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17 **BEFORE THE ARIZONA NAVIGABLE**

18 **STREAM ADJUDICATION COMMISSION**


19 In re Determination of Navigability of the) No. 03-005-NAV
20 Lower Salt River, from Granite Reef Dam to)
21 the Gila River Confluence) **CITIES OF MESA, PHOENIX AND**
22) **TEMPE'S JOINT LEGAL**
23) **MEMORANDUM REGARDING**
24) **WHETHER LOWER SALT RIVER**
25) **WAS NAVIGABLE IN ITS**
) **"ORDINARY AND NATURAL**
) **CONDITION" AND JOINDER IN**
) **SALT RIVER PROJECT'S**
) **MEMORANDUM**

1 In accordance with the June 29, 2012, request of the Arizona Navigable Stream
2 Adjudication Commission ("Commission"), the Cities of Mesa, Phoenix and Tempe ("Cities")
3 file this Legal Memorandum and Joinder regarding whether the Lower Salt River was navigable
4 in its ordinary and natural condition, Case No. 03-005-NAV. The Cities re-urge the positions set
5 out in their memoranda on this matter filed with the Commission on January 13, 2012, March 23,
6 2012, and June 8, 2012, and join in Salt River Project's Memorandum Regarding whether the
7 Lower Salt River was Navigable in its "Ordinary and Natural Condition," filed on or about
8 September 7, 2012.


9 In applying both the recent Arizona Court of Appeal's opinion in this case, *State v.*
10 *Arizona Navigable Stream Adjudication Commission*, 224 Ariz. 230, 229 P.3d 242 (App. 2010),
11 and the United States Supreme Court's opinion in *PPL Montana LLC v. Montana*, 132 S. Ct.
12 1215 (2012), to the evidence before the Commission, the proponents of navigability cannot meet
13 their burden of establishing by a preponderance of the evidence that the Lower Salt River was
14 navigable in its "ordinary and natural condition" at statehood. The Commission should find once
15 again that the Lower Salt River was nonnavigable.

16 Dated this 6th day of September, 2012

17 **TEMPE CITY ATTORNEY'S OFFICE**

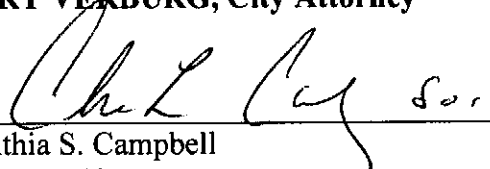
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6 ORIGINAL AND SIX COPIES of the foregoing
7 hand-delivered for filing this 6th day of September,
8 2012 to:

8 Arizona Navigable Stream Adjudication Commission
9 1700 W. Washington, Suite B-54
10 Phoenix, Arizona 85007

10 AND A COPY hand-delivered this
11 6th day of September, 2012, to:

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15 AND A COPY mailed this 6th day of September, 2012, to:

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