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10
11 **BEFORE THE ARIZONA NAVIGABLE STREAM**
12 **ADJUDICATION COMMISSION**
13

14 In re Determination of Navigability of
15 the Lower Salt River, from Granite Reef
16 Dam to the Gila River Confluence

No. 03-005-NAV

**CEMEX, INC.'S MEMORANDUM
JOINING SALT RIVER PROJECT'S
MEMORANDUM REGARDING
WHETHER THE LOWER SALT
RIVER WAS NAVIGABLE IN ITS
"ORDINARY AND NATURAL
CONDITION"**

17 Pursuant to the Commission's order at its meeting held on June 29, 2012, the Salt
18 River Project Agricultural Improvement and Power District and Salt River Valley Water
19 Users' Association (collectively, "SRP") has submitted a memorandum regarding whether the
20 Lower Salt River was navigable in its "ordinary and natural condition." The SRP
21 Memorandum evaluates the evidence submitted to the Commission during the course of this
22 matter and evaluates that evidence both as to the Lower Salt River's "ordinary and natural
23 condition" and as to such condition on the date of statehood. The latter is the appropriate date
24 for consideration of title purposes. In the interest of saving the Commission's time and effort,
25 CEMEX, by this filing, fully supports and agrees with the SRP Memorandum.

26 Specifically, CEMEX agrees that the evidence is clear that the Lower Salt River was
27 NOT navigable in its "ordinary and natural condition" and that the Lower Salt River was
NOT navigable on February 14, 1912. The United States Supreme Court very clearly

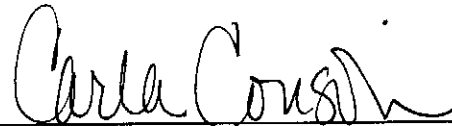
1 confirmed that the test of navigability for title is pragmatic in nature asking: Was the river, as
2 of February 14, 1912, used or susceptible to being used, in its ordinary and natural condition,
3 as a highway for commerce, over which trade and travel were or could have been conducted
4 in the customary mode of trade and travel on water? (*See PPL Montana LLC v. Montana*, 132
5 S. Ct. 1215, 1228 (2012)). This reconfirmed the federal test of navigability for title purposes
6 that mirrors the Arizona statutory test in A.R.S. § 37-1101(5).

7 As a result, the Commission can and should find that the Lower Salt River is
8 nonnavigable.

9 DATED this 10th day of September, 2012.

10 LEWIS AND ROCA LLP.

11
12 By: _____



13 Carla Consoli
14 Robert G. Schaffer
Attorneys for Cemex, Inc.

15 ORIGINAL AND SIX COPIES of the foregoing
16 hand-delivered for filing this 10th day of September,
17 2012 to:

18 Arizona Navigable Stream Adjudication Commission
19 1700 West Washington, Room B-54
Phoenix, AZ 85007

20 AND COPY mailed this 10th day of September, 2012 to:

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