizona
(2nd Amended Agenda)**

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on November 16, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of October 20, 2005, Maricopa County.
4. All motions and responses to "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILITY OF ROOSEVELT LAKE" in both 04-008-NAV and 04-010-NAV (discussion and action).
5. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
6. Hearing regarding the navigability of the Gila River 03-007-NAV.
7. Hearing regarding the navigability of the Verde River 04-009-NAV.
8. Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.
9. Determination of the navigability of the Coconino County Small and Minor Watercourses 05-010-NAV (discussion and action).
10. Call for Public Comment (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
11. Future agenda items and establishment of future hearings and other meetings.
12. Commission budget and continuation.
13. Legal advice regarding laws and terms relating to navigability.
14. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 8th day of November, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD
November 16, 2005 at 9:30 a.m. in Phoenix, Arizona
(First Amended Agenda)

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on November 16, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of October 20, 2005, Maricopa County.
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5. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
6. Hearing regarding the navigability of the Gila River 03-007-NAV.
7. Hearing regarding the navigability of the Verde River 04-009-NAV.
8. Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.
9. Call for Public Comment (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
10. Future agenda items and establishment of future hearings and other meetings.
11. Commission budget and continuation.
12. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

A handwritten signature in black ink, appearing to read "George Mehnert".

Dated this 26th day of October, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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JANET NAPOLITANO
Governor

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

November 16, 2005 at 9:30 a.m. in Phoenix, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on November 16, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

Title 2 of the Americans with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of October 20, 2005, Maricopa County.
4. Hearing regarding the navigability of the Gila River 03-007-NAV.
5. Hearing regarding the navigability of the Verde River 04-009-NAV.
6. Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.
7. Call for Public Comment (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
8. Future agenda items and establishment of future hearings and other meetings.
9. Commission budget and continuation.
10. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6th day of October, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



JANET NAPOLITANO
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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GEORGE MEHNERT
Executive Director

CONSOLIDATED MEETING MINUTES

Meeting was continued and included 3 separate dates, November 16, 2005,
November 17, 2005, and January 18, 2006.
Phoenix, Arizona

November 16, 2005

COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria, Earl Eisenhower, Jim Henness & Cecil Miller.

COMMISSION MEMBERS ABSENT

None, Jay arrived about 10 minutes after meeting was called to order.

STAFF PRESENT

George Mehnert, Dir and Curtis Jennings, Attorney who arrived about 10 minutes after meeting was called to order.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 9:36 A.M.

2. ROLL CALL.

See Above.

3. APPROVAL OF MINUTES (discussion and action).

A. October 20, 2005 Maricopa County

Motion by: Dolly Echeverria Second by: Cecil Miller

Motion: To accept minutes as submitted. Vote: All aye.

4. All motions and responses to "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILILTY OF ROOSEVELT LAKE" in both 04-008-NAV and 04-010-NAV (discussion and action). Two people spoke on the subject, Mark McGinnis, John Helm.

5. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).

Motion by: Cecil Miller Second by: Jim Henness

Motion: To adopt the Commission Report as Written. Vote: All aye.

6. Hearing regarding the navigability of the Gila River 03-007-NAV.

Witnesses included: Laurie Hachtel, Jon Fuller, Dennis Gilpin, Gary Huckleberry, Douglas Littlefield, Jack August, David Weedman, Alan Gookin, and John Hestand.

7. **Hearing regarding the navigability of the Verde River 04-009-NAV.**
David Weedman testified because he cannot appear at a later date, and the balance of this hearing was completed on January 18, 2006.
8. **Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.**
Matter was continued to November 17, 2005.
9. **Determination of the navigability of the Coconino County Small and Minor Watercourses 05-010-NAV (discussion and action).**
10. **Call for Public Comment (comment sheets).**
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.) None.
11. **Future agenda items and establishment of future hearings and other meetings.**
12. **Commission budget and continuation.** Continued to future date.
13. **Legal advice regarding laws and terms relating to navigability.** Continued to future date.
14. **ADJOURNMENT.** Meeting was not adjourned. At approximately 4:40 P.M. the Chair continued the meeting to November 17, 2005 at 9:00 A.M.

November 17, 2005

Meeting Continued from November 16, 2005

COMMISSION MEMBERS PRESENT

Dolly Echeverria, Earl Eisenhower, & Jim Henness.

COMMISSION MEMBERS ABSENT

Jay Brashear, Cecil Miller.

STAFF PRESENT

George Mehnert, Dir and Curtis Jennings.

1. **CALL TO ORDER.**
Chair Eisenhower called the meeting to order at approximately 9:11 A.M.
2. **ROLL CALL.**
See Above.
3. **APPROVAL OF MINUTES** (discussion and action).
None.
4. **All motions and responses to “SALT RIVER PROJECT’S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILILTY OF ROOSEVELT LAKE” in both 04-008-NAV and 04-010-NAV** (discussion and action). No discussion.
5. **Adoption of the Commission report regarding the Pima County Small & Minor Watercourses** (discussion and action).
Completed on November 16, 2005.
6. **Hearing regarding the navigability of the Gila River 03-007-NAV.**
Witnesses included: Stanley Schumm, Douglas Littlefield, D.C. Jackson, Hjalmar Hjalmarson, and Jon Colby. The Chair closed the hearing for the taking of evidence and indicated that the deadline date for filing post hearing opening memorandums will be determined in relation to the Commission’s receipt of the court reporter’s transcript of the proceedings.
7. **Hearing regarding the navigability of the Verde River 04-009-NAV.**
Hearing continued to January 18, 2006.
8. **Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.**
Witness was Jon Fuller. Chair closed this matter for taking of evidence.
9. **Determination of the navigability of the Coconino County Small and Minor Watercourses 05-010-NAV (discussion and action).**
Motion by: Jim Henness Second by: Dolly Echeverria
Motion: Not navigable as of statehood. Vote: All aye.
10. **Call for Public Comment (comment sheets).**
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.) None.
11. **Future agenda items and establishment of future hearings and other meetings.**

12. **Commission budget and continuation.** Continued to future date.
13. **Legal advice regarding laws and terms relating to navigability.** Continued to future date.
14. **ADJOURNMENT.** Meeting was not adjourned. At approximately 8:42 P.M. the Chair continued the meeting to January 18, 2006 at 10:00 A.M.

January 18, 2006
Meeting Continued from November 18, 2005

COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria, Earl Eisenhower, & Jim Henness.

COMMISSION MEMBERS ABSENT

Cecil Miller.

STAFF PRESENT

George Mehnert, Dir and Curtis Jennings.

1. **CALL TO ORDER.**
Chair Eisenhower called the meeting to order at approximately 10:06 A.M.
2. **ROLL CALL.**
See Above.
Motion by: Dolly Echeverria Second by: Jim Henness
Motion: To go into executive session. Vote: All aye.
Meeting went into Executive Session beginning at approximately 10:04 A.M. regarding agenda items 4, 12, and 13, and the Executive Session ended at approximately 10:38 A.M.
3. **APPROVAL OF MINUTES** (discussion and action).
None.
4. **All motions and responses to "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILILTY OF ROOSEVELT LAKE" in both 04-008-NAV and 04-010-NAV** (discussion and action). The Chair stated that the Commission will accept jurisdiction regarding the navigability of Roosevelt Lake.
5. **Adoption of the Commission report regarding the Pima County Small & Minor Watercourses** (discussion and action).
Completed on November 16, 2005.
6. **Hearing regarding the navigability of the Gila River 03-007-NAV.**

Completed on November 17, 2005.

7. Hearing regarding the navigability of the Verde River 04-009-NAV.

David Weedman was permitted to testify regarding this matter on November 16, 2005 and did not appear on January 18, 2006; however, the Chair stated that his the transcript of his testimony on November 16, 2005 will be appear as Appendix a to the Verde River hearing transcript. Appearing as witnesses were: Jon Fuller, Philip Pearthree, Jon Colby, Douglas Littlefield, and Jim Slingluff. AAG Laurie Hachtel said she will write a letter to the Commission regarding the status of an appeal regarding Indian Nations and the State Land Department. Following completion of the testimony, the Chair closed the hearing for taking evidence and indicated that a date will be established for the deadline to receive post hearing legal memorandums based on the date the Commission receives the court reporter's transcript of the hearing. Attorney Joy Herr-Cardillo will mail to the Commission a copy of the CD containing the PowerPoint photographic slides presented by witness Jim Slingluff.

8. Hearing regarding the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV.

Completed on November 17, 2005.

9. Determination of the navigability of the Coconino County Small and Minor Watercourses 05-010-NAV (discussion and action).

Completed on November 17, 2005

10. Call for Public Comment (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.) None.

11. Future agenda items and establishment of future hearings and other meetings.

12. Commission budget and continuation. Continued to future date.

13. Legal advice regarding laws and terms relating to navigability. Continued to future date.


14. ADJOURNMENT. Meeting was not adjourned. At approximately 8:42 P.M. the Chair continued the meeting to January 18, 2006 at 10:00 A.M.

Motion by: Jay Brashear Second by: Jim Henness

Motion: To go into executive session. Vote: All aye.

Meeting adjourned at approximately 3:30 P.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George Mehnert", with a stylized flourish at the end.

George Mehnert, Director
January 19, 2006



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

January 24, 2005, at 12:00 P.M., in Yuma, Arizona

(First Amended Agenda)

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public on January 24, 2005 at 12:00 p.m. in the Yuma County Supervisors' Auditorium located at 198 South Main, Yuma, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **APPROVAL OF MINUTES** (discussion and action).
A. November 15, 2004, Gila County.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**
5. **STATUS OF CASES AND BUDGET** (discussion and action).
6. **ATTORNEY HOURLY RATE** (discussion and action).
7. **CALL FOR PUBLIC COMMENT** (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
8. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**
9. **ADJOURNMENT.**

The chair reserves the right to alter the order of the agenda.

Dated this 12th day of January, 2005

George Mehnert, Director
Navigable Stream Adjudication Commission



STATE OF ARIZONA
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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

January 24, 2005, at 12:00 P.M., in Yuma, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public on January 24, 2005 at 12:00 p.m. in the Yuma County Supervisors' Auditorium located at 198 South Main, Yuma, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **APPROVAL OF MINUTES** (discussion and action).
A. November 15, 2004, Maricopa County.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**
5. **STATUS OF CASES AND BUDGET** (discussion and action).
6. **CALL FOR PUBLIC COMMENT** (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
7. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**
8. **ADJOURNMENT.**

The chair reserves the right to alter the order of the agenda.

Dated this 21st day of December, 2004

George Mehnert, Director
Navigable Stream Adjudication Commission



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GEORGE MEHNERT
Executive Director

MEETING MINUTES

Yuma, Arizona, January 24, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

Jim Henness.

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. **CALL TO ORDER.**

Chair Eisenhower called the meeting to order at approximately 12:06 p.m.

2. **ROLL CALL.**

See above.

3. **APPROVAL OF MINUTES** (discussion and action).

A. November 15, 2004, Gila County.

Motion by: Dolly Echeverria Second by: Cecil Miller

Motion: To approve the minutes of November 15 2004. Vote: All aye.

4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**

Cheryl Doyle and Dr. Ottozawa Chatupron appeared on behalf of the State Land Department.

They discussed the report regarding the Gila River from the Colorado River confluence to the town of Safford;

5. **STATUS OF CASES AND BUDGET** (discussion and action).

Director: The Governor's Office and the Legislature are presently engaged in the budget process. The Commission is not asking for any additional funding for either FY2005 or FY2006 beyond that recommended by the OSPB and the JLBC, unless and until appeals are filed. The greater problem is for the Land Department which needs funding to pay outside engineers to prepare reports and appear at hearings. The issue we are working on right now with the Deputy Land Commissioner and with the Governor's Office and the Legislature is money versus time table, related to how soon we can get hearings done. Jay Brashear: Raised the issue of hearings notification beyond legal advertising and funding for such notification. Mr. Brashear asked about the status of the newsletter publications and the director pointed out that we have had no need to do a newsletter lately and it has never been notice because everyone who receives the newsletter also receives agendas. Mr. Brashear said he doubts anyone ever reads legal notices. Mr. Brashear said we need to put the word out in another form that is better than the legal notice. Mr. Brashear stated that he believes only the people who are really interested in our work actually read the legal notices. Mr. Brashear said that to believe the legal notices really engage the public in the process is a fiction because the public really doesn't know that anything is taking place. The director said that a couple of years ago we asked for an additional \$50,000.00 beyond our base budget for the purpose of advertising, but that money was never approved.

6. **ATTORNEY HOURLY RATE** (discussion and action).

The director indicated that we are considering an additional \$25.00 or \$50.00 per hour, but we will not be able to make any changes until after the new contract with the attorney has been signed and an amendment to the contract for the hourly rate will have to be approved. The Commissioners discussed the hourly rate of the Commission's Attorney (\$150.00 per hour) and tabled the matter until a future date. Regarding attorney costs the Director indicated the attorney fees are also related to the Land Department's budget and how many reports they can have prepared and how many experts they can have appear at hearings and during what period of time. He said we also must determine at which hearings the Commissioners want an expert. Chairman Brashear indicated that he was Chair when we hired our attorney and that Curtis was the only

applicant when the Commission sent out bids, and that SPO told him we should expect to pay \$225.00 per hour. The Chair indicated that we would make a decision following our budget hearings.

7. **CALL FOR PUBLIC COMMENT** (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Dr. Ottozawa Chatupron representing the State Land Department: Dr. Chatupron asked the Commission not to send reports to the Land Department, other than the Salt, because of the Land Department's inability to act on the reports, without additional funding. Dr. Chatupron said he recognizes the Commission has a job to do but to the extent possible he is asking us to hold off sending the State Land Department any reports other than the Salt this fiscal year. The Chair indicated that he would like to help the Land Department obtain additional money to do the Commission's work, citing the problem encountered in Globe when expert testimony was not available and the hearing regarding the Upper Salt River had to be continued as a result. Jay Brashear said he wanted to clarify that the work Dr. Chatupron was talking about is the funding needed to handle reports of navigability or non-navigability from the Commission, once they reach the Land Department. Dr. Chatupron indicated this was the work he was talking about and not the work of experts appearing at hearings. Mr. Brashear indicated that if the State wants the job done they should give us the money we need to do it. Mr. Brashear said we are talking about chump change insofar as the State budget is concerned. Dr. Chatupron indicated he was not trying to give us any heartache, but they have a considerable budget problem. Curtis Jennings said he wanted to clarify what reports the Land Department wanted us to hold off sending them for the balance of this fiscal year. Dr. Chatupron said he believes they will be able to handle our small and minor watercourse reports and that the major watercourses are the issue. The Director indicated he has discussed the matter with the Deputy Land Commissioner regarding budget and timetable. He also indicated that the budget people we deal with are aware the Commissioner's terms do not expire until June 30, 2008. The Director wanted to also point out that, regarding timetable and Sunset date, once a report from the Commission is filed with the Land Department almost 8 months of appeal time remains. Chairman Eisenhower said we will continue to hold evidentiary hearings and we will think about the determinations and reports. Commissioner Brashear said that maybe some sources would donate money to the state to get this done. The Director stated that the Commission cannot directly accept gifts without a change in the law; and that for an agency to accept such gifts the law must say it may, and the law does not presently state this.

8. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**

The Chair discussed hearings in Yavapai County and the need for experts because of the number of watercourses. The Chair indicated we will hold off establishing hearings until we talk to the Land Department, the Governor and Legislative budget staff, etc. Mark McGinnis wanted to clarify dates of hearings so he can arrange for experts. The Chair stated we will hold hearings only on the Yavapai County watercourses in March.

9. **ADJOURNMENT.**

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 12:48 p.m.

Respectfully submitted,



George Mehnert, Director
January 25, 2005



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF PUBLIC MEETING
TO BE HELD May 24, 2006 AT 10:00 A.M.
PHOENIX, ARIZONA

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Navigable Stream Adjudication Commission and to the general public that the Navigable Stream Adjudication Commission will hold a meeting open to the public on May 24, 2006 at 10:00 A.M. at La Quinta Inn Phoenix North, 2510 West Greenway Rd, Phoenix, AZ 85023, in the Vista Room. I-17 and West Greenway Road, northeast corner.

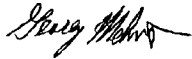
Pursuant to A.R.S. § 38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. ' 38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of April 11, 2006.
4. Determination of the navigability of the small and minor watercourses in Gila County, 04-010-NAV (discussion and action).
5. Determination of the navigability of the Gila River 03-007-NAV (discussion and action).
6. Determination of the navigability of the Upper Salt River 04-008-NAV (discussion and action).
7. Determination of the navigability of the Verde River 04-009-NAV (discussion and action).
8. Motion by the Attorney General in its Response Memorandum relating to the Verde River to strike from the record First American Title Insurance Company of Arizona's Joinder Memorandum to Salt River Project's Opening Memorandum and to Phelps Dodge's Opening Memorandum, on the basis of untimely filing (discussion and action).
9. Renewal of Attorney Contract to be effective July 1, 2006 through June 30, 2008, (discussion and action).
10. Budget/Funding condition and forecast.

11. Budget Supplemental Request for FY2006 regarding notice of intent to seek judicial review.
12. Call for Public Comment (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
13. Future agenda items and establishment of future meetings.
14. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.



Dated this 17th day of May, 2006, George Mehnert, Director, Navigable Stream Adjudication Commission



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

MEETING MINUTES

Phoenix, Arizona, May 24, 2006

COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria, Earl Eisenhower, Jim Henness, Cecil Miller.

COMMISSION MEMBERS ABSENT

None.

STAFF PRESENT

Curtis Jennings, George Mehnert.

1. CALL TO ORDER.

Chairman Eisenhower called the meeting to order at approximately 10:04 A.M.

2. Roll Call.

See above.

3. Approval of Minutes (discussion and action). Minutes of April 11, 2006.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To accept minutes as submitted. Vote: All aye.

4. Determination of the navigability of the small and minor watercourses in Gila County, 04-010-NAV (discussion and action).

Motion by: Cecil Miller Second by: Dolly Echeverria

Motion: That the Gila River was not navigable. Vote: All aye.

5. Determination of the navigability of the Gila River 03-007-NAV (discussion and action).

Motion by: Jim Henness Second by: Jay Brashear

Motion: That the Gila River was not navigable. Vote: All aye.

6. Determination of the navigability of the Upper Salt River 04-008-NAV (discussion and action).

Motion by: Jay Brashear Second by: Earl Eisenhower

Motion: That the Upper Salt River was navigable Vote: One aye. Four nay.

Motion by: Jay Brashear Second by: Jim Henness

Motion: That the Upper Salt River was not navigable. Vote: All aye.

7. Determination of the navigability of the Verde River 04-009-NAV (discussion and action).

Motion by: Jay Brashear Second by: Earl Eisenhower

Motion: That the Verde was navigable Vote: Second and Motion
Withdrawn.

Motion by: Dolly Echeverria Second by: Cecil Miller

Motion: That the Verde River was not navigable. Vote: All aye.

8. Motion by the Attorney General in its Response Memorandum relating to the Verde River to strike from the record First American Title Insurance Company of Arizona's Joinder Memorandum to Salt River Project's Opening Memorandum and to Phelps Dodge's Opening Memorandum, on the basis of untimely filing (discussion and action).

Motion denied by Chair.

9. Renewal of Attorney Contract to be effective July 1, 2006 through June 30, 2008, (discussion and action).

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: That the contract be renewed through June 30, 2008. Vote: All aye.

10. Budget/Funding condition and forecast.

The Chair and the Director explained the condition of the budget.

11. Budget Supplemental Request for FY2006 regarding notice of intent to seek judicial review.

The Chair and the Director commented that a supplemental request for \$50,000.00 has been filed but has not yet been acted on.

12. Call for Public Comment (comment sheets).

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Questions and conversation by an unidentified guest regarding prior Gila River Lawsuit took place.

13. Future agenda items and establishment of future meetings.

None specifically established.

14. ADJOURNMENT.

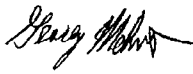
Motion by: Jay Brashear

Second by: Cecil Miller

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 10:50 A.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George Mehnert", with a stylized flourish at the end.

George Mehnert, Director

May 24, 2006

EXHIBIT D

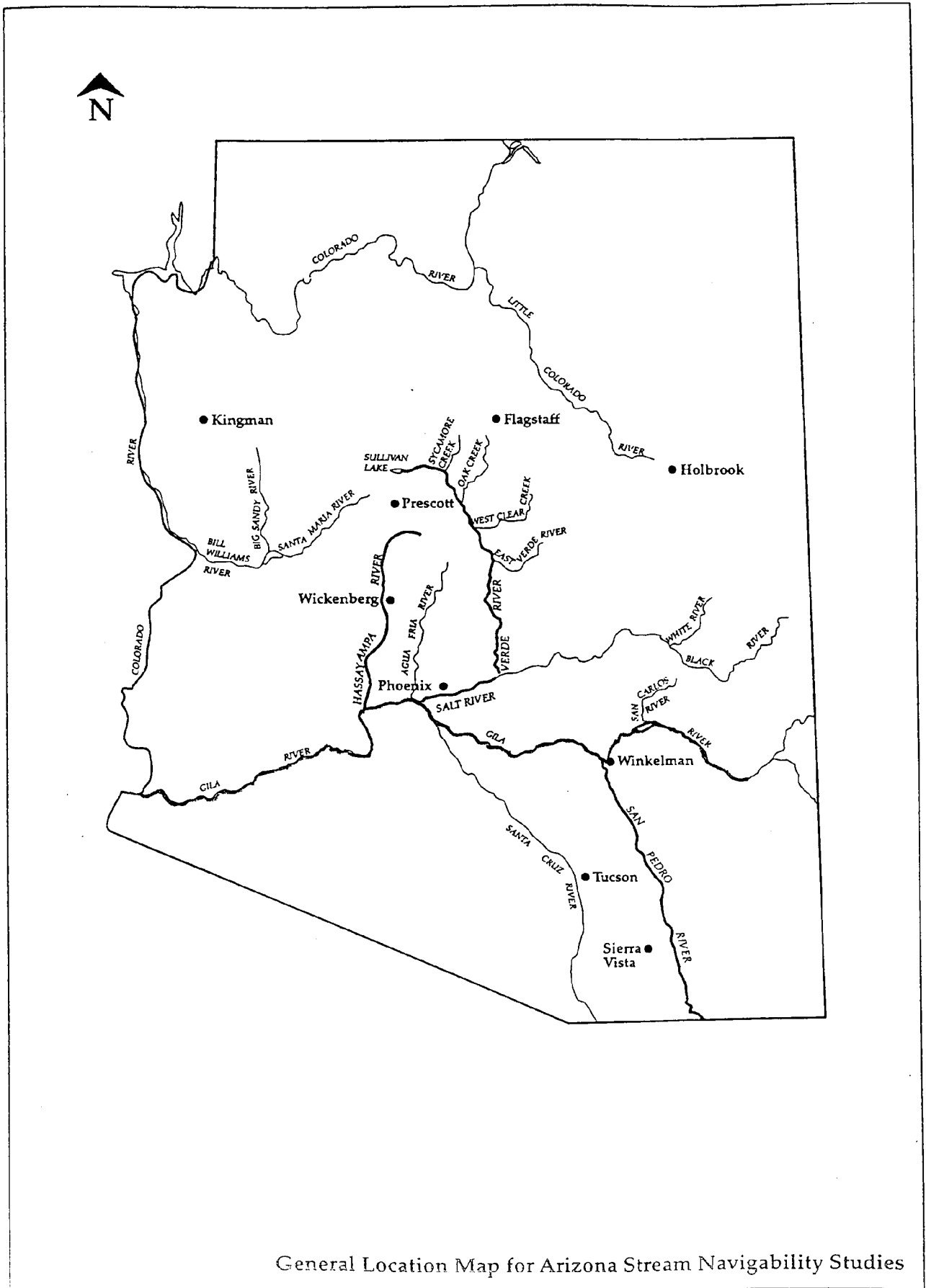


EXHIBIT E

Evidence Log

Hearing No. 03-007

Page No.

1

Arizona Navigable Stream Adjudication Commission

Gila River

Graham County October 14, 2003, Greenlee County October 15, 2003, Pinal County March 9, 2004, Gila County November 15, 2004, Yuma County January 24, 2005, Maricopa County November 16 and 17, 2005.

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	Pre Aug, 2001	Evidence on hand at prior to August 9, 2002	Four Volumes, I, II, III, IV, and the Criteria for Assessing Small & Minor Watercourses, 9/98 and the 3 County Pilot Study, 9/99.	George Mehnert
2	9/26/03	State Land Department	Draft Final Report by Jon Fuller. Upper Gila River Safford to the State Boundry and San Francisco River, Gila River Confluence to the State Boundry.	George Mehnert
3	10/14/03	Steve Wene	City of Safford's Opening Memorandum, provided at hearing, not as post hearing memorandum in usual sense so treated as evidence item.	George Mehnert
4	2/20/04	State Land Department	Draft Final Report by Jon Fuller-Gila River: Colorado River Confluence to the Town of Safford.	George Mehnert
5	3/9/04	Alan Gookin	Presentation to Arizona Stream and Navigability Commission.	George Mehnert
6	6/2004	Mark McGinnis	Geomorphic Character of the Lower Gila River by Stanley A. Schumm.	George Mehnert
7	5/24/04	Noel Fitzgerald	Letter.	George Mehnert
8	6/15/2004	Chuck Kranz	Letter.	George Mehnert
9	7/11/04	Nancy Orr	Letter.	George Mehnert
10	7/14/04	Coby Muckelroy	Letter.	George Mehnert
11	6/23/04	Jeanne Keller	Letter.	George Mehnert

Evidence Log

Hearing No. 03-007

Page No.

2

Arizona Navigable Stream Adjudication Commission

Gila River Continuation Page

Item Number	Received Date	Source to ANSAC	Description	Entry By
12	11/2005	Mark McGinnis	Assessment of the Navigability of the Gila River Between the Mouth of the Salt River and the Confluence with the Colorado River Prior to and on the Date of Arizona's Statehood, February 14, 1912, by Douglas R. Littlefield.	George Mehnert
13	11/14/05	Mark McGinnis	Faustball Tunnel Article by John Hammond Moore.	George Mehnert
14	11/16/05	Helm & Kyle	Land Surveys and Instructions and other documentation relating to Land Surveys, and affidavit of Vince Murray relating to Land Surveys.	George Mehnert
15	11/16/05	Alan Gookin	Presentation to the Arizona Stream and Navigability Commission, and other documents including Hydrologic History of the Gila River Indian Reservation.	George Mehnert
16	11/16/05	Barbara Tellman for the State Land Department	Papers submitted with testimony.	George Mehnert
17	11/16/05	Jack August	Expert Witness Report.	George Mehnert
18	11/16/05	Rebecca Goldberg	Accounts of Historical Gila River Boating	George Mehnert
19	11/16/05	Helm & Kyle	Deposition of Douglas R. Littlefield, May 25, 2001.	George Mehnert
20	11/16/05	Jon Fuller	Power Point Presentation, copies of slides used by Jon Fuller in testimony.	George Mehnert
21	11/17/05	Helm & Kyle	Power Point Presentation by D. C. Jackson.	George Mehnert
22	11/17/05	Mark McGinnis	Deposition of Donald C. Jackson January 15, 2003.	George Mehnert

Evidence Log

Hearing No. 03-007

Page No.

3

Arizona Navigable Stream Adjudication Commission

Gila River Continuation Page

Item Number	Received Date	Source to ANSAC	Description	Entry By
23	11/17/05	Helm & Kyle	Navigability along the natural channel of the Gila River, including PowerPoint slides, by Hjalmar W. Hjalmarson.	George Mehnert
24	11/17/05	Mark McGinnis	Deposition of Hjalmar W. Hjalmarson January 16, 2003.	George Mehnert
25	11/17/05	Mark McGinnis	Confidential Notes-The Ability to Navigate the Gila River under natural conditions below the confluence with the Salt River to the mouth at Yuma, Arizona by Hjalmar W. Hjalmarson.	George Mehnert
26	11/17/05	John Helm	Single Page #377 Forty-Fourth Congress, Session II, Ch. 107, 108, An act to provide for the sale of desert lands in certain States and Territories.	George Mehnert
27	5/1/04	Candace Hughes	Letter. Filed in other County and added here out of chronological received date order.	George Mehnert
28	4/1/03	Mark McGinnis	Information Regarding Navigability of Selected U.S. Watercourses. Exhibit #25 to Lower Salt River Report.	George Mehnert

EXHIBIT F

