

AGUA FRIA RIVER

BEFORE THE

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE
NAVIGABILITY OF THE AGUA FRIA
RIVER AND ITS MAJOR TRIBUTARIES,
NEW RIVER AND SKUNK CREEK, FROM
ITS HEADWATERS TO ITS CONFLUENCE
WITH THE GILA RIVER,
YAVAPAI AND MARICOPA
COUNTIES, ARIZONA

No.: 05-002-NAV

**REPORT, FINDINGS AND DETERMINATION REGARDING THE
NAVIGABILITY OF THE AGUA FRIA RIVER
AND ITS MAJOR TRIBUTARIES, NEW RIVER AND SKUNK CREEK, FROM
ITS HEADWATERS TO ITS CONFLUENCE WITH THE GILA RIVER**

AGUA FRIA RIVER

**BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION**

**IN THE MATTER OF THE
NAVIGABILITY OF THE AGUA FRIA
RIVER AND ITS MAJOR TRIBUTARIES,
NEW RIVER AND SKUNK CREEK,
FROM ITS HEADWATERS TO ITS
CONFLUENCE WITH THE GILA RIVER,
YAVAPAI AND MARICOPA
COUNTIES, ARIZONA**

No.: 05-002-NAV

**REPORT, FINDINGS AND DETERMINATION REGARDING THE
NAVIGABILITY OF THE AGUA FRIA RIVER
AND ITS MAJOR TRIBUTARIES, NEW RIVER AND SKUNK CREEK, FROM
ITS HEADWATERS TO ITS CONFLUENCE WITH THE GILA RIVER**

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 Agua Fria River and its major tributaries, New River and Skunk Creek, from its headwaters to its confluence with the Gila River was navigable or nonnavigable for title purposes as of February 14, 1912. 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 hearings and being fully advised in the premises, hereby submits its report, findings and determination.

I. PROCEDURE

Pursuant to A.R.S. § 37-1123(B), the Commission gave proper notice by publication of its intent to receive, compile, review, study and consider all relevant historical and scientific data and information, documents and other evidence regarding the issue of navigability or nonnavigability of the Agua Fria River and its major tributaries, New River and Skunk Creek, from its headwaters at the base of Mingus Mountain in Yavapai County through the counties of Yavapai and Maricopa to its confluence with the Gila River. The notice was published on February 10, February 17 and February 24, 2005 in the Prescott Courier published in Prescott, Yavapai County, Arizona; and on July 21, July 28 and August 4, 2005 in the Arizona Business Gazette published in Phoenix, Maricopa County, Arizona. Copies of the Notices of Intent to receive, compile, review, study and consider evidence on the issue of navigability of the Agua Fria River in Yavapai and Maricopa Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonably available evidence received pursuant to the Notice of Intent to receive, compile, review, study and consider evidence, the Commission scheduled public hearings to receive additional evidence and testimony regarding the navigability or nonnavigability of the Agua Fria River and its major tributaries in Yavapai and Maricopa Counties. Public notice of these hearings was given by legal advertising for the Yavapai County hearing on March 4, 2005 in the Prescott Courier published in Prescott, Yavapai County, Arizona; on March 4, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona; for the Maricopa County hearing on August 18, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona, published in Phoenix, Maricopa County, Arizona 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). The hearing for Yavapai County

was held on March 29, 2005, in the City of Prescott, the county seat of Yavapai County and for Maricopa County on September 21, 2005, in the City of Phoenix, the county seat of Maricopa County. These hearings were held in the county seats of each county through which the Agua Fria River flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of the Agua Fria 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 "B" are copies of the notices of the public hearing.

All parties were advised that anyone who desired to appear and give testimony at the public hearing could do so and, in making its findings and determination as to navigability and nonnavigability of the Agua Fria River and its major tributaries, New River and Skunk Creek, from its headwaters to its confluence with the Gila River, the Commission would consider all matters presented to it at the hearings, 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 hearing, including all data, information, documents and evidence previously submitted to the Commission under prior law. Following the final public hearing on the Agua Fria River and its major tributaries, New River and Skunk Creek, held on September 21, 2005 in Phoenix, Arizona, all parties were advised that they could file post-hearing memoranda pursuant to the Commission Rules. Four post-hearing memoranda were filed by the parties, including the Arizona Center for Law in the Public Interest on behalf of its clients, Defenders of Wildlife, Donald Steuter, Jerry Van Gasse and Jim Vaaler; the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association; and Maricopa County. Attached as Exhibit "C" is a list of the four post-hearing memorandum filed by the various parties.

On April 11, 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 argument 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 Agua Fria River, and its major tributaries, New River and Skunk Creek, from its headwaters to its confluence with the Gila River Gila River in Maricopa County, Arizona, was nonnavigable as of February 14, 1912 nor was it susceptible of navigability. A copy of the notice for the hearing held on April 11, 2006 at Phoenix, Arizona, is attached as a part of Exhibit "B." Copies of the agenda and minutes of all of the hearings held on March 29, 2005 in Prescott, Yavapai County, Arizona; on September 21, 2005 in Phoenix, Maricopa County, Arizona and on April 11, 2006 in Phoenix, Maricopa County, Arizona, are attached hereto as Exhibit "D."

II. THE AGUA FRIA RIVER ITS TRIBUTARIES, NEW RIVER AND SKUNK CREEK

The Agua Fria River and its tributaries drains a 2,340 square mile area in Central Arizona; 1,450 square miles of which are in Yavapai County, Arizona, and 890 square miles are in Maricopa County. The Agua Fria is a 130 miles in length. The river rises at the base of Mingus Mountain, elevation 7,743 feet, in the Prescott National Forest in central Arizona at approximately latitude 34°37'48" north, longitude 112°23'53" west in Section 11, Township 15 North, Range 2 East, Gila and Salt River Base and Meridian. The River flows in a generally southerly direction almost equidistant between two parallel mountain ranges – the New River Mountains and the Bradshaw Mountains – that form the east and west boundaries of the drainage basin. Below Waddell Dam in Maricopa County, the river flows into an alluvial plain which is part of the Salt River and Gila River Basin.

The Agua Fria River is usually divided into two reaches. The upper reach extends from the headwaters down to the New Waddell Dam. It is considered perennial or intermittent and is located primarily in narrow canyons bounded by bedrock. The lower reach extends downstream from New Waddell Dam and includes ephemeral, wide alluvial stream segments that are within the Salt River Valley. From north to south, the Agua Fria River flows through or near a number of small communities, including Dewey, Humboldt, Mayer in Yavapai County, and in Maricopa County the Agua Fria Ranch, El Mirage, Litchfield and Avondale. The tributaries to the Agua Fria River, Skunk Creek and New River, are both located in Maricopa County. Skunk Creek is technically a tributary of New River and is located roughly 15 miles north of downtown Phoenix. It drains an area of approximately 127 square miles of central Arizona. The basin elevations range from 4,680 feet at Black Mesa to 1,170 feet at the confluence with New River.

New River is the major tributary of the Agua Fria and flows generally southward for 40 miles from its source to its confluence with the Agua Fria River which is roughly 10 miles above the Agua Fria's confluence with the Gila River. New River drains an area of approximately 350 square miles and originates near Cook's Mesa in the New River Mountains. The only settlement of any importance on either of these tributaries is the town of New River which lies on New River in Maricopa County a few miles south of the Yavapai County line. The Agua Fria River flows into the Gila River a few miles west of where the Salt River flows into the Gila River at an elevation of approximately 910 feet above sea level at approximately latitude 33°23'24" north and longitude 112°22'48" west in Section 33, Township 1 North, Range 1 West, Gila and Salt River Base and Meridian. The major flood control and irrigation facility on the Agua Fria River is Waddell Dam which forms Lake Pleasant. It was completed in 1927 and is 30 miles northwest of downtown Phoenix. It provides water conservation and storage, and

recreation, including fishing and boating. Attached as Exhibit E are maps showing the watershed basin area drained by the Agua Fria River.

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 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 Arizona 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.¹ 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

¹ Putting the Public Trust Doctrine to Work, David C. Slade, Esq. (Nov. 1990), pp. xvii and 4.

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 non-navigable 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 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 thirteen 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 navigable 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 non-navigable 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 non-navigable 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.² 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

² 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 Session Laws, Chapter 127.

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 -1128.

The 1992 Act provided that the Commission would make findings of navigability or non-navigability 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. 278 ("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 non-navigability 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.2d 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 rivers, streams and watercourses.

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 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.

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 Agua Fria River and its tributaries, New River and Skunk Creek. 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 of navigability of the Agua Fria River and its tributaries, New River and Skunk Creek, in Yavapai and Maricopa 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 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 bed lands, it first must be determined whether the land was acquired through the equal footing doctrine. However, for bed lands 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 id.*

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.

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 overbear, 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 (2d Cir. 1969).³

VI. STANDARD FOR DETERMINING NAVIGABILITY

The statutes 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.

³ 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).

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.⁴ 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 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 watercourses were 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 manmade 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.

⁴ 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).

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.

VII. LEGAL PRECEDENT INVOLVING NAVIGABILITY OF THE AGUA FRIA RIVER

The case of *State of Arizona v. Maricopa County*, Cause No. C569870, Superior Court, Maricopa County, was brought in the mid-1980's involving the issue of navigability for title purposes of a portion of the Agua Fria River. The Flood Control District of Maricopa County, which desired a declaratory judgment to resolve the navigability issue for ongoing condemnation actions in which it was involved, intervened in the case as did the City of Tempe and other parties, all of whom were named as additional defendants in this action. A great deal of information was gathered, discovery was undertaken by the parties, and the Flood Control District of Maricopa County filed a motion for partial summary judgment as to a specific reach of the Agua Fria River. Thereafter, the parties stipulated that judgment could be entered

and on November 20, 1986, the Superior Court entered a judgment approving the stipulation, vacating the hearing on the Maricopa County Flood Control District's motion for summary judgment and providing as follows:

2. That the State of Arizona and Arizona Land Department have no interest or estate, legal or equitable, by reason of the Equal Footing Doctrine, in lands in Maricopa County which constitute the beds (from mean high water mark to mean high water mark) of the tributaries of the Agua Fria River, including Skunk Creek and New River, and the Agua Fria River from Waddell Dam south to the South line of the North half of Sections 22 and 23, Township 1 North, Range 1 West, Gila and Salt River Base and Meridian, for the reason that these reaches of rivers and tributaries were not navigable at the time of statehood.

3. That pursuant to the Equal Footing Doctrine, the State of Arizona and the Arizona Land Department has never had, does not now have and shall not hereafter claim an interest or estate, legal or equitable in the lands described above in paragraph two.

4. That the Stipulation is adjudged to be a disclaimer of the State's interest in the lands described in paragraph two, above, pursuant to A.R.S. §12-1103(c), and such disclaimer shall be limited to any real property which the State might have claimed pursuant to the Equal Footing Doctrine.⁵

This judgment was not appealed and thus became a final order and adjudication of the issues set forth therein. By the terms of the judgment, a specifically described reach of the Agua Fria River was adjudged to be nonnavigable for title purposes. The judgment, by its own terms, does not cover the Agua Fria River north of the Waddell Dam and from approximately one-quarter of a mile south of Lower Buckeye Road to the confluence of the Agua Fria River with the Gila River. A question might be raised as to the legal effect of this judgment in light of the doctrines of collateral estoppel and res judicata.

Collateral estoppel precludes re-litigation of the same issue and is distinguishable from the doctrine of res judicata which precludes parties from

⁵ A copy of the Stipulation, Order and Partial Judgment, and the Amended Order and Judgment is attached hereto as Exhibit F.

re-litigating the same issue or cause of action when finally decided. *Gilbert v. Board of Medical Examiners*, 155 Ariz. 169, 745 P.2d 617 (1987). Under the doctrine of res judicata, an existing final judgment rendered upon the merits by a court of competent jurisdiction is conclusive as to every point decided therein and thus as to every point raised by the record which could have been decided with respect to the parties. *Day v. Estate of Wiswall*, 93 Ariz. 400, 381 P.2d 217 (1963). Res judicata is commonly referred to as "cause preclusion" while collateral estoppel is known as "issue preclusion." *Gilbert*, 155 Ariz. at 174.

In view of the foregoing, it seems clear that the issue of navigability for title purposes is res judicata as to the parties who participated in this litigation and as to the reach of the Agua Fria River described in the judgment. While others who were not parties to the litigation are not bound by the doctrine of res judicata, it is highly probable that they would be bound by collateral estoppel under the issue preclusion theory, at least as to the possibility that the State of Arizona could claim title under the Equal Footing Doctrine. The issue of navigability for title purposes under the Equal Footing Doctrine was raised and litigated in this matter. There was a full and fair opportunity to litigate the issue, the resolution of the issue was essential to the decision, and there was a valid and final decision on the merits. The State of Arizona was a party to the litigation and thus it would seem clear that it would be bound under the doctrine of collateral estoppel, as would any other person or entity who might claim the State of Arizona had title.

Based on the foregoing and the judgment in *State of Arizona v. Maricopa County* (Exhibit "F"), the Commission could have found that the Agua Fria River and its two major tributaries were nonnavigable in the area covered by the judgment. However, since this judgment did not speak specifically as to navigability of other parts of the Agua Fria River and its major tributaries above and below the area covered by the

judgment, the Commission undertook to receive, compile, review and consider relevant historical and scientific data as to the entire watercourse and basin, as well as to portions of the Agua Fria River not covered by the judgment in that case.

VIII. 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, studied and reviewed evidence and records regarding the navigability and nonnavigability of the Agua Fria River and its major tributaries, New River and Skunk Creek. Evidence consisting of studies, written documents, newspapers and other historical accounts, pictures and testimony were submitted. There were a number of separate documentary filings, including the Stream Navigability Investigation for the Agua Fria River prepared by JE Fuller/Hydrology and Geomorphology, Inc. for the Arizona State Land Department dated March 2005, and A Historical Analysis of the Agua Fria River and Its Tributaries, New River and Skunk Creek, prepared by Elaine C. Lacy, Fred Andersen, Pat O'Brien and Dennis Preisler of Research Management West, Tempe, Arizona, for Larry J. Richmond, Ltd., Phoenix, Arizona. The Maricopa County Department of Transportation submitted road plats, deeds and easements relating to roadway facilities, rights-of-way and flood plain limits on the Agua Fria River. The Drainage and Engineering Unit, Hydrology Section, Natural Resources Division of the State Land Department also submitted a technical study and evaluation of the Agua Fria River. Two memoranda regarding navigability of the Agua Fria River were submitted by special counsel for Maricopa County. Correspondence and documents were submitted by Mark Reardon, Timothy J. Flood, Charles Krantz, Nancy Orr, Coby McIlroy and others. The Flood Control District of Maricopa County also submitted a memorandum on the navigability of the Agua Fria River. Pleadings and documents in Cause No. C-569870, Superior of Court of Arizona, Maricopa County were submitted regarding

litigation as to the navigability of a portion of the Agua Fria River, including a stipulated order and partial judgment. The list of evidence and records, together with a summarization is attached as Exhibit "G". A public hearing was held on March 29, 2005, at Prescott, Arizona, in Yavapai County, and on September 21, 2005 at Phoenix, Arizona in Maricopa County, for the public to present testimony and evidence on the issue of navigability of the Agua Fria River. A number of individuals appeared at the hearings in Prescott and Phoenix and gave testimony. A public hearing was also held on April 11, 2006 in Phoenix, Arizona, to consider the evidence submitted and the post-hearing memoranda filed. The minutes of these hearings are attached hereto as Exhibit "D."

A. Prehistoric Conditions on the Agua Fria Watershed

The Agua Fria River and its major tributaries, New River and Skunk Creek, played an important role in the pre-history of central Arizona. No Paleo-Indian sites and few archaic period sites are documented for this area.⁶ This is probably due to their not having been discovered or being buried with post-occupation soil disposition or destroyed by flooding or the process of erosion. There are Paleo-Indian sites and archaic sites in the areas surrounding the Agua Fria watershed so it is only logical that these early Indians would have used the Agua Fria River Valley as a highway of movement from one area to another, as well as for hunting.

Hohokam sites are well documented, which appear to have evolved from hunting and gathering into varying degrees of agricultural dependence. Hohokam occupation in the Salt and the Gila River Basins to the south of the Agua Fria watershed spans the time from 300 B.C. to A.D. 1450. Major Hohokam occupation of the Agua Fria watershed area did not occur until the colonial or sedentary periods (roughly A.D. 700

⁶ The Paleo-Indian period is generally recognized to be between 10,000 B.C. or 12,000 B.P. (before present) to approximately 8,000 B.C.. The Paleo-Indian period was followed the archaic period 8,000 B.C. to 1 A.D. when the classical cultures called Anasazi, Hohokam, Sinagua and Mogollon began to develop.

to 1100 A.D.). The area that includes the Agua Fria, Skunk Creek and New River is referred to in the late prehistoric period as the "northern periphery" of the Hohokam's sphere of influence. In the early part of this period, there was a possible seasonal use of the area but the presence of permanent habitational structures, along with three watercourses, indicates the occupation soon became permanent. It had been suggested that the Hohokam first moved into the Agua Fria river basin because of population pressures from its core area, or there may well have been people indigenous to the area when they first came, but they adopted to the way of life of the people already there and brought with them the Hohokam technology and land modification and water control. They built check dams, terraced hill slopes and gridded and linear stone alignments, which were used widely in the Agua Fria basin, as well as in the Salt and the Gila River basin. These methods of run-off diversion and retention are primarily associated with dry farming techniques, but they also did some irrigated farming. The flood and flow action of the Agua Fria River over the centuries had carved a series of terraces along side the river. These terraces positioned 6 to 15 meters above the flood plain formed nearly level surfaces of up to 1.5 km in width. It is on these land forms that virtually all evidence of prehistoric habitation and farming in the Agua Fria basin is found.

Artifacts and archeological manifestations in these areas include small trash mounds, shard scatters, stone compounds and rooms, field houses and mountaintop "forts." Also, the larger drainage areas and alluvial deposits of the Agua Fria attracted more Hohokam farmers than either New River or Skunk Creek. Hohokam habitations along the Agua Fria occur from the Henderson site, 15 miles east/southeast of Prescott, down river to the Cashion site at the confluence of the Agua Fria and Gila Rivers. The Henderson site is a pit house village with numerous remodeling and super-imposed housing units. Anasazi pottery and non-Hohokam pit house types were found there. A

number of cultural affiliations were found so it was probably a meeting area. This site also included a canal from the spring to a cistern. The cistern probably contained water for domestic rather than agricultural use. Other sites, such as Beardsley Canal, Calder Wood Butte Ruin, West Wing Site and East Wing Site have been located down the river which date from A.D. 750 onto A.D. 1300. Near the confluence of the Agua Fria and Gila Rivers is the Cashion site which is a large village and considered to be outside of the northern periphery since it falls in the Salt/Gila River core area. This site has an established canal system. There are also Hohokam sites along the New River which date from A.D. 700 to A.D. 1100 or 1200. Likewise, there are five sites of Hohokam Indian activity identified in the Skunk Creek area which were built between A.D. 800 and A.D. 1200. A good amount of agriculture irrigation for maize, squash and beans was conducted at these sites.

Archaeologists generally agree that the Hohokam abandoned the Agua Fria Basin northern periphery area sometime in the 12th Century. The climate apparently changed to a warmer and dryer regime around 1150 and it is believed that this drying and resulting loss of reliable water supply caused the indigenous personnel to move elsewhere. The area remained virtually unoccupied for hundreds of years afterwards. No evidence of further occupation by either the Hohokam or other groups are evident until the period of Anglo occupation. At that time, the area between the Pima and Papago to the south and the Yavapai to the north was considered a no-man's land. There is no evidence of prehistoric use of the Agua Fria River or its major tributaries for commerce or water travel of any kind.

B. Historical Development of the Watershed of the Agua River and Its Major Tributaries, New River and Skunk Creek

The Agua Fria watershed was neither explored nor occupied during the Spanish and Mexican era. There is no record of any Spanish expeditions coming into the area and no missions or presidios were built. After Mexican independence in 1821, the

Mexican government, having internal disputes in Mexico showed little or no interest in the Agua Fria River watershed area. The watershed of the Agua Fria River and its major tributaries also seems not to have attracted the attention of mountainmen or trappers in the 1820's and 1830's as did other rivers of Arizona. This was probably due to its low rate of flow and lack of beavers. If the mountainmen did, in fact, explore this area, they left no written record of it.

The Agua Fria River and its tributaries run primarily in a north/south direction and were not on any of the major trails crossing the State. The area was bypassed by the 49ers on their way to California, most of whom followed the Gila River to the south of the area. Other trails cross the State to the north following the current route of Interstate 40 and the Santa Fe Railroad.

Anglo occupation of the Agua Fria River Basin began in the 1870's when settlers participated in a wide range of activities, including mining, establishment of transportation depots and agriculture. Mining was the primary cause of Anglo interest in the river basin and most of the mining activity took place in the Yavapai County area between 1870 and 1920. The Indians occupied the region at the time of the first Anglo settlements and conflicts between them and the settlers occurred intermittently. A stage station and post office manager in the Town of Agua Fria was attacked by Apaches in 1872. Col. Charles Craig, commander of troops at Whipple Barracks fought a battle with the Apaches in the vicinity of Castle Hot Springs in 1867. Rumors of major gold and silver deposits in the Bradshaw Mountains began circulating in the Southwest in the 1880's and many mines and mining camps immediately sprang up throughout the region. Mining communities in the area included Bumble Bee, Crown King, Dewey, Humboldt, Moore Gulch, Poland and Tip Top. Other than Tip Top, which had 3,000 residents in 1886, none of these other communities was large nor did they exist very long. The Bradshaw Mountain mining region proved unprofitable and by the turn of

the century, only scattered miner shacks remained in the area. The Bumble Bee mines and Crown King mines were within the Rock Springs district. The 1930 population of Bumble Bee was 42 and the 1930 population of Crown King was 76. The Towns of Dewey and Humboldt were located in the Yeager mining district. The 1910 population for Humboldt was 525 and that same year the U.S. Census reported Dewey had 162 people. Mayer was first established as a stage station on the Big Bug Creek, an important tributary to the Agua Fria River in Yavapai County. It became an important mining and trade center and had a population in 1910 of 344. Most of the mines had shut down soon after the beginning of the 20th Century, although some remained as small hamlets. Mining activities on the lower reaches of the Agua Fria were limited since the mineral deposits were relatively insignificant. All had closed by 1905.

Numerous agricultural settlements grew up along the Agua Fria River over time and much of the land was irrigated by appropriator's canals whereby a small group of farmers would band together to build a dam or diversion structure and construct and maintain a canal system. The dams would catch the winter and summer runoff and were frequently washed out by floods and had to be rebuilt. The river flow was very erratic, as indicated by the floods which would wash out the dams, and then the long stretches of dry weather where there was no water at all for the farmers to use on their crops. Generally, the Agua Fria Basin was considered a poor ranching and farming region before the construction of the Carl Pleasant Dam and Reservoir, which were constructed in 1927 because the river was not a reliable water source. Small homesteads were settled along the length of the Agua Fria River. In its upper reach, the Towns of Dewey and Humboldt were the most important agricultural locations, but most of the larger homesteads were located in what is today the Lake Pleasant State Park area. The Town of Pratt was the center of numerous ranches and farms. Farming conditions in this area were favorable because it was a good location for diverting river water. The

Bird Ranch, which was established in the 1880's, was also a significant farming area. The success of most of these farms and ranches depended to a great extent to the water level in the Agua Fria in a given year. Another farming and ranching region was located near the town of Agua Fria on the Maricopa and Yavapai County borders. Avondale and Litchfield Park, which are located near the confluence of the Agua Fria and the Gila Rivers, were also centers of farming and ranching. Avondale was built around 1900 and was originally established as a railroad station. Litchfield Park was built in 1916 as housing for those growing cotton for the Goodyear Tire & Rubber Company. The farms and ranches around Avondale and Litchfield Park depended primarily on underground pumping and subsurface irrigation for their water.

The Agua Fria Basin was also extensively used in the late 19th and early 20th Centuries for transportation. In the 1880's, stage coach and freight wagon routes ran from Phoenix west to Wickenburg and north to Prescott. These routes paralleled the Agua Fria River and important stops along the way provided water, food and safety along this difficult and treacherous road. Cold Water Crossing was established on the west bank of the river in 1892 as one of the earliest stage stations in the region. A post office was established there in 1896 and it merged with Avondale when the Santa Fe Railroad Station was closed. In 1890, the Phoenix and Prescott Tollroad Company constructed a road from the Salt River Valley to the Bradshaw Mountains. This road operated for a few years but failed due to the failure of the mining operations in the Agua Fria Basin. The Santa Fe, Prescott and Phoenix Railroad was built in 1895 and ran parallel to the Agua Fria drainage. After the railroad was built, wagon roads were quickly abandoned and by 1900, the old wagon routes up the river were being used only by ranchers and settlers of the region for local traffic. The road system was improved when automobiles and trucks became more generally available. As the mining activity diminished, the Agua Fria drainage basin began to be used more

extensively for livestock grazing. Cattle were moved into the basin from the Mogollon Rim prior to railroad shipment to markets in the East. Sheep were also introduced into the region in the late 1880's and were brought down from the Coconino Plateau for winter and spring grazing, shearing and lambing. The livestock boom in both cattle and sheep which occurred after 1880 and the coming of the railroad led to extensive over-grazing and a diminishing environment.

There are no reports of any of the early settlers engaged in mining or agriculture having used the Agua Fria River or its major tributaries for boating, commerce or other travel on the river. The early settlers reported that the Agua Fria River had a seasonal or perennial flow during the period prior to 1870, but the normal flow, when it occurred, was not very deep and not very wide. The over-grazing occurred commencing 1880 and on through to 1900 caused extreme incising of the channels and denuded the landscape of grasses and other stabilizing vegetation. This resulted in arroyo cutting. Other early settlers reported that the river did not have a well-defined channel but that the water spread out over a wide area in the valley. This was especially true of the lower reaches before the river merged into the Gila River. Reports were also that on occasion, the Agua Fria became a clear mountain torrent. Allen Sargent, in a biography entitled "House by Buckeye Road," describes the Agua Fria in the early part of the 20th Century as being dry and sandy most of the year, but there were seasonal high waters or floods. During the occasional years of high water, such as in January of 1915, she reported that the river stayed up so much of the time that her husband actually built a little boat and used it to cross the river several times before it sank. Thus, in the lower reach of the Agua Fria, it appears that it was an erratic, unpredictable and undependable stream which was dry most of the time, but occasionally visited by large floods, which would wash out any diversion structure. Also, in the lower reach of the river where it nears its convergence with the Gila River,

the Agua Fria was described as braided, with an extreme built up of bars and islands in the stream bed. Skunk Creek was said to have had a seasonal flow on average from January through April, but the rest of the year was dry. It is described as having a seasonal flow in the upper reaches but is ephemeral in the lower reaches. New River is similar to the Agua Fria and Skunk Creek. The geological survey water supply paper in 1919 stated that during the greater part of the year, New River was a dry wash. None of the early settlers or even later observers of the river reported that any boating was ever done on the river at the time and prior to statehood.

C. Geology, Geomorphology and Hydrology

There are three (3) great physiographic provinces in Arizona – the Colorado Plateau Province in the north and the Basin and Range Province in the South, with transition zone of Central Mountain Province dividing them. The Agua Fria River drains a portion of the Central Mountain Province and flows south into the Basin and Range Province where it joins with the Gila River. The Agua Fria River rises at the base of Mingus Mountain in the Prescott National Forest in the Central Mountain Province of Arizona and flows in a southerly direction for approximately 130 miles, draining approximately 2,340 square miles. Its course runs almost equidistant between two (2) parallel mountain ranges, the New River Mountains to the east and the Bradshaw Mountains to the west.

Regional uplift of the entire State, including the Central Mountain Province, is thought to have occurred during the Laramide Orogeny in the late Cretaceous or early Tertiary Period approximately 65,000,000 years ago. The Central Mountain Region is characterized by mountains of precambrian, igneous and metamorphic rocks capped by remnants of quaternary and late tertiary volcanoes. The dominant geologic formations in the Agua Fria Basin include metasedimentary rocks, Pliocene volcanic rocks and quaternary stratified sequence. Other formations of common occurrence include lower

tertiary volcanic rocks, some of which include Cretaceous deposits, granitic rocks about 1700 to 1800 million years old. As mentioned above, the upper reach of the Agua Fria flows equidistant between the Bradshaw and New River Mountains but the southern or lower reach flows into the Gila and Salt River Basin area where the Agua Fria has its confluence with the Gila River.

The New River, a major tributary of the Agua Fria flows generally southward for 40 miles from its source near Cooks Mesa in the New River Mountain to the confluence with the Agua Fria River which is roughly 10 miles above the Agua Fria River's confluence with the Gila River.

Skunk Creek, which is a tributary of New River, is located roughly 15 miles north of downtown Phoenix. It originates in Black Mesa to the east of New River and then joins New River just north of where New River flows into the Agua Fria.

Historically, the Agua Fria River experienced flow along the upper reach during most of the year, with occasional occurrences of dry sections during the hotter summer months. The lower reach of the Agua Fria River was dry most of the time except for periods of flooding after significant rainfall or snowmelt on the watershed. The alignment and geometry of the river varied during the early part of the last century due to erosion associated with flooding and overgrazing practices. Except in flooding or high flow conditions, boating conditions do not exist on the river and the Agua Fria River and its tributaries are not listed as boating streams in any published boating guide.

In a survey conducted in August and September of 1871 on the upper reach of the Agua Fria River, the surveyor noted:

The lands along the north half of this line, east and west of it, are level, smooth, and, of a rich soil but destitute of water and are excellent grazing lands . . . There are no running streams of water, but it is not difficult to obtain a good supply by digging wells and by that method the lands can be made valuable for pasturage.

Helen Seargeant, a long-time resident who lived along the lower Agua Fria River stated that the residents were dependent upon the providence for water and rainfall. She stated that the area is desert and while subject to rain at times, sometimes the dams run very low and have given many uneasy days for the farmers for lack of irrigation water.

In the late 19th Century, a settler by the name of McCash described the lower Agua Fria River as a wide river without a well-defined channel, but with thick grass that could be harvested for hay. None of the early settlers opined that the Agua Fria River could be used for boating or navigation and there is no history of it being considered as a highway for commerce. They did describe the upper reach as experiencing some flow but not enough to be considered navigable. The lower reach of the Agua Fria was described as being dry most of the time except for periods of significant rainfall on the watershed. These dry periods were interspersed with periods of floods in which the irrigation dams were washed out and severe damage could be done to the surrounding area. In the 1880's, with the severe overgrazing and the period of alternate floods and drought, arroyo cutting took place, which further disturbed the regular flow of even the upper reach of the Agua Fria River.

There were few flow gauges installed on the river in the early days prior to statehood and those that were installed would frequently wash out during floods or become useless when the riverbed shifted. The comparison of recent years does give some idea as to what the flow would have been around statehood. For example, the annual mean flow between 1941 and 1996 at the gauge station near Mayer, Arizona was 24 cubic feet per second ("cfs"). The average annual mean flow at the Rock Springs gauging station between 1971 and 1996 was 98 cfs. These were years in which a number of floods occurred and high flows which would raise the average. The average annual

mean flow for the gauge station at Avondale, Arizona between 1968 and 1982 was 32 cfs.

The evidence presented indicated that the climate along the Agua Fria Basin at statehood was not drastically different from the present or pre-statehood conditions. The same basic climate patterns applied. Summers were warm and relatively dry with intense late summer monsoon rainfall sometimes producing flash floods. Winters were cool with less intense Pacific frontal storms bringing snow to higher elevations and rain to lower elevations. As was typical in the case of other southwestern watercourses, the very dry or drought periods were interspersed with periods of flood. A number of such floods occurred between 1880 and 1920, but because of the lack of gauging stations, the actual size of many of the floods could not be quantified. In 1905, the gauge near Rock Springs, Arizona recorded a flood peak at 85,000 cfs and similar sized floods were recorded for that area and south at the gauge near Glendale, Arizona in 1915, 1917, 1918 and 1919. The largest floods recorded in recent years were January 27, 1916 and November 27, 1919 in which the Glendale gauge recorded a peak flow of 105,000 cfs. Other gauges near Mayer, Avondale and Rock Springs recorded similar flows for flood years. In the latter part of the 1800's and the early part of the 20th Century, significant changes along the channel of the Agua Fria River appear to have occurred as a result of this flooding, which flooding was exacerbated by poorly managed grazing that occurred during this time. The arroyo cutting was a serious concern in the early 1900's and a number of studies were conducted. Most people felt that the arroyo cutting was a natural process that was accelerated dramatically when over-grazing occurred after the introduction of cattle in the 1880's.

One other issue was mentioned in the evidence and that related to underflow. In the late 19th and early 20th Centuries, the water table was very near the surface in the Agua Fria Basin, as well as along the banks of the Salt and the Gila Rivers. In many

places, water could be brought to the surface by digging a ditch or shallow well. The return irrigation water upstream on the Gila and Salt Rivers added to this underflow, at least at the very lower end of the Agua Fria River. Pumping and other diversionary uses of the water in more recent years have lowered the water table.

In summary, the evidence showed that the upper regions of the Agua Fria River are mountainous and steep with a seasonal flow and some runoff because of the granitic structure of the Bradshaw Mountains. In its lower reaches, the Agua Fria is an ephemeral stream characterized by a braided channel, erodable banks and sedimentation that causes rapid percolation. In the lower reaches, when it does flow, the river is wide and very shallow. Skunk Creek and New River are very similar to the Agua Fria. All three of these rivers underwent considerable changes around the turn of the century due to erosion factors believed to have been caused mainly by over-grazing. The streams are seasonal and in some years were perennial, but at some time before the 1920's their geomorphology changed to the extent that they became more entrenched with their sides being erodable and the beds changed to coarse grain sediment and became braided. There was no evidence presented of navigability on any of the three rivers either during the pre-history period of the Hohokam occupation or in modern times. The residents in the area used such water as available mostly for irrigation purposes. It is highly unlikely that the upper reach of the Agua Fria could have been navigated given the terrain and lack of water flow. The lower reach was usually dry. During serious flooding, the rivers were clearly too dangerous to attempt to boat them.

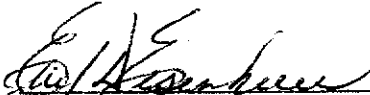
VIII. FINDINGS AND DETERMINATION

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 Agua Fria River and its tributaries, New River and Skunk Creek, from its headwaters to its confluence with the Gila River,

Yavapai and Maricopa Counties, Arizona, are erratic, unstable, undependable and unpredictable, characterized by periodic floods, sometimes extreme, in its ordinary and natural condition. The Commission also finds that the Agua Fria River, while considered to be a perennial stream, has an almost insignificant flow during the dry seasons of the year. The Commission also finds that there is no evidence of any historical or modern commercial boating or commercial fishing having occurred on the Agua Fria River.

Accordingly, the Commission finds that the Agua Fria River and its tributaries, New River and Skunk Creek, from its headwaters to its confluence with the Gila River, Yavapai and Maricopa Counties, Arizona were 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 17 day of November 2009.



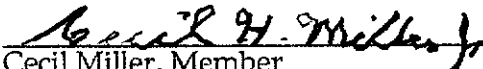
Earl Eisenhower, Chair



Dolly Echeverria, Vice Chair 11/18/09



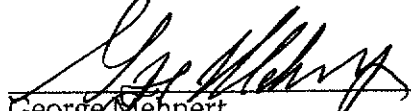
James Henness, Member



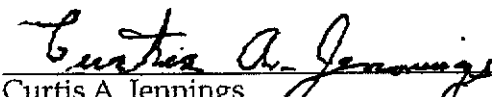
Cecil Miller, Member

Jay Brashear, Member
Deceased September 15, 2007

Staff Members:



George Mehnert
Executive Director



Curtis A. Jennings
Legal Counsel to the Commission

EXHIBIT A

Prescott Newspapers

Legal Department
 P.O. Box 312
 Prescott, AZ 86302
 (928)445-3333

Acknowledgement of Classified Advertising

Date: 02/07/05

Customer No: 1297

Ansac
 George Mehnert
 1700 West Washington, Ste 304
 Phoenix AZ 85007

Your current balance owing is: \$ 574.88

Your current credit balance is: \$ 0.00

| <u>Ad #</u> | <u>Words</u> | <u>Charge</u> | <u>Paid</u> | <u>Owing</u> |
|-------------|--------------|---------------|-------------|--------------|
| 4208 | 1407 | \$574.88 | \$0.00 | \$574.88 |

| <u>Ad Text or Copy</u> | <u>Publication</u> | <u>Issues</u> | <u>Starts</u> | <u>Ends</u> |
|--|--|---------------|-----------------|-----------------|
| <p>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 Agua Fria River, Burro Creek, the Hassayampa River, the Santa Maria River, and the Verde River in Yavapai 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 nonnavigability of the Agua Fria River, Burro Creek, the Hassayampa River, the Santa Maria River, and the Verde River. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by March 29, 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. Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is also planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Yavapai County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-11</p> | <p>Courier Chino Valley Prescott Val</p> | <p>3</p> | <p>02/10/05</p> | <p>02/24/05</p> |

Phoenix

THE ARIZONA REPUBLIC

STATEMENT OF INTENT
 State of Arizona
 Navigable Stream
 Adjudication Commission
 Pursuant to A.R.S. 637-1101, et. sec., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the Agua Fria River, and the Hassayampa River, in Maricopa County, Arizona. Notice is hereby given, pursuant to A.R.S. 637-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or non-navigability of the Agua Fria River and the Hassayampa River in Maricopa County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by September 20, 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 85001. The telephone number is (602) 542-9214. The web site address is <http://www.azstreams.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.
 05469-July 21, 28; August 4, 2005

STATE OF ARIZONA }
 COUNTY OF MARICOPA } SS.

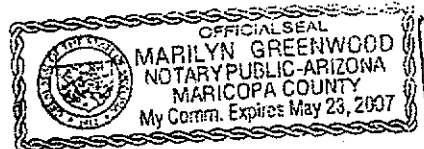
Diana Chavez, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes 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

JULY 21, 28; AUGUST 4, 2005

Diana Chavez

Sworn to before me this
 4TH day of
 August A.D. 2005



Marilyn Greenwood
 Notary Public

EXHIBIT B

Arizona Navigable Stream Adjudication Commission Advertising Correction
NOTICE OF PUBLIC HEARING
 State of Arizona Navigable Stream Adjudication Commission Pursuant to A.R.S. § 37-1129 (A) notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigable stream capability of all watercourses in Yavapai County. The hearings will be held in Yavapai County on March 29, 2005 beginning at 12:00 pm. In an order established by the Clerk in the Yavapai County Superior Court Conference Room located at 1015 Fall Street, Prescott, Arizona 86305. The following are presently the only hearings scheduled: The Agua Fria River, Budd Creek, the Huerfano River, the Santa Maria River, the Verde River, and all of the small and minor watercourses in Yavapai County.
 TTC PUB March 4, 2005 ad 4401

AFFIDAVIT OF PUBLICATION

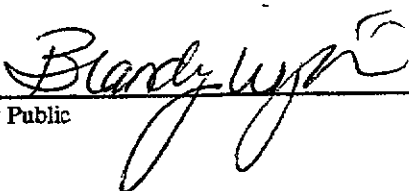
STATE OF ARIZONA)
 County of Yavapai) ss.

I, Aileen A. Kemper, being first duly sworn on her oath says:
 That she is the Legal Clerk of PRESCOTT NEWSPAPERS, INC., an Arizona corporation, which owns and publishes the COURIER, a Daily Newspaper published in the City of Prescott, County of Yavapai that the notice attached hereto, namely,

**ANSAC
 NOTICE OF PUBLIC HEARING
 ADVERTISING CORRECTION**

has, to the personal knowledge of affidavit, been published in the news paper aforesaid, according to law, on 4 day of March, 2005 to 4 day of March, 2005 both inclusive without change, interruption or omission, amounting in all 1 insertions, made on the following dates:
 March 4, 2005

By: 
 Dated this 4 Day of March, 2005

By: 
 Notary Public

My commission expires:



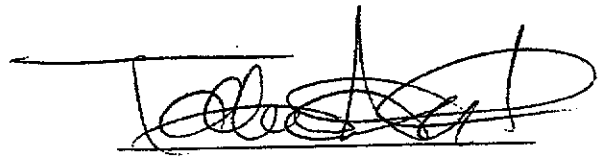
THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

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.

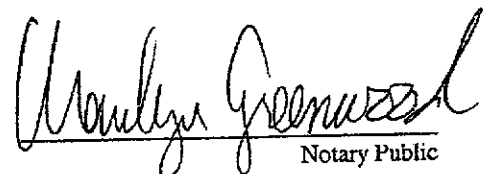
The Arizona Republic

March 4, 2005



Sworn to before me this
4TH day of
March A.D. 2005




Notary Public

NOTICE OF PUBLIC HEARING
State of Arizona
Maricopa County
Adjudication Commission
Pursuant to A.R.S. § 45-1126
(A) notice is hereby given
that the Maricopa County
Adjudication Commission
will hold public hearings to
receive physical evidence
and testimony relating to the
availability of all water cours-
es in Yavapai County. The
hearings will be held in
Yavapai County on March 23,
2005, beginning at 12:00 p.m.
in an order established by
the Chair in the Yavapai
County Superior Court, Corfer
Hall Street, Prescott, Arizona
86305. The following hearings
entirely the only hearings
scheduled:
The Lower Rio Grande
Creek, the Hassayampa River,
of the Santa Maria River, the
Verde River, and all of the
small and minor water courses
in Yavapai County.
March 4, 2005

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 Yavapai County. The hearings will be held in Yavapai County on March 25, 2005 beginning at 12:00 p.m. in an order established by the chair in the Yavapai County Supervisors' Conference Room located at 1015 Fair Street, Prescott, Arizona 86305. The following are presently the only hearings scheduled:

- Agua Fria River, Burro Creek, the Hassayamoh River, the Santa Maria River, the Verde River, and all of the small and minor watercourses in Gila County, including but not limited to: Adobe Creek - Yavapai, Alkali Wash, Ally Wash, Amazon Wash, Antelope Creek 1 - Yavapai, Antelope Creek 2 - Yavapai, Antelope Wash - Yavapai, Apache Creek - Yavapai, Arrastre Creek 1 - Yavapai, Arrastre Creek 2 - Yavapai, Ash Creek 1 - Yavapai, Ash Creek 2 - Yavapai, Ash Creek 3 - Yavapai, Ash Fork Draw - Yavapai, Ash Spring Creek, Aspen Wash - Yavapai, Badger Spring Wash, Barnon Creek, Banty Creek - Yavapai, Bear Canyon, Bear Creek 1 - Yavapai, Bear Creek 2 - Yavapai, Bear Creek 3 - Yavapai, Beaver Creek - Yavapai, Big Bug Creek, Big Chino Wash, Big Ship Wash, Bill Ann Creek, Bishop Creek, Bitter Creek 1 - Yavapai, Bitter Creek 2 - Yavapai, Black Butte Wash, Black Canyon Creek, Black Canyon - Yavapai, Black Hill Wash, Blackwater Creek, Blend Creek, Blind Indian Creek, Blowout Creek, Blue Tank Wash - Yavapai, Board Creek, Boulder Creek - Yavapai, Boulder Creek 1 - Yavapai, Boulder Creek 2 - Yavapai, Bridle Creek, Brushy Creek, Brushy Prong, Brushy Wash, Buckbed Wash, Buckhorn Creek - Yavapai, Bull Run Creek, Bull Spring Wash, Bulard Wash, Bumble Bee Creek, Burnt Wash, Butte Creek - Yavapai, Butte Wash, Buzzard Roost Creek, Buzzard Roost Wash, Cabin Wash, Calamity Wash, Castle Creek - Yavapai, Cave Creek - Maricopa, Cedar Creek - Yavapai, Cedar Creek 1, Cedar Springs, Cement Wash, Chaparral Gulch, Chasm Creek, Cherry Creek 1, Cherry Creek 2, Chino Wash, Cienega Creek - Yavapai, Cimarron Creek, Clippier Wash, Coffee Creek, Cold Water Creek, Conger Creek, Contreras Wash, Yavapai, Copper Wash, Cooperopolis Creek, Copper Basin Wash, Copper Creek 1 - Yavapai, Copper Creek 2 - Yavapai, Copper Creek 3 - Yavapai, Cottonwood Canyon, Cottonwood Creek 1 - Yavapai, Cottonwood Creek 2 - Yavapai, Cottonwood Creek 3 - Yavapai, Cow Creek 1 - Yavapai, Cow Creek 2 - Yavapai, Cowboy Wash, Coyote Spring, Coyote Wash - Yavapai, Crazy Basin Creek, Cypress Creek, Date Creek, Davonport Wash, Dead Mexican Creek, Deasman Creek, Devil Dog Canyon, Dillion Wash, Dry Beaver Creek, Dry Creek 1 - Yavapai, Dry Creek 2 - Yavapai, Dry Wash 1 - Yavapai, Dry Wash 2 - Yavapai, Dugan Wash, East Antelope Creek, East Branch Suwa, East Fork Castle, Eastwood Creek, Eddie Wash, Eightmile Creek, Finch Wash, Fort Rock Creek, Fossil Creek, Francis Creek, French Creek - Yavapai, Gadsden Wash, Gap Creek, Government Springs, Grandpa Wash, Granite Creek, Grapevine Creek - Yavapai, Grapevine Wash, Greif Hill Wash, Grandstone Wash, Groom Creek, Hackberry Creek - Yavapai, Hackberry Wash - Yavapai, Hamlin Wash, Hell Canyon, Helzapoppin Creek, Hide Creek, Hit Wash, Hoop Creek, Horse Creek - Yavapai, Horse Creek 2 - Yavapai, Horse Wash, Houston Creek - Yavapai, Humbug Creek, Humphrey Wash, Indian Creek 1 - Yavapai, Indian Creek 2 - Yavapai, Indian Springs Creek, Indian

THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

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

February 25, 2005

Sworn to before me this
25th day of
February A.D. 2005



[Handwritten signature]

[Handwritten signature]
Notary Public

Handwritten signature

THE ARIZONA REPUBLIC

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

August 18, 2005

Handwritten signature of Diana Chavez

Sworn to before me this
18TH day of
August A.D. 2005



Handwritten signature of 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
navigability or non-
navigability of the Agua Fria
River and the Hassayampa
River. The hearings will be
held in Maricopa County on
September 21, 2005, begin-
ning at 10:00 a.m. in an order
established by the chair in
the First Floor Conference
Room located at 1700 West
Washington, Phoenix, Arizo-
na. The following are presen-
tly the only hearings
scheduled.
The Agua Fria River and the
Hassayampa River.
Interested parties may submit
evidence to the commission
office prior to the hearing
and/or during the appropri-
ate public hearing. The com-
mission will conduct its hear-
ings informally without ad-
herence to judicial rules of
procedure or evidence.
Evidence submitted in ad-
vance of the hearing will be
available for public inspec-
tion during regular commis-
sion office hours of 8:00 a.m.
to 5:00 p.m., Monday thru Fri-
day, 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 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, August 16, 2005.
05535-August 18, 2005.



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 APRIL 11, 2006 AT 2:00 P.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 April 11, 2006, at 2:00 P.M. in the first floor conference room 1700 West Washington, Phoenix, Arizona 85007.

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 November 16, 2005, November 17, 2005, and January 18, 2006 as joint minutes.
4. Determination of the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV (discussion and action).
5. Determination of the navigability of the Agua Fria River 05-002-NAV (discussion and action).
6. Determination of the navigability of the Hassayampa River 05-004-NAV (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 15th day of April, 2006, George Mehnert, Director, Navigable Stream Adjudication Commission

EXHIBIT C

EXHIBIT D



JANET NAPOLITANO
Governor

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 A PUBLIC HEARING TO BE HELD

March 29 2005, at 12:00 P.M., in Prescott, 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 29, 2005 at 12:00 p.m. in the Yavapai County Supervisors' Conference Room located at 1015 Fair Street, Prescott, 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. January 24, Yuma County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE AGUA FRIA RIVER, 05-002-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF BURRO CREEK, 05-003-NAV.
6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE HASSAYAMPA RIVER, 05-004-NAV.
7. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA MARIA RIVER, 05-005-NAV.
8. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE VERDE RIVER, 04-009-NAV.
9. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY, 05-001-NAV.
10. BUDGET UPDATE
11. ATTORNEY PAY (discussion and action).
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 HEARINGS AND OTHER MEETINGS.
14. ADJOURNMENT.

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

Dated this 24th day of February, 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
Phone (602) 542-9214 FAX (602) 542-9220
E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

MEETING MINUTES
Prescott, Arizona, March 29, 2005

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 12:23 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. January 24, 2005, Yuma County.

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To approve the minutes of January 24, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE AGUA FRIA RIVER, 05-002-NAV.

Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist Jon Fuller prepared the reports regarding this matter for the State Land Department, and stated among other things that New River and Skunk Creek had been included in an earlier report as small and minor watercourses in Maricopa County with Skunk Creek flowing into New River and New River flowing into the Agua Fria.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF BURRO CREEK, 05-003-NAV. Cheryl

Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, except for report dates, and the Chair stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions. As a matter of clarification, attorney Curtis Jennings and expert Jon Fuller discussed that the report Mr. Fuller was talking about covered Burro Creek, the Big Sandy River, and the Santa Maria River, all part of a single watershed, and that the Big Sandy River flowed exclusively in Mohave County and not at all in Yavapai County.

6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE HASSAYAMPA RIVER, 05-004-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions.
7. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA MARIA RIVER, 05-005-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions.
8. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE VERDE RIVER, 04-009-NAV.** Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse

hearing, and the Chair had previously stated there would be no point in her repeating it. Jon Fuller, who prepared the Verde River Report, was present, but Ottozawa Chatupron of the State Land Department spoke and responded to questions regarding the Verde River Report. Attorney John Ryley representing the Yavapai Apache Nation spoke regarding this matter. Shanti Rosette, representing the State Land Department, also spoke. Dolly Echeverria discussed that she has had a lengthy history in Arizona and she mentioned her view that the Verde is used mainly for fun, for kayaking, etc., but indicated it is too difficult to get in and out of for conducting commercial traffic. Ms. Rosette indicated experts will be available at the final hearing in Maricopa County regarding the Verde and that those experts will present the Land Commissioner's position at that time. Mr. Brashear asked the Chair that additional information be provided to the Commission by those who provide the evidence regarding commercial boating.

9. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY, 05-001-NAV.

Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. In response to questions from the Commission Attorney Jon Fuller said that information in the report that may be pertinent to the Commission making a decision relating to Curtis Jennings' questions is that Oak Creek would be considered a boating stream for modern boating year round and that he found no evidence of historical boating around the time of statehood, but there is sufficient flow for low-draft boating and that those are some of the facts present in his report. Commissioner Miller clarified that Jon Fuller was referring to that portion of Oak Creek South of Sedona, and Mr. Fuller indicated he was talking about the area between about Cornville to the confluence with the Verde.

10. **BUDGET UPDATE.** The Director and the Chair indicated that ANSAC's base budget has not changed from its original request and that ANSAC asked the joint House Senate budget committee for an additional \$67,000.00 (should be \$64,000.00), a number provided by the State Land Department, for updates and for experts appearing at hearings. The State Land Department asked for an additional \$1,000,000.00 to complete Commission work. The director also said the State Land Department asked for an additional approximately \$7,000.00 for the April 25 and 26, 2005 hearings; and that this is money to pay for the experts, and is money the Land Department Engineering Section had thought was available for this purpose, but is no longer. Commissioner Henness asked what the \$7,000.00 was for and Ottozawa Chatupron indicated it was for the expert consulting engineers for review of data and appearance at hearings. The Chair explained the process that occurred at the budget hearings. Mr. Ott explained that was never an appropriation to the State Land Department for FY2005 monies to do the Commission's work. Commissioner Brashear pointed out that even if we called these hearings off at this time we will have to again pay the \$9,000.00 we have already paid for advertising when we hold these hearings in the future, and suggested that if there is a way we can do this then we should do it. Attorney Curtis Jennings indicated the appearance of the Commission paying for expert witnesses is not a good thing, and that an alternative is to hold the hearings and listen to whomever shows up. Commissioner Echeverria made the point that very few local citizens appear at our hearings. Mr. Ott pointed out that the reason the Land Department provides expert witnesses at hearings is because that is what the Commissioners want, and that they believe the Land Department has satisfied the statute by providing the reports and that it is not necessary to provide the experts at hearings. Mr. Ott pointed out that he believes the purpose for hearings is for others to present evidence and that all of the evidence the Land Department has is in the reports. Commissioner Henness wanted to make clear with Mr. Ott that the report updates contain information that comports with the court rulings and stated that he is concerned about the expert

witnesses; who retains them, who they represent, who selects them for their pedigrees, etc. Commissioner Henness indicated the process involving the Land Department's expert, particularly with the involvement of the attorney representing the Land Department, is beginning to have an edge to it. He also wanted to clarify that the \$7,000.00 is for the balance of the work for this fiscal year.

Commissioner Brashear discussed the benefit of the information and education provided to the public by the engineers who appear at Commission hearings. The Chair indicated we would check on the availability of funds and will notify the Commissioners individually.

11. ATTORNEY PAY (discussion and action).

Motion by: Jim Henness Second by: Jay Brashear

Motion: To increase the Commission Attorney's hourly rate to \$200.00 per hour. Vote: All aye.

12. CALL FOR PUBLIC COMMENT (comment sheets).

(Pursuant to Attorney General Opinion No. I99-006 [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.)

Attorney Mark McGinnis spoke regarding which watercourses are closed for the taking of evidence today because the closing of the taking of evidence triggers the post hearing memorandum filing clock. The Chair said that only the small and minor watercourses are closed for the taking of evidence.

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

The Chair indicated that Coconino County will be rescheduled for July, 2005 based on Mr. Fuller's unavailability in June. There was discussion of other potential meeting dates for Mohave and Maricopa County.

14. ADJOURNMENT.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 1:51 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "George Mehnert", is enclosed within a rectangular border with a stippled or dotted background.

George Mehnert, Director
March 30, 2005



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 A PUBLIC HEARING TO BE HELD
September 21, 2005, at 10:00 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 10:00 a.m. on September 21, 2005 in the first floor conference room at 1700 West Washington, Phoenix, 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. August 8, 2005, Mohave County, Arizona.
 - B. August 9, 2005, La Paz County, Arizona.
4. Hearing regarding the navigability of the Agua Fria River, 05-002-NAV.
5. Hearing regarding the navigability of the Hassayampa River, 05-004-NAV.
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. Review of laws and terms regarding navigability.
9. ADJOURNMENT.

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

Dated this 17th day of August, 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

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 A PUBLIC HEARING TO BE HELD

First Amended Agenda

September 21, 2005, at 10:00 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 10:00 a.m. on September 21, 2005 in the first floor conference room at 1700 West Washington, Phoenix, 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 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).
 - A. August 8, 2005, Mohave County, Arizona.
 - B. August 9, 2005, La Paz County, Arizona.
4. Hearing regarding the navigability of the Agua Fria River, 05-002-NAV.
5. Hearing regarding the navigability of the Hassayampa River, 05-004-NAV.
6. Adoption of the Commission report regarding the Lower Salt River (discussion and action).
7. Adoption of the Commission report regarding the Pinal County Small & Minor Watercourses (discussion and action).
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. Commission budget and continuation.
11. Review of laws and terms regarding navigability.
12. ADJOURNMENT.

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

Dated this 13th day of September, 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

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

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

GEORGE MEHNERT
Executive Director

MEETING MINUTES

Phoenix, Arizona, September 21, 2005

COMMISSION MEMBERS PRESENT

Earl Eisenhower, Jim Henness, and Cecil Miller.

COMMISSION MEMBERS ABSENT

Jay Brashear, Dolly Echeverria.

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. CALL TO ORDER.

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

2. ROLL CALL.

See Above.

3. APPROVAL OF MINUTES (discussion and action).

A. August 8, 2005, Mohave County

Motion by: Jim Henness Second by: Cecil Miller

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

B. August 9, 2005, La Paz County.

Motion by: Cecil Miller Second by: Jim Henness

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

4. Hearing regarding the navigability of the Agua Fria River, 05-002-NAV.

Cheryl Doyle and Jon Fuller representing the State Land Department, and attorneys John Helm and Julie Lemmon appeared.

5. Hearing regarding the navigability of the Hassayampa River, 05-004-NAV.

Cheryl Doyle and Jon Fuller representing the State Land Department appeared. The Chair announced that the two previous hearings had concluded and that the time would now begin for filing post hearing memorandums.

6. Adoption of the Commission report regarding the Lower Salt River (discussion and action).

Motion by: Cecil Miller Second by: Jim Henness

Motion: To adopt the report as submitted. Vote: All aye.

7. **Adoption of the Commission report regarding the Pinal County Small & Minor Watercourses (discussion and action).**
Motion by: Jim Henness Second by: Cecil Miller
Motion: To adopt the report as submitted. Vote: All aye.
8. **Call for Public Comment (comment sheets).**
(Pursuant to Attorney General Opinion No. I99-006 [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. **Commission budget and continuation.** A discussion of the budget and request for two-year continuation was discussed by the Commissioners and staff.
11. **Review of laws and terms regarding navigability.**
Entered Executive Session for the purpose of obtaining legal advice at approximately 10:48 a.m. and concluded Executive Session at approximately 11:36 a.m.
12. **ADJOURNMENT.**
Motion by: Jim Henness Second by: Cecil Miller
Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 11:36 a.m.

Respectfully submitted,



George Mehnert, Director
September 22, 2005



JANET NAPOLITANO
Governor

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

MEETING MINUTES
Phoenix, Arizona, April 11, 2006

COMMISSION MEMBERS PRESENT

Cecil Miller, Earl Eisenhower, Jim Henness.

COMMISSION MEMBERS ABSENT

Jay Brashear, Dolly Echeverria.

STAFF PRESENT

Curtis Jennings, George Mehnert.

1. CALL TO ORDER.

Chairman Eisenhower called the meeting to order at approximately 2:00 P.M.

2. Roll Call.

See above.

3. Approval of Minutes (discussion and action). Minutes of November 16, 2005, November 17, 2005, and January 18, 2006 as combined minutes.

Motion by: Jim Henness Second by: Cecil Miller

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

4. Determination of the navigability of the small and minor watercourses in Maricopa County, 05-014-NAV (discussion and action).

Motion by: Jim Henness Second by: Cecil Miller

Motion: That the small and minor watercourses in Maricopa County were not navigable. Vote: All aye.

5. Determination of the navigability of the Agua Fria River 05-002-NAV (discussion and action).

Motion by: Cecil Miller Second by: Jim Henness

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

6. Determination of the navigability of the Hassayampa River 05-004-NAV (discussion and action).

Motion by: Jim Henness Second by: Cecil Miller

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

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.

Motion by: Cecil Miller

Second by: Jim Hennes

Motion: To adjourn.

Vote: All aye.

Meeting adjourned at approximately 2:40 P.M.

Respectfully submitted,



George Mehnert, Director

April 12, 2006

EXHIBIT E

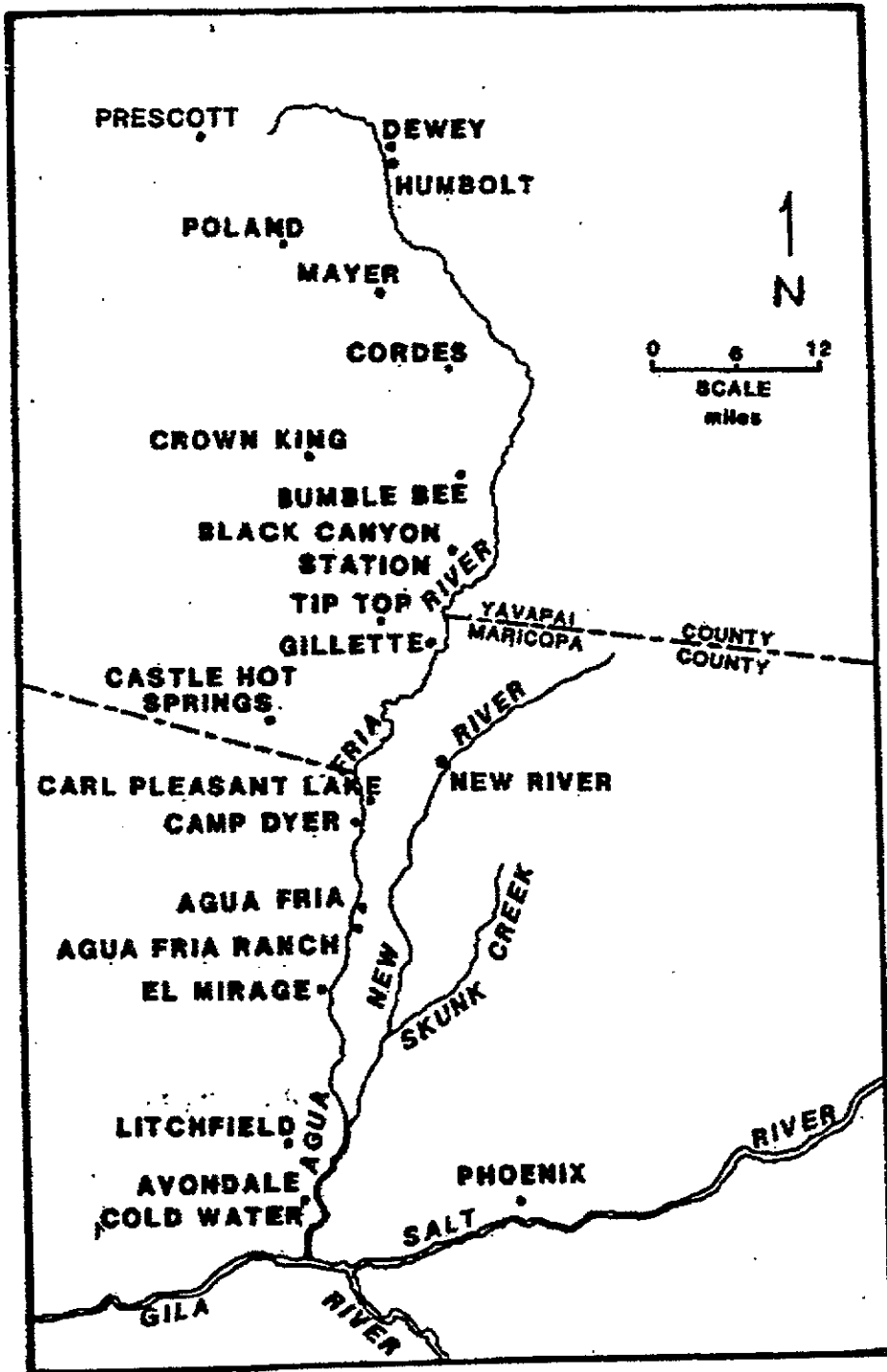
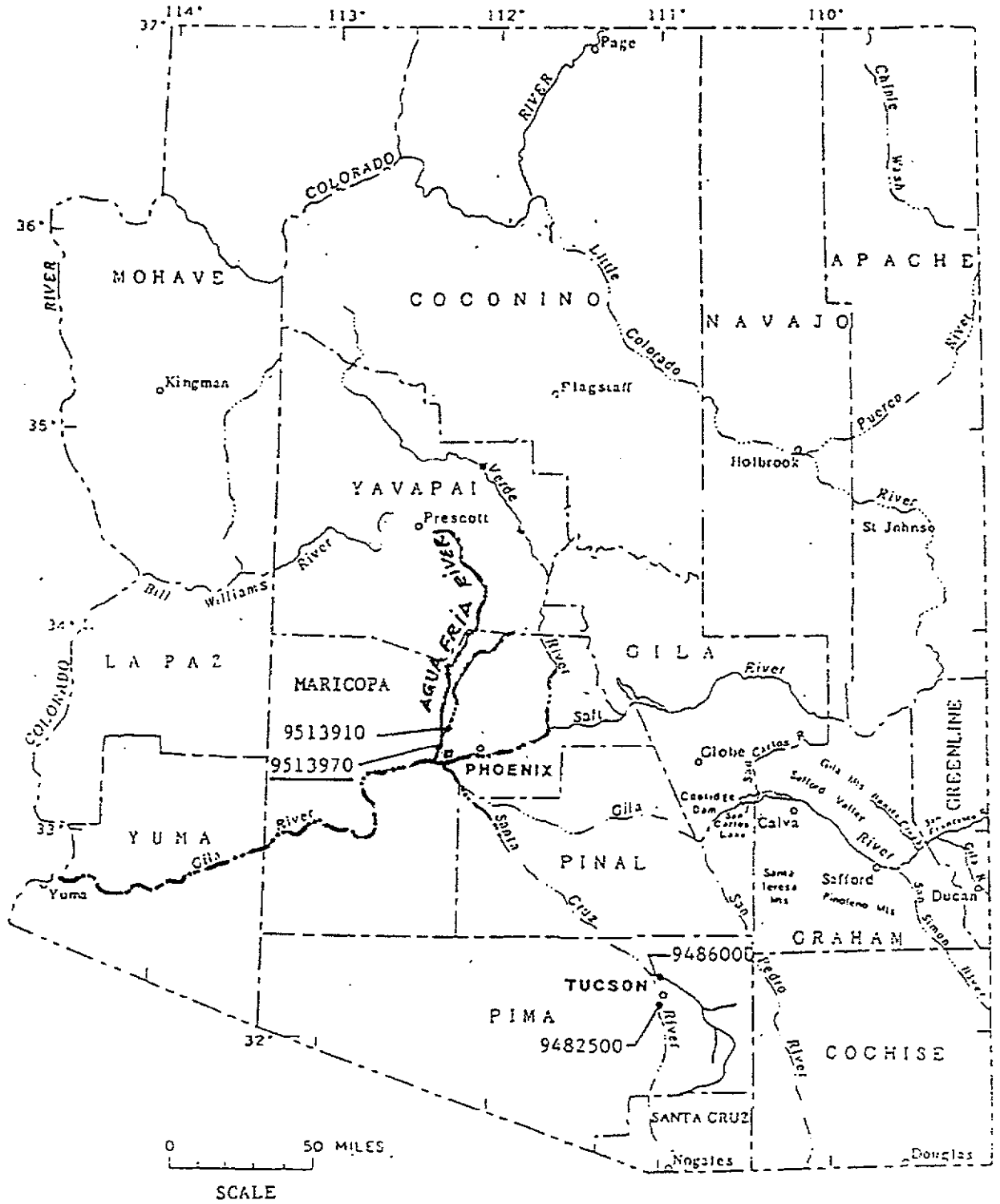


Figure 2: Historical Site Location Map (Research Management West, 1986)

Figure 3



U.S.G.S. GAGING STATIONS VICINITY MAP

EXHIBIT F

86 382225

RECORDED
INDEXED
OCT 22 PM 3 34
CIV JLG (CJ)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, STATE LAND)
DEPARTMENT and ROBERT K.)
LANE, Commissioner of the State)
Land Department, et al.,)

Plaintiffs,)

v.)

MARICOPA COUNTY, a political)
subdivision,)

Defendant,)

FLOOD CONTROL DISTRICT OF)
MARICOPA COUNTY,)

Defendant-Intervenor.)

CITY OF TEMPE,)

Defendant-Intervenor.)

CERTIFIED COPY

NO. C-569870

STIPULATION, ORDER AND
PARTIAL JUDGMENT ON AGUA
FRIA RIVER, AND ITS TRIBUTARIES
INCLUDING SKUNK CREEK AND
NEW RIVER

The State of Arizona and the Arizona Land Department, by their attorney, Anthony B. Ching, Solicitor General of the Office of the Attorney General, and the Maricopa County Flood Control District, by its attorney, Larry J. Richmond, Maricopa County by its attorney, John D. Helm, and City of Tempe by its attorney, C. Brad Woodford, stipulate as follows:

1. That by entering into this Stipulation, the State of Arizona and the Arizona Land Department, Plaintiffs, Maricopa County, Defendant, and the Flood Control District of Maricopa County, and City of Tempe, Defendant-Intervenors, do not waive any claims or defenses which the parties may have or may raise against each other with regard to all other pending matters not specifically resolved herein.

2. That this stipulation relates only to real property and any interest or estate therein which the State of Arizona and the Arizona Land Department may have under and pursuant to the Equal Footing Doctrine.

3. That the State of Arizona and the Arizona Land Department disclaim any interest, legal or equitable, by reason of the Equal Footing Doctrine, in lands in Maricopa County which constitute the beds (from mean high water mark to mean high water mark) of the tributaries to the Agua Fria River, including Skunk Creek and New River, and the Agua Fria River from Waddell Dam south to the South line of the North half of Sections 22 and 23, Township 1 North, Range 1 West, Gila and Salt River Base and Meridian, for the reason that these reaches of rivers and tributaries were not navigable at the time of statehood.

4. That pursuant to the Equal Footing Doctrine, the State of Arizona and the Arizona Land Department has never had, does not now have and shall not hereafter claim an interest or estate, legal or equitable in the lands described in paragraph 3.

5. That this Stipulation is also intended to be a disclaimer of the State's interest in the lands described above in paragraph 3, pursuant to A.R.S. §12-1103 (C), and shall be limited to any real property which the State might have claimed pursuant to the Equal Footing Doctrine.

6. That the motion for summary judgment filed heretofore by the Maricopa County Flood Control District is withdrawn.

7. That the Order and Partial Judgment attached hereto be signed and entered.

Stipulation, Order and Partial Judgment
C-569870/Page Two

86 582225

LARRY J. RICHMOND, P.C.

ROBERT K. CORBIN, Attorney General

By *Julie M. Lemmon*
LARRY J. RICHMOND
JULIE M. LEMMON
1419 North 3d Street, Suite 100
Phoenix, Arizona 85004
Attorneys for the Flood Control District
of Maricopa County

By *Anthony B. Ching*
ANTHONY B. CHING
Solicitor General
Attorneys for the State of Arizona and
the Arizona State Land Department

HELM & KYLE, LTD.

C. BRAD WOODFORD, ESQ.

By *John D. Helm*
JOHN D. HELM, ESQ.
1619 East Guadalupe, Suite 1
Tempe, Arizona 85283

By *W. Kent Free*
C. BRAD WOODFORD, ESQ.
Assistant City Attorney, City of Tempe
P.O. Box 5002
Tempe, Arizona 85281

Stipulation, Order and Partial Judgment
C-569870/Page Three

ORDER AND JUDGMENT

Upon reading the stipulation by the State of Arizona, the Arizona Land Department, the Maricopa County Flood Control District, Maricopa County and the City of Tempe, and good cause appearing,

IT IS ORDERED AND ADJUDGED:

1. That the stipulation is approved;
2. That the State of Arizona and Arizona Land Department have no interest or estate, legal or equitable, by reason of the Equal Footing Doctrine, in lands in Maricopa County which constitute the beds (from mean high water mark to mean high water mark) of the tributaries to the Agua Fria River, including Skunk Creek and New River, and the Agua Fria River from Waddell Dam south to the South line of the North half of Sections 22 and 23, Township 1 North, Range 1 West, Gila and Salt River Base and Meridian, for the reason that these reaches of rivers and tributaries were not navigable at the time of statehood.
3. That pursuant to the Equal Footing Doctrine, the State of Arizona and the Arizona Land Department has never had, does not now have and shall not hereafter claim an interest or estate, legal or equitable in the lands described above in paragraph 2.
4. That the Stipulation is adjudged to be a disclaimer of the State's interest in the lands described in paragraph 2, above, pursuant to A.R.S. §12-1103 (C), and such disclaimer shall be limited to any real property which the State might have claimed pursuant to the Equal Footing Doctrine.
5. That the hearing on Maricopa County Flood Control District's Motion for Partial Summary Judgment is vacated.



 THOMAS O'TOOLE
 Judge of the Superior Court

Stipulation, Order and Partial Judgment
 C-569870/Page Four

COPY of the foregoing delivered
this 17 day of October, 1986, to:

The Honorable Thomas O'Toole
Judge of the Maricopa County Superior Court
9D Central Court Building
201 West Jefferson Street
Phoenix, Arizona 85003

COPY of the foregoing mailed this 17 day
of October, 1986, to:

G. Eugene Neil, Deputy County Attorney
Maricopa County Attorney's Office
201 West Jefferson Street, 7th Floor
Phoenix, Arizona 85003

John D. Helm, Esq.
Helm & Kyle, Ltd.
1619 East Guadalupe, Suite 1
Tempe, Arizona 85283

John H. Lyons, Esq.
Udall, Shumway, Blackhurst, Allen,
Lyons & Davis, P.C.
30 West First Street
Mesa, Arizona 85201

Larry J. Richmond, Esq.
Larry J. Richmond, P.C.
1419 North 3d Street, Suite 100
Phoenix, Arizona 85004

C. Brad Woodford, Esq.
Assistant City Attorney, City of Tempe
P.O. Box 5002
Tempe, Arizona 85281

Jay Dushoff, Esq.
Thomas K. Irvine, Esq.
Dushoff & Associates
2025 North 3d Street, Suite 100
Phoenix, Arizona 85004

Patrick E. Burke, Esq.
Sorenson, Moore, Evens & Burke
1144 East Jefferson
Phoenix, Arizona 85034-2285

Stipulation, Order and Partial Judgment
C-569870/Page Five

86 582225

WHEN RECORDED, PLEASE RETURN TO:

LARRY J. RICHMOND, P.C.
1419 North Third Street
Suite 100
Phoenix, Arizona 85009

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA
OCT 23 '86 -455
KEITH POLETIS, County Recorder
FEE *N/C* PGS 6 T.N.

The foregoing instrument is a full, true and correct copy of
the original on file in this office on OCT 22 1986

Attest _____
VIVIAN TRINGLE, Clerk of the Superior Court of Maricopa County, Arizona, in and for the State of Arizona

By *C. J. [Signature]* Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, STATE LAND)
DEPARTMENT and ROBERT K.)
LANE, Commissioner of the State)
Land Department, et al.,)

Plaintiffs,)

v.)

MARICOPA COUNTY, a political)
subdivision,)

Defendant.)

FLOOD CONTROL DISTRICT OF)
MARICOPA COUNTY, a political)
subdivision and municipal corporation,)

Defendant-Intervenor.)

CITY OF TEMPE, a municipal)
corporation,)

Defendant-Intervenor.)

No. C-569870

NOTICE OF FILING
PROPOSED AMENDED ORDER
AND JUDGMENT

(Assigned to the Honorable
Thomas O'Toole, Division 41)

Defendant/Intervenor FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

hereby gives notice of filing the attached proposed Amended Order and Judgment on
this 19th day of November, 1986.

DATED this 19th day of November, 1986.

LARRY J. RICHMOND, P.C.

By Julie M. Lemmon
LARRY J. RICHMOND
JULIE M. LEMMON
1419 North Third Street, Suite 100
Phoenix, Arizona 85004
Intervenors, Flood Control District
of Maricopa County

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MOD JUDG (MJ)

STATE OF ARIZONA, STATE LAND DEPARTMENT and ROBERT K. LANE, Commissioner of the State Land Department, et al.,

Plaintiffs,

v.

MARICOPA COUNTY, a political subdivision,

Defendant.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a political subdivision and municipal corporation,

Defendant-Intervenor.

CITY OF TEMPE, a municipal corporation,

Defendant-Intervenor.

NO. C-569870

AMENDED ORDER AND JUDGMENT

(Assigned to the Honorable Thomas O'Toole, Division 41)

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA
JAN 07 1987 -4 00
KEITH POLETIS, County Recorder
FEE *MC* PGS 3 R.N.

Good cause appearing, IT IS ORDERED AND ADJUDGED:

1. That the stipulation is approved.
2. That the State of Arizona and Arizona Land Department have no interest or estate, legal or equitable, by reason of the Equal Footing Doctrine, in lands in Maricopa County which constitute the beds (from mean high water mark to mean high water mark) of the tributaries to the Agua Fria River, including Skunk Creek and New River, and the Agua Fria River from Waddell Dam south to the South line of the North half of Sections 22 and 23, Township 1 North, Range 1 West, Gila and Salt River Base and Meridian, for the reason that these reaches of rivers and tributaries were not navigable at the time of statehood.

LAW OFFICES OF
Larry J. Richmond, P.C.
1418 NORTH 3RD STREET
SUITE 100
PHOENIX, ARIZONA 85004
TELEPHONE 402 271-0500

Ed Greshin
4/1/87
15

3. That pursuant to the Equal Footing Doctrine, the State of Arizona and the Arizona Land Department has never had, does not now have and shall not hereafter claim an interest or estate, legal or equitable in the lands described above in paragraph two.

4. That the Stipulation is adjudged to be a disclaimer of the State's interest in the lands described in paragraph two, above, pursuant to A.R.S. Sec. 12-1103 (C), and such disclaimer shall be limited to any real property which the State might have claimed pursuant to the Equal Footing Doctrine.

5. That the hearing on Maricopa County Flood Control District's Motion for Partial Summary Judgment is vacated.

6. That, there being no just reason for delay, the entry of this final judgment is expressly directed pursuant to Arizona Rules of Civil Procedure, Rule 54(b).

DATED this 20th day of November, 1986.



 THOMAS O'TOOLE
 Judge of the Superior Court

COPY of the foregoing delivered
 this 19th day of November, 1986, to:

The Honorable Thomas O'Toole
 Judge of the Superior Court
 9D Central Court Building
 201 West Jefferson Street
 Phoenix, Arizona 85003

COPY of the foregoing mailed
 this 19th day of November, 1986, to:

G. Eugene Neil, Deputy County Attorney
 Maricopa County Attorney's Office
 201 West Jefferson Street, 7th Floor
 Phoenix, Arizona 85003

Amended Order and Judgment
 C-569870/Page Two

John D. Helm, Esq.
Helm & Kyle, Ltd.
1619 East Guadalupe, Suite 1
Tempe, Arizona 85283

John H. Lyons, Esq.
Udall, Shumway, Blackhurst, Allen,
Lyons & Davis, P.C.
30 West First Street
Mesa, Arizona 85201

C. Brad Woodford, Esq.
Assistant City Attorney, City of Tempe
P.O. Box 5002
Tempe, Arizona 85281

Jay Dushoff, Esq.
Thomas K. Irvine, Esq.
Dushoff & Associates
2025 North 3d Street, Suite 100
Phoenix, Arizona 85004

Patrick E. Burke, Esq.
Sorenson, Moore, Evans & Burke
1144 East Jefferson
Phoenix, Arizona 85034-2285

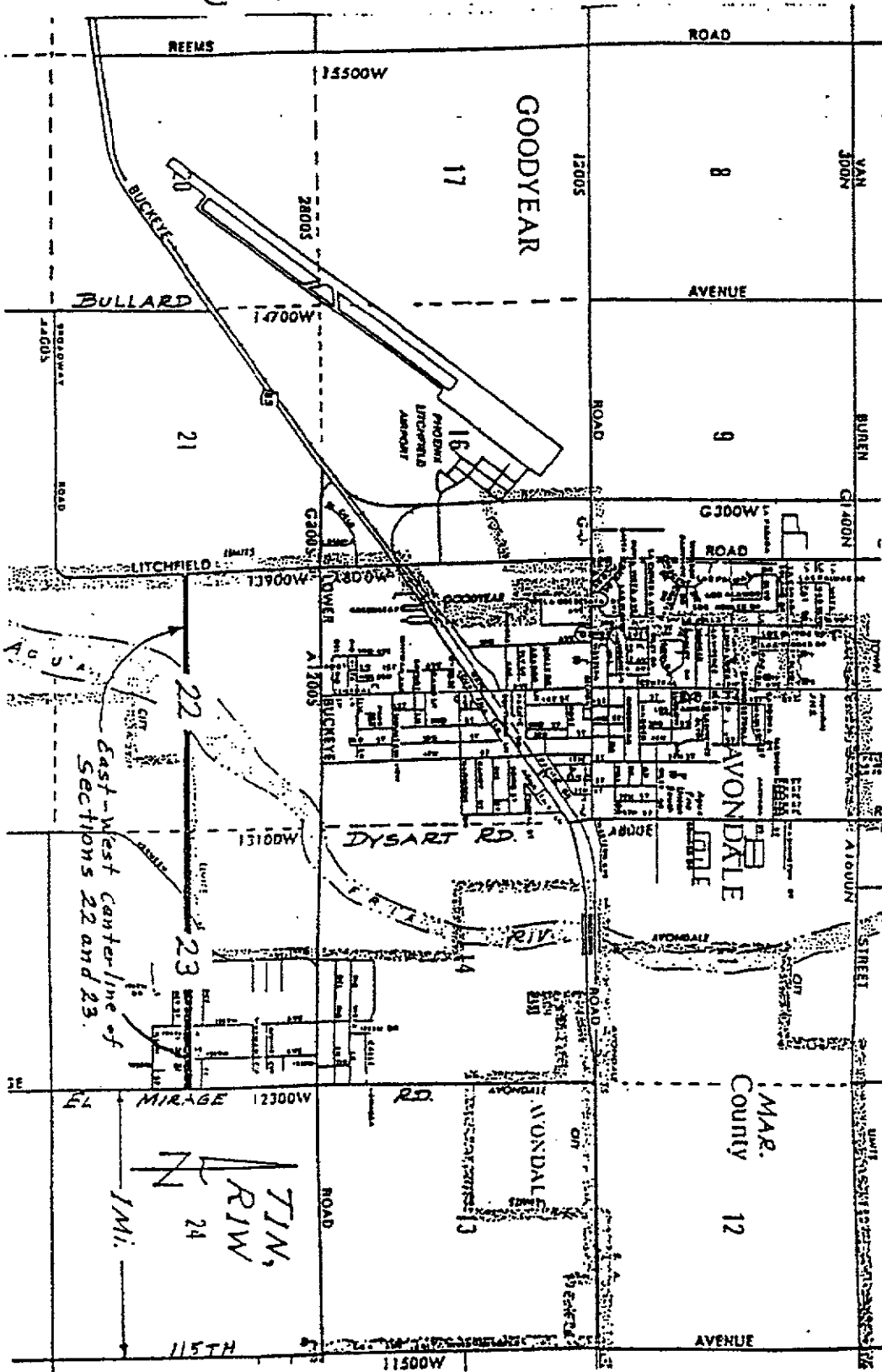
Clare H. Abel, Esq.
Burch & Cracchiola, P.A.
P.O. Box 16882
Phoenix, Arizona 85011

Peter Kiewit, Jr., Esq.
John E. Lundin, Esq.
Michael W. Sillyman, Esq.
Wentworth, Lundin & Herf
201 North Central Avenue
3500 Valley Bank Center
Phoenix, Arizona 85073

Robert B. Hoffman, Esq.
Snell & Wilmer
3100 Valley Bank Center
201 North Central Avenue
Phoenix, Arizona 85073

Anthony B. Ching, Esq.
Solicitor General
Office of the Attorney General
State of Arizona
1275 West Washington Street
Phoenix, Arizona 85007

Penny Adams



OFFICE DISTRIBUTION

| | |
|--------------------|--|
| APPEALS | |
| BONDS | |
| CHANGE OF VENUE | |
| JURY FEES | |
| REMANDS | |
| CERTIFICATION DESK | |
| ACCOUNT SERVICES | |
| CRIMINAL JUDGMENTS | |

15
 SUPERIOR COURT OF ARIZONA
 MARICOPA COUNTY

RECEIVED PROCESSED
 NOV 24 '86 NOV 24 '86
 Clerk of the Court - Mail Distr. Ctr.
 VIVIAN KRINGLE, Clerk

RC05-72122 11/20/86 HON. THOMAS W. O'TOOLE Sen. Sanders
Code Date Judge or Commissioner Deputy

NO. C-569870

STATE OF ARIZONA, et al

VS.

MARICOPA COUNTY

Anthony B. Ching - A.A.G.

~~Larry J. Richmond/~~
~~Julie McLemmon~~

G. Eugene Neil

John D. Helm

Peter Kiewit, Jr./
 John E. Lundin/
 Michael W. Sillyman

C. Brad Woodford

John H. Lyons

Jay Dushoff/
 Thomas K. Irvine

Patrick E. Burke

Clare H. Abel

Robert B. Hoffman

IT IS ORDERED approving and settling formal written Amended
 Order and Judgment, signed by the Court and filed this date.

NOV 24 1986

REVIEWED BY: LJR
 BUR _____ JEL ✓ MR _____
 DOCKET CONTROL _____
 COPY TO CLIENT _____
 DATE: _____
 FILED BY: SV

EXHIBIT G

Evidence Log

Hearing No. 05-002-NAV

Page No.

1

Arizona Navigable Stream Adjudication Commission

Agua Fria River

Yavapai County March 29, 2005 - Maricopa County October 20, 2005

| Item Number | Received Date | Source to ANSAC | Description | Entry By |
|-------------|---------------|---|--|----------------|
| 1 | July 1986 | Attorney General | Agua Fria Materials. | George Mehnert |
| 2 | 10/17/86 | State Land Dept | Stipulation and Order. | George Mehnert |
| 3 | Unknown | Unknown | Sovereign Land Ownership along Agua Fria. | George Mehnert |
| 4 | 01/11/92 | Helm & Kyle | Memo to Commission. | George Mehnert |
| 5 | 07/09/92 | State Land Dept | Memo-Project #07-496-AG, East Bank of Agua Fria. | George Mehnert |
| 6 | 06/01/93 | Mark F. Reardon, Esq. | Petition for Determination of Non-Navigability. | George Mehnert |
| 7 | 07/03/93 | Timothy J. Flood | Letter to ANSAC Re Agua Fria and other rivers. | George Mehnert |
| 8 | 07/23/93 | ACLPI David Baron | Letter to ANSAC | George Mehnert |
| 9 | 07/29/93 | Attorney General | SLD's response to petition for determination of non-navigability of Agua Fria. | George Mehnert |
| 10 | 05/15/96 | State Land Dept | Ltr submittal of evidence re Agua Fria | George Mehnert |
| 11 | 05/16/96 | Flood Control District of Maricopa County | Notice of Apparance and Intent to Participate as a Party. | George Mehnert |
| 12 | 05/16/96 | Julie Lemmon & John Helm | Submission of Information Regarding the Non-Navigability of the Agua Fria River. | George Mehnert |
| 13 | 07/12/96 | Maricopa Cy Dept of Transportation | Exhibit for ANSAC re Agua Fria. | George Mehnert |

Evidence Log continuation Page

Hearing No. 05-002

Page No.

2

Arizona Navigable Stream Adjudication Commission

Agua Fria River

Yavapai County March 29, 2005 - Maricopa County October 20, 2005

| Item Number | Received Date | Source to ANSAC | Description | Entry By |
|-------------|---------------|----------------------------|---|----------------|
| 14 | 02/18/96 | ACLPI David Baron | Testimony Relevant to Agua Fria River | George Mehnert |
| 15 | 02/18/96 | ACLPI David Baron | Letter from David Baron dated February 18, 1997. Testimony Relevant to all Watercourses | George Mehnert |
| 16 | 06/15/04 | Chuck Kranz | Ltr to ANSAC re Agua Fria. | George Mehnert |
| 17 | 07/11/04 | Nancy Orr | Ltr to ANSAC re Agua Fria. | George Mehnert |
| 18 | 07/20/04 | Coby Muckelroy | Ltr to ANSAC re Agua Fria. | George Mehnert |
| 19 | 03/10/05 | Jon Fuller | Report re Agua Fria. | George Mehnert |
| 20 | 09/21/05 | John Helm | Amended Submission of Information Regarding the Non-Navigability of the Agua Fria River | George Mehnert |
| 21 | 09/7/98 | Evidence on hand at AN-SAC | Small and Minor Watercourse Criteria Final Report. | George Mehnert |
| 22 | 09/7/98 | Evidence on hand at AN-SAC | Final Report, 3 County Pilot Study. | George Mehnert |