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**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

**Maricopa County and The Flood Control
District of Maricopa County's Post-
Hearing Closing Response Brief
Regarding Navigability of Gila River in
"Natural and Ordinary" Condition on
February 14, 1912.**

This Closing Response Brief is submitted by Maricopa County and the Flood Control District of Maricopa County ("County and FCD") by undersigned counsel in response to closing briefs submitted by opponents of a finding of navigability for the lower Gila River from the confluence with the Salt River near Phoenix to the confluence with the Colorado River near Yuma. This response incorporates by this reference, the opening closing brief, Maricopa County and Flood Control District of Maricopa County's Proposed Findings of Fact and Conclusion of law, and all briefs previously filed by Maricopa County and the Flood Control District of Maricopa County in this matter during all previous rounds of hearings.

1. SRP and Freeport misstate the holding in Winkleman.

SRP claims (See Memo at page 1:11-14) that the holding in *State ex rel Winkleman v Nav. Stream Adj.* 224 Ariz. 230, 229 P.3d 242 (App. 2010) (hereafter *Winkleman*) was that the Commission had failed to consider the ordinary and natural condition of the river because it had failed to consider diversions below Roosevelt Dam. This is not what the court said. The court stated that the Commission had conflated the terms ordinary and natural by treating them as interchangeable when they were not and that in order to properly treat these terms they had to establish what the river would look like before the commencement of modern-era settlement and farming as well as eliminating extraordinary events such as floods when determining what was ordinary. See *Winkleman*, supra at 241-242.

Freeport Mining (hereafter Freeport) makes the same error by claiming no navigability because water was diverted mistaking the ordinary and natural condition ruling in *Winkleman*. Freeport also misstates the term “meaningfully similar” in regard to watercraft as used in *PPI Montana, LLC v. Montana* 132 S. Ct. 1215,1233 (2012) case. See Freeport memo page 3, line 22 to page 4, line 6.

2. SRP claims that the proponents of navigability have never been able to show that the Gila was navigable.

See SRP Memo at page 2:13-15

The following citations to our memoranda disprove SRPs’ conclusion :

See Maricopa County and Flood Control District Post Hearing Brief November 14, 2014 at pages 2-15, Maricopa County and Flood Control Districts Findings of Fact and

Conclusions of Law dated 01/23/15 at pages 9-16, 18-25.

3. Citations to facts and reports need to be checked. Many of the referenced citations by opponents to a navigability finding and segmentation of the river do not apply to the lower Gila River.

See SRP Memo at pages 2:18-20, 2:23-24, 11:21-25, 18:11-16, 25:15-19, Gila River Indian Community (hereafter GRIC) Memo at page10: 1-6, San Carlos Apache Tribe Memo (hereafter San Carlos) at page 5:9-13, 5:20-24, 7:9-15, 20:10-14, 21:6-15, Freeport Memo at 4:9-13, 10:7-14 for example. It is inappropriate for the Commission to use factual evidence from outside the segment being considered without explaining how it establishes an applicable fact within the segment under consideration.

4. Reliance on the previous Gila Decision by the Commission is not appropriate.

See SRP Memo at 2:21-22, 3:9-13, 7:12-22, 13:18-24, 14:13-22 , San Carlos Memo at 6:21-24, 24:20-23, 25:1-6, 25:14-18 26:1-7, 14-18, for example. The Gila Decision suffers from the same warts as the Salt Decision reversed by the court. Like the Salt, the Gila Decision did not consider the ordinary and natural conditions separately nor did it consider segmentation. Further, the *Winkleman* court held that the Commission did not apply the right standard to its consideration of the evidence. *Winkleman*, supra at 242. How can one claim a fact is a fact if it is based on an incorrect legal standard that makes it inapplicable for the ultimate Commission decision?

5. Opponents of navigability err when they claim that no prehistoric use of boat type evidence or flotation of logs was presented.

See SRP Memo page 3:3-5, San Carlos Memo at page 4:2-6. Evidence of prehistoric use is cited in, for example, the Tellman Report, EL from the 2005 hearing

#016 at pages 19-21, and in the statement on page 20 that Frank Cushing is reported to have found the remains of a canoe at a Hohokam site in the Salt River Valley

6. It is inappropriate to cite to testimony or reports of experts when they go beyond their field of expertise to express an opinion.

See, for example, SRP Memo at 3:22-4:2 , 4:4-12, 5:5-9, San Carlos Memo at 6:1-4, 6-12, 13-19, 7: 1-7. Mr. Gookin is a hydrologist, not a historian or archaeologist. His expression of opinions outside his field of expertise are not admissible evidence and should not be used to prove a fact.

Also see testimony with Mr. Burtell's opinion on the navigability of the upper Gila applied to lower Gila (Freeport memo page 4:9-13) and Burtell's testimony on the history of the lower Gila (Freeport memo page 10:7-14), all clearly outside the studies he conducted on the upper Gila

7. The use of non-boat transportation in proximity to a watercourse is not probative of non-navigability and violates the federal test for navigability.

See *Defenders of Wildlife v Hull*, 199 Ariz. 411, 424-425, 18 P3d 722 (App. 2001). See for example SRP Memo 6:13-17, 6:22-24, San Carlos Memo at 7: 17-18, 15:18-24, 16:1-25, 17:2, 18:8-16, 19:21-24, 20:11-15, 21:19-24. An affidavit from Mr. Lingenfelter with the erroneous conclusion that non-river transportation proved non-navigability is cited in the Freeport Memo on page 10:15-24 and fn 25.

8. Opponents of navigability attempt to diminish the accounts of early navigation on the lower Gila River.

See for example SRP Memo at 7:3-7, GRIC Memo at 8:8-11, San Carlos Memo at 7:19-21.

See chart attached as Exhibit C hereto listing numerous early travels on the Gila.

In contrast, the Freeport Memo opens with the erroneous statement that the County memo relies on modern standards for determining navigability. See Freeport Memo page 2:5-11. The County submitted evidence of actual boating on the lower Gila before statehood. What is important is that the research and evidence shows that on the lower Gila there is no significant difference between early and modern boats in terms of draft. The lower Gila is a fairly flat river without rapids, so draft and solidity of construction are not the significant issues they would be on a different type of river.

9. Use of surveyors' opinions about navigability by opponents of navigability is of little significance regarding facts about the ordinary and natural condition of the lower Gila. They did not spend vast amounts of time viewing the river and the majority of the surveys all occurred after significant diversion of the river had begun.

See Exhibit A hereto listing survey dates relied on by Dr. Littlefield.

See, for example, SRP Memo at 7:19-8, San Carlos Memo at 13:15-14:2.

See *State of Oklahoma v State of Texas*, 258 U.S. 574,585 (1922)

10. Land patents do not provide any information applicable to the lower Gila that can be used to determine if land underlying a navigable river is conveyed by the patent.

See, for example, SRP Memo at 8:10-14, San Carlos Memo at pages13:15-14:2.

Most patents were issued long after significant diversions had taken place and thus cannot tell us what the river was like in its ordinary and natural condition. See Exhibit B hereto listing of patents by date.

It has long been the law that unless a patent specifically states that land underlying a navigable river is conveyed by the patent such land will not be held to

have been conveyed by the patent. None of the opponents of navigability have identified any patent on or near the Gila River that specifically states that it is intended to convey the land underlying the river below the mean high watermark.

See *United States v Holt State Bank*, 270 U.S. 49, 55 (1926), *Morgan v. Colorado River Indian Tribe*, 103 Ariz. 425, 427, 443 P.2d 421, 423 (1968)

11. There is no requirement that travel and trade must be both upstream and downstream.

See SRP Memo at 8:25-9:2

See *Defenders*, supra at 422

12. Evidence of the river's condition after obstruction and diversion is of little significance and minimal probative value.

See *Winkleman*, supra at 243.

See, for example, SRP Memo at 13:9-15.

13. It is error to consider factual claims that have not had the proper legal test applied to them.

See *Winkleman*, supra at 238.

See SRP Memo at page 14;23-15:8, for example, citing Dr. Shumm's testimony. He did not apply the ordinary and natural legal standard to his analysis and his evidence should be rejected. See TR 11/17/2005, 28:15-20, 31:4-32:11.

14. Consideration of large floods and their impacts violates the ruling in *Winkleman*.

See SRP Memo at pages 15;18-25 and 26:4-8, for example.

See *Winkleman*, supra at 241 stating that the Commission must evaluate the river in its ordinary and natural condition absent major floods or drought and without

manmade obstructions. It is clearly not correct to say a flood is ordinary when they only occur less than 1% of the time (see State Opening Memo at 6.)

15. Claims that channel relocation after flooding significantly affect navigation are wrong.

See SRP Memo at page 16:1-4.

See TR 06/16/14 at page 117 where Mr. Fuller states that while a flood can relocate the low flow channel within a river valley, the low flow channel will still exist in and have the characteristics for boating seen before the flood.

16. None of the expert witnesses testifying in opposition to navigability are qualified to render testimony on the lower Gila River.

See Maricopa County and the Flood Control District's Post Hearing Closing Brief dated November 14, 2014 at pages 15-28, incorporated herein by this reference, for a full discussion of this topic.

17. No opponent of navigability of the lower Gila has proved that there were any obstructions that impacted the navigability of the segment.

See SRP Memo at page 21:8-14 where not one obstruction on the lower Gila is specifically identified or its location in the river given.

18. SRP's claim that Mr. Fuller is the only expert who testified that the Gila was navigable is wrong.

See SRP Memo at page 22:20

See testimony of Hjalmar Hjalmarson TR 11/17/05 at page 254 where Mr. Hjalmarson renders his opinion that the Gila River from the Salt River confluence with the Gila to the Colorado River was a navigable segment in its ordinary and natural

condition, given after pages of testimony explaining the engineering applied to come to this conclusion

19. SRPs' claim that there is insufficient evidence to establish that the Gila River is susceptible to navigation completely overlooks the testimony and work of Hjalmar Hjalmarson.

See EL #023 and his testimony appearing at in TR 11/17/05 at pages 205-330.

For SRP to make such a claim, they should at least have presented evidence of what was wrong with Mr. Hjalmarsons' work,

20. Notwithstanding SRPs' argument to the contrary, the *Winkleman* case establishes that the law in Arizona is that a flood is natural but it is not ordinary. The Commission is bound by this ruling.

See SRP Memo at pages 26-27

See *Winkleman*, supra at 241

21. SRP argues that no government agency ever indicated that the lower Gila was navigable.

SRP ignores EL #006 showing the virgin flow of the Gila to be sufficient for navigation.

See SRP Memo at 28:19-20.

22. Some opponents of navigability argue that *PPL* changed the date ordinary and natural condition of a river to have it read that those conditions in existence on the date of statehood are the ordinary and natural conditions that are to be used to determine navigability rather than the definitions set out in *Winkleman*.

See GRIC Memo at pages 3-4, for example.

The problem with this claim is that *PPL* does not say this. To accept this conclusion one would have to construe *PPL* as having done away with the equal footing doctrine. If the ordinary and natural condition determinations are keyed to the date of

statehood then each state, after the original 13, will have a different set of natural and ordinary conditions to use to determine navigability depending on what time they came into the union. Clearly this would be a violation of the underlying rationale of the equal footing doctrine. States entering the union would no longer come in under equal status. If Puerto Rico enters the union will their boat condition change because our technology now has hovercraft that will allow travel up rivers with waters that a canoe would find too shallow? Nowhere does *PPL* state that the equal footing doctrine is no longer applicable. The argument is spurious.

23. GRIC argues that PPL does away with the concept that travel alone is enough to determine that a river is navigable.

See GRIC Memo at page 4.

PPL states “In contrast, for title purposes, the inquiry depends only on navigation and not on interstate travel.” *Id* at 1229. If navigation is the only inquiry it is nonsense to attempt to graft other requirements on to it. Navigate is defined as “to travel through or over (water, air, etc) in a ship or aircraft.” Webster’s New World Dictionary at page 400, ergo, to navigate is to travel. GRIC’s argument is nonsense.

24. Opponents of navigability continue to argue that trade and travel must occur together and that the travel and trade must be commercial.

See, for example, GRIC Memo at page 5, Freeport Memo at 2:16,6:12-15 and footnote 8,10:17,15:19,16:7

Defenders, supra at 421, makes clear that the law in Arizona does not require that trade and travel occur together or that the trade and travel have a commercial component. Nothing in *PPL* specifically overrules the holding in *Utah v. United States*,

403 U.S. 9 (1971) relied on by the *Defenders* Court for this decision. There is no meaningful distinction between the *Utah* Courts finding that the lake was used as a “highway”, *Id*, and the *PPL* Court statement that navigation is the sole issue. *PPL* at page 1229. If the *PPL* Court intended to change the standard to require commercial components for trade or travel they would have not done it by inferences as GRIC argues. The Court would have told us the change. They did not.

25. GRIC’s argument that there is a requirement in a navigability determination that a proponent must demonstrate that trade or commerce took place on a river in question is nonsense.

See GRIC Memo at page 6.

This argument does away with the susceptibility rule. The concept of “susceptibility” has always required proponents of navigability to prove that a river that doesn’t have actual travel on it could be used in that fashion without actual trade, travel or commerce taking place. By definition such an attempt has a hypothetical element. Apparently GRIC argues that the *Daniel Ball* decision, 19 L.Ed. 999 (1871) is dead. If any Court was going to do away with the susceptibility clause first announced in *Daniel Ball* and recognized in almost every title navigability case since then, surely they would have written it down. They haven’t done that yet. GRIC’s argument is silly.

26. GRIC claims that *PPL* has made significant changes to existing Arizona state law, requesting that the Commission follow the GRIC version of the *PPL* decision.

See, for example, GRIC Memo at page 7.

Neither GRIC nor the Commission is empowered to overrule Arizona Courts of Appeal and all are bound by their law until they change it. *Defenders* and *Winkleman* are still good law in Arizona until changed by Courts with the authority to do so. As a result, the Commission must follow those Arizona cases even if they wished to adopt GRIC's version of the law.

27. GRIC argues for deeper stream flow standards for determining navigability of segments of the Gila, suggesting that the Commission would be better served with the standards set out in *United States v Utah* by the special master.

See GRIC Memo at page 14-16.

What GRIC overlooks is that the lower Gila, as demonstrated by Mr. Hjalmarson's work, meets these greater depth standards. See LE #023 at page 20, for example.

28. The Commission is required to issue its determination in writing with documentation and detail to disclose their rationale and basis for their decisions.

See *Winkleman*, supra at page 237: fn 9

29. Opponents of navigability make fact claims and conclusions without any evidence to support them.

Such unsupported claims should be disregarded by the Commission. They are not evidence, just hyperbole.

See, for example, San Carlos Memo at page 4:3-1.

30. San Carlos claims that no one in the 1846 and 1853 military expeditions used the Gila for travel.

See San Carlos Memo at page 13:11-13

In fact, the 1846 Mormon Battalion floated supplies on a raft from Gila Bend to Yuma. See ASLD Study at IV-2.

31. Reliance on USGS Annual Reports does not provide viable data to establish the ordinary and natural condition of the river.

See for example San Carlos Memo at 14:3-15:5.

All of the USGS reports were written using data that is post-diversion data and thus do not reflect the ordinary and natural condition of the river.

32. Reliance on the Territorial Governors Reports is misplaced.

See, for example, San Carlos Memo at page 17, 23-24.

The majority of these reports come long after significant diversions of the river were taking place.

33. Reliance on the E. C. Murphy report is a mistake.

See San Carlos Memo at page 23:1-17

The report describes the Gila in 1912 after virtually all of the water had been diverted and Roosevelt Dam was removing the Salt River flows. His description of the Gila is not shocking when put into the historical context of an entire river that was over-subscribed and diverted.

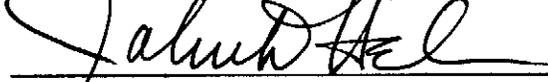
34. Freeport adopts unique strategy of taking facts particular to other rivers in other navigability cases and attributing those facts to the Gila River.

Unable to refute the evidence in the Hjalmarson testimony that the lower Gila was navigable over 90 per cent of the time, Freeport's Memo imports site specific facts from cases discussing the Rio Grande River, the Red River and the San Juan Rivers in

other states to prove that the Gila was not navigable. See Freeport Memo page 2:21 to page 3:11, and page 18:9-15. No evidence or testimony of any kind was given to link these diverse rivers with the Gila River.

Respectfully Submitted this 23rd day of January 2015.

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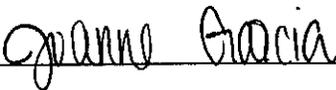


EXHIBIT A

Surveys on Figures 6-15

<u>Description</u>	<u>Year</u>	<u>Year Filed</u>	<u>Source</u>	<u>Exhibit Reference</u>
T1N R1W Gila and Salt River Meridian	1868	1870	U.S. Bureau of Land Management Phx, AZ	Exhibit 2
T4S R4W Gila and Salt River Meridian	1871	1871	U.S. Bureau of Land Management Phx, AZ	Exhibit 3
T5S R4W Gila and Salt River Meridian	1871	1872	U.S. Bureau of Land Management Phx, AZ	Exhibit 3
T8S R2W Gila and Salt River Meridian	1874	1875	U.S. Bureau of Land Management Phx, AZ	Exhibit 5
*T7S R16W Gila and Salt River Meridian		1877	U.S. Bureau of Land Management Phx, AZ	Exhibit 4
T8S R16W Gila and Salt River Meridian	1877, 1878	1878	U.S. Bureau of Land Management Phx, AZ	Exhibit 4
T8S R17W Gila and Salt River Meridian	1878	1878	U.S. Bureau of Land Management Phx, AZ	Exhibit 4
T1S R2W Gila and Salt River Meridian	1882, 1883	1883	U.S. Bureau of Land Management Phx, AZ	Exhibit 2
T1N R2W Gila and Salt River Meridian (Resurveyed in 1907)	1883	1883	U.S. Bureau of Land Management Phx, AZ	Exhibit 2
T8S R21W Gila and Salt River Meridian	1890	1891	U.S. Bureau of Land Management Phx, AZ	Exhibit 5
T1N R2W Gila and Salt River Meridian (Resurveyed)	1907	1907	U.S. Bureau of Land Management Phx, AZ	Exhibit 2
**T1S R1W Gila and Salt River Meridian		1914	U.S. Bureau of Land Management Phx, AZ	Exhibit 2
***T3S R4W Gila and Salt River Meridian				Exhibit 3
*T8S R18W Gila and Salt River Meridian				Exhibit 4
*Survey not shown on Figures 6-15. Located on Exhibit 4.				
**Survey not shown on Figures 6-15. Located on Exhibit 2.				
***Survey not shown on Figures 6-15. Located on Exhibit 3.				

EXHIBIT B

FEDERAL LAND PATENTS ALONG THE HISTORIC GILA RIVER CHANNEL (Exhibits 2-5 of Littlefield Report)

<u>Patent Type/Grant</u>	<u>Number</u>	<u>Year Issued</u>	<u>Exhibit Reference</u>
State Grant		1858	Exhibit 2
State Grant		1871	Exhibit 3
State Grant		1878	Exhibit 4
State Grant		1878	Exhibit 4
State Grant		1883	Exhibit 2
State Grant		1890	Exhibit 5
CE - Cash Entry	284	1891	Exhibit 2
CE - Cash Entry	656	1891	Exhibit 3
CE - Cash Entry	556	1891	Exhibit 3
CE - Cash Entry	645	1891	Exhibit 3
CE - Cash Entry	595	1891	Exhibit 4
CE - Cash Entry	347	1891	Exhibit 4
CE - Cash Entry	869	1891	Exhibit 4
CE - Cash Entry	774	1891	Exhibit 5
CE - Cash Entry	258	1892	Exhibit 2
CE - Cash Entry	173 3/4	1892	Exhibit 2
HE - Homestead Entry	527	1892	Exhibit 2
CE - Cash Entry	876	1892	Exhibit 4
CE - Cash Entry	836	1892	Exhibit 4
HE - Homestead Entry	657	1894	Exhibit 2
CE - Cash Entry	475	1894	Exhibit 2
HE - Homestead Entry	625	1894	Exhibit 2
CE - Cash Entry	1143	1896	Exhibit 2
CE - Cash Entry	581	1898	Exhibit 2
HE - Homestead Entry	942	1899	Exhibit 2
HE - Homestead Entry	947	1899	Exhibit 3
HE - Homestead Entry	1087	1901	Exhibit 3
HE - Homestead Entry	1305	1904	Exhibit 5
HE - Homestead Entry	1411	1905	Exhibit 2
HE - Homestead Entry	1331	1905	Exhibit 2
HE - Homestead Entry	89	1907	Exhibit 5
HE - Homestead Entry	58881	1909	Exhibit 2
CE - Cash Entry	178376	1911	Exhibit 2
CE - Cash Entry	233230	1911	Exhibit 2
Ind. Res. X. Pat	175044	1911	Exhibit 3
CE - Cash Entry	276609	1912	Exhibit 2
CE - Cash Entry	280872	1912	Exhibit 2
CE - Cash Entry	285029	1912	Exhibit 2
HE - Homestead Entry	261568	1912	Exhibit 5
Ind. Res. X Pat.	505219	1915	Exhibit 2
Ind. Res. X Pat.	505219	1915	Exhibit 2
ME - Mineral Entry	467745	1915	Exhibit 2
Ind. Res. X. Pat	505233	1915	Exhibit 3
Ind. Res. X. Pat	505233	1915	Exhibit 4
Ind. Res. X. Pat	505229	1915	Exhibit 4

SS	3	1915		Exhibit 4
SS	3	1915		Exhibit 4
SS	3	1915		Exhibit 4
SS	3	1915		Exhibit 4
SS	3	1915		Exhibit 4
SS	3	1915		Exhibit 4
CE - Cash Entry	513101	1916		Exhibit 2
Ind. Res. X Pat.	522094	1916		Exhibit 2
Ind. Res. X. Pat	507210	1916		Exhibit 4
Ind. Res. X. Pat	507210	1916		Exhibit 4
State Grant		1918		Exhibit 2
SS		1918		Exhibit 4
IL	8	1918		Exhibit 5
IL	10	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	232	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	8	1918		Exhibit 5
IL	8	1918		Exhibit 5
SS	18	1919		Exhibit 2
HE - Homestead Entry	695503	1919		Exhibit 2
HE - Homestead Entry	670611	1919		Exhibit 4
CE - Cash Entry	762971	1920		Exhibit 2
CE - Cash Entry	739285	1920		Exhibit 5
IL	40	1920		Exhibit 5
CE - Cash Entry	814694	1921		Exhibit 2
HE - Homestead Entry	830677	1921		Exhibit 2
HE - Homestead Entry	830675	1921		Exhibit 2
HE - Homestead Entry	810317	1921		Exhibit 2
IL	47	1922		Exhibit 2
IL	61	1922		Exhibit 2
HE - Homestead Entry	911357	1923		Exhibit 2
DLE - Desert Land Entry	925887	1923		Exhibit 2
HE - Homestead Entry	942273	1924		Exhibit 2
HE - Homestead Entry	936943	1924		Exhibit 2
IL	80	1924		Exhibit 2
HE - Homestead Entry	941526	1924		Exhibit 5
IL	89	1926		Exhibit 4
DLE - Desert Land Entry	987760	1926		Exhibit 4
TC - Timber Culture	1010386	1927		Exhibit 2
TC - Timber Culture	1010387	1927		Exhibit 2
DLE - Desert Land Entry	1001597	1927		Exhibit 3
DLE - Desert Land Entry	1009161	1927		Exhibit 4
CE - Cash Entry	1009152	1927		Exhibit 4

DLE - Desert Land Entry	1000821	1927		Exhibit 5
HE - Homestead Entry	1017436	1928		Exhibit 4
HE - Homestead Entry	1018585	1928		Exhibit 4
HE - Homestead Entry	1018586	1928		Exhibit 4
CE - Cash Entry	1014044	1928		Exhibit 5
HE - Homestead Entry	1028522	1929		Exhibit 4
HE - Homestead Entry	1027712	1929		Exhibit 4
DLE - Desert Land Entry	1028040	1929		Exhibit 4
DLE - Desert Land Entry	1032755	1929		Exhibit 4
HE - Homestead Entry	1022535	1929		Exhibit 5
CE - Cash Entry	1033448	1930		Exhibit 2
HE - Homestead Entry	1101664	1930		Exhibit 2
HE - Homestead Entry	1036618	1930		Exhibit 2
HE - Homestead Entry	1037198	1930		Exhibit 4
DLE - Desert Land Entry	1043071	1930		Exhibit 4
HE - Homestead Entry	1034203	1930		Exhibit 5
HE - Homestead Entry	1045475	1931		Exhibit 4
CE - Cash Entry	1053257	1932		Exhibit 4
CE - Cash Entry	1066811	1933		Exhibit 3
HE - Homestead Entry	1072938	1934		Exhibit 2
HE - Homestead Entry	1071855	1934		Exhibit 2
CE - Cash Entry	1071005	1934		Exhibit 2
SS	13	1934		Exhibit 2
HE - Homestead Entry	1070902	1934		Exhibit 2
HE - Homestead Entry	1073385	1934		Exhibit 4
DLE - Desert Land Entry	1074012	1935		Exhibit 4
PS - Public Sale	1088399	1937		Exhibit 3
DLE - Desert Land Entry	1104916	1939		Exhibit 4
IL	214	1941		Exhibit 2
DLE - Desert Land Entry	1111509	1941		Exhibit 2
HE - Homestead Entry	1118089	1944		Exhibit 2
CE - Cash Entry	1123764	1948		Exhibit 2
DLE - Desert Land Entry	1134685	1952		Exhibit 2
DLE - Desert Land Entry	1136359	1952		Exhibit 5
PS - Public Sale	1140493	1953		Exhibit 3
DLE - Desert Land Entry	1147922	1954		Exhibit 3
DLE - Desert Land Entry	1154409	1955		Exhibit 2
PS - Public Sale	1151737	1955		Exhibit 2
DLE - Desert Land Entry	1154408	1955		Exhibit 2
DLE - Desert Land Entry	1168161	1957		Exhibit 2

EXHIBIT C

Summary Table of Historical Navigation Accounts

II.	No.	Year(s)	Party	Location	Citation
1		1824-27	James Ohio Pattie	Entire River	ASLD study IV-1
2		1846-47	Mormon Battalion-Captain Phillip George Cooke and Mormon Battalion successfully floated supplies via a raft from Gila Bend to Yuma	Lower Gila-Gila Bend to Yuma	ASLD study IV-2
3		1849	Edward Howard party constructed a boat and floated the Gila River from Gila Bend to Yuma.	Lower Gila-Gila Bend to Yuma	ASLD study IV-2
4		1850	An unsigned letter from a traveler at Camp Salvation reported that the "expedient of lightening down teams by building small boats on the Gila" had been tried and succeeded and that many Gila Trail travelers had thus reached the Colorado River.	Lower Gila	ASLD study IV-3; Transcript ("TR") 11/16/2005 39:9-15; TR 11/17/2005 209:20-210:5
5		1857-64	Lieu., J.C. Ives, Steamboat, "Explorer"	Lower Gila-mouth to Dome	Littlefield Report 118-19; TR 11/16/2005 63:20-22
6		1867-92	Henry Morgan operated ferry 25 years beginning in 1867	Maricopa Wells	ASLD study IV-5
7		1881	Two men, Cotton and Bingham, reported to be planning a trip to Yuma	Lower Gila-Salt River to Yuma	ASLD study IV-7; TR 11/16/2005

II.	No.	Year(s)	Party	Location	Citation
			via the Salt and Gila Rivers in an 18-foot skiff, flat-bottom boat.		39:23-40:1; TR 11/17/2005 210:18-211:3
8	1881	Three men, including William "Buckey" O'Neill, departed Phoenix for Yuma in a 20 foot long, 5 foot wide boat called "Yuma or Bust."	Lower Gila-Phoenix to Yuma	ASLD study IV-7; TR 11/16/2005 39:16-22, 172:23-173:2; TR 11/17/2005 211:4-19	
9	1884	A.J. McDonald built large ferry boat for Gila and Salt River Ferry Company to be used on Salt River below town. It will be of the same dimensions as the one sent to the Gila, viz: 16 by 18 feet.	Lower Salt/Gila	ASLD study IV-7	
10	1891	R.M. Straus of Aztec, senior partner of Straus, Dallman & Co. has new ferry at work on the Gila River. It is large enough to carry a load 6-horse team in safety.	Lower Gila	ASLD study IV-8	
11	1891	Two men navigated Gila from source to Yuma trapping the river after prospecting trip	Entire river	EL X019, at 15, Arizona Republican article from Yuma Times April 18, 1891	
12	1891	J.K. & George Day trapped all the way to Yuma. Fifth trip by J.K. Day. Brothers intended to repeat trip the	Verde, Salt, Gila to Yuma	EL X019, at 8-Arizona Sentinel article, April 2, 1892	

II.	No.	Year(s)	Party	Location	Citation
			following September.		
13		1894	Messrs. Stacy and Tapia operated steamer "Aztec" for excursions up the Gila five miles every Sunday to a park	Lower Gila	EL X019, at 12-Arizona Sentinel article, May 26, 1894.
14		1895	Evans and Amos	Upper/Middle Gila-San Francisco to Yuma (one portage from Sacaton to Phoenix)	ASLD study IV-8: TR 11/16/2005 40:1-5, TR 11/17/2005 212:2-215:9
15		1897	Captain Aspinwall of the Schooner McCord used to transport cargo of wood down lower Gila	Lower Gila to Yuma	EL X019, at 13, Phoenix Weekly Herald article October 28, 1897
16		1905	Jack Shibely	Lower Gila-Phoenix to Gila Bend	ASLD study IV-13; TR 11/16/2005 40:13-14, 116:7-20, 215:12-18.
17		1905	Jack Hennes of Florence operates suspended cable-and-cage to transport cargo and people across river. Report looking down on Gila Queen (ferry boat) as he passes over.	Middle Gila	ASLD study IV-12
18		1905	Two new boats enter the thriving ferry business, the Mayflower and the Rey del Gila	Not clear	ASLD study IV-13
19		1905	Gila King ferry enters the ferry business. The boat is 20 feet long, 6 feet	Unknown	ASLD study IV-13

II.	No.	Year(s)	Party	Location	Citation
			wide and capable of carrying a 3000 pound load.		
	20	1909	Stanley Sykes	Entire River-New Mexico to Yuma	TR 11/16/2005 40:15-16, 106:1-16,
	21	1959	Three unknown men entered river near Duncan with intention of traveling to Yuma. Later account reported in Yuma Courier	Entire River	ASLD study IV-21