

LITTLE COLORADO RIVER

BEFORE THE

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE
NAVIGABILITY OF THE LITTLE
COLORADO RIVER FROM ITS
HEADWATERS TO THE CONFLUENCE
WITH THE COLORADO RIVER
APACHE, NAVAJO AND COCONINO
COUNTIES, ARIZONA

No.: 05-007-NAV

REPORT, FINDINGS AND DETERMINATION REGARDING
THE NAVIGABILITY OF THE LITTLE COLORADO RIVER FROM ITS
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Pursuant to Title 37, Chapter 7, Arizona Revised Statutes, the Arizona Navigable Stream Adjudication Commission ("Commission") has undertaken to receive, compile, review and consider relevant historical and scientific data and information, documents and other evidence regarding the issue of whether the Little Colorado River from its headwaters to the confluence with the Colorado 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 a hearing was 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. § 37-1123B, the Commission gave proper prior notice by publication of its intent to receive, compile, review, consider and study all relevant historical and scientific data and information, documents and other evidence regarding the issue of navigability or nonnavigability of the Little Colorado River from its headwaters on the slope of Mt. Baldy through the Counties of Apache, Navajo and Coconino to its confluence with the Colorado River for title purposes as of February 14, 1912 as follows:

On March 8, March 15, and March 22, 2005 in the White Mountain Independent published in St. Johns, Apache County, Arizona;

On March 8, March 15 and March 22, 2005 in the White Mountain Independent published in Show Low, Navajo County, Arizona;

On March 23, March 30 and April 6, 2005 in the Arizona Daily Sun in Flagstaff, Coconino County, Arizona; and

On May 13, May 20 and May 27, 2005, in the Arizona Daily Sun in Flagstaff, Coconino County, Arizona.

Copies of these Notices of Intent to Study and Receive, Review and Consider Evidence on the issue of navigability of the Little Colorado River in Navajo, Apache and Coconino Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonably available evidence received pursuant to the notices of intent to receive, compile, review, consider and study evidence, the Commission scheduled public hearings to receive additional evidence and testimony regarding the navigability or nonnavigability of the Little Colorado River in Navajo, Apache and Coconino Counties. Public notice of these hearings was given by legal advertising for the Apache County hearing on March 22, 2005 in the White Mountain Independent published in St. Johns, Apache County, Arizona; on March 22,

2005 in the Arizona Republic, a newspaper of general circulation in Arizona; for the Navajo County hearing on March 22, 2005 in the White Mountain Independent published in Show Low, Navajo County, Arizona; on March 23, 2005 in the Holbrook Tribune News published in Holbrook, Navajo County, Arizona; on March 22, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona; and for the Coconino County hearing on June 10, 2005, in the Arizona Daily Sun published in Flagstaff, Coconino County, Arizona; on June 9, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona as required by law pursuant to A.R.S. § 37-1126 and, in addition, by mail to all those requesting individual notice and by means of the ANSAC website (azstreambeds.com).

The hearings for Apache County was held on April 26, 2005 in the City of St. Johns, the county seat of Apache County, Arizona, for Navajo County on April 25, 2005 in the City of Holbrook, the county seat of Navajo County, Arizona, and for Coconino County on July 14, 2005 in the City of Flagstaff, the county seat of Coconino County, Arizona. These hearings were held in the county seats in each county through which the Little Colorado River flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of the Little Colorado 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 these public hearings.

All parties were advised that anyone who desired to appear and give testimony at the public hearings could do so and, in making its findings and determination as to navigability and nonnavigability of the Little Colorado River, the Commission would consider all matters presented to it at the hearing, as well as other historical and scientific data, information, documents and evidence that had been submitted to the Commission at any time prior to the date of the hearings, including all data,

information, documents and evidence previously submitted to the Commission under prior law. Following the final public hearing on the Little Colorado River held on July 14, 2005 in Flagstaff, Arizona, all parties were advised that they could file post-hearing memoranda pursuant to the Commission Rules. Three 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, Jim Vaaler; and Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association. Attached as Exhibit "C" is a list of the three (3) post-hearing memoranda filed by the various parties.

On October 20, 2005, at a public hearing in Phoenix, Arizona, after considering all of the evidence and testimony submitted and the post-hearing memoranda filed with the Commission, and the comments and oral arguments presented by the parties, and being fully advised in the premises, the Commission, with a unanimous vote, found and determined in accordance with A.R.S. § 37-1128 that the Little Colorado River from its headwaters on the slope of Mt. Baldy in Apache County, Arizona to its confluence with the Colorado River in Coconino County, Arizona, was not navigable as of February 14, 1912, nor was it susceptible of navigability. A copy of the Notice of Hearing for the hearing held on October 20, 2005 is also attached as a part of Exhibit "B." Copies of the agenda and minutes of all of the hearings on April 26, 2005, in St. Johns, Apache County, on April 25, 2005, in Holbrook, Navajo County, and on July 14, 2005, in Flagstaff, Coconino County and on October 20, 2005, in Phoenix, Arizona are attached hereto as Exhibit "D."

II. THE LITTLE COLORADO RIVER FROM ITS HEADWATERS TO THE CONFLUENCE WITH THE COLORADO RIVER

The headwaters of both the East Fork and the West Fork of the Little Colorado River are located high on the north slope of Mt. Baldy (elevation 11,590 feet above sea level) in the White Mountains in Apache County in east central Arizona at

approximately latitude 33° 54' North, longitude 109° 33' West in the Southeast Quarter, Section 13, Township 6 North, Range 26 East, Gila and Salt River Base and Meridian. The West Fork of the Little Colorado begins in the West Half of Section 13, and the Northeast Quarter of Section 14, Township 6 North, Range 26 East, Gila and Salt River Base and Meridian, and the East Fork begins in the Northeast Quarter of Section 18, Township 6 North, Range 27 East, Gila and Salt River Base and Meridian. These branches flow in a northerly direction and converge near the town of Greer, Arizona. From there the river turns in a northeasterly direction, flowing past the towns of Eager and Springerville where the river again turns northerly past Lyman Lake and to St. Johns, the county seat of Apache County. At this point, the river makes a westerly turn, passing Zion Reservoir and past the town of Hunt near which it is joined by the Zuni River. The river then flows past Woodruff where it turns in a more northerly direction and just outside of Holbrook, the county seat of Navajo County, the Little Colorado River is joined by the Puerco River which is its largest tributary and frequently contributes more water to the Little Colorado than does its own upper reaches. From Holbrook, the Little Colorado River flows in a westerly direction paralleling Interstate 40 passing by Joseph City and the Jack Rabbit Trading Post. Just before it reaches Winslow, the Little Colorado River is joined by two major tributaries from the south – Chevelon Creek and Clear Creek, which drain many of the canyons of the Mogollon Rim and high country to the south. At Winslow, the river turns north flowing passed the Homolovi Ruins State Park and then onto the Navajo Indian Reservation flowing toward Leupp and Sunrise. Halfway between Winslow and Leupp/Sunrise, the river crosses into Coconino County. Beyond Leupp/Sunrise, it passes by the Grand Falls and then turns more northerly where it becomes the western boundary for the Navajo Reservation. It then flows back onto the Reservation and passes Cameron Trading Post and the Town of Cameron on Highway 89. At Cameron

the Little Colorado River turns almost due west for a few miles flowing alongside State Route 84 and then enters the Little Colorado Gorge where it turns in a northerly direction and then westerly where it flows into the Colorado River near a point known as Cape Solitude. The convergence with the Colorado River is located approximately at latitude 36° 12' North, longitude 111° 48' West in the Northeast Quarter of Section 1, Township 32 North, Range 5 East, Gila and Salt River Base and Meridian at the approximate elevation of 2,700 feet above sea level.

The Little Colorado River is 356 miles long and the Little Colorado River basin is the second largest in Arizona after the Gila River basin. The Little Colorado River drains approximately 27,800 square miles in northwestern New Mexico and northeastern Arizona, including 1,030 square miles of closed basins located in the lava-capped plateaus of the easternmost portion of the watershed. Of the total drainage area, 21,667 square miles, or 78%, are located within the State of Arizona. The Little Colorado River basin occupies a structural depression roughly oval in shape, with the long axis trending northwest approximately 245 miles long. The short axis is 158 miles wide at its widest point. The Little Colorado River basin is bounded on the north by the Kaibito Plateau, Black Mesa, and the Chuska Mountains, on the east by the Continental Divide in New Mexico, on the south by the White Mountains and the Mogollon Rim in Arizona and the Gallo Mountains in New Mexico, and on the west by the Coconino Plateau and the Grand Canyon. The elevation in the Little Colorado watershed ranges from 11,590 feet at Mt. Baldy to approximately 2,700 at the confluence with the Colorado River.

Precipitation and vegetative communities are closely related to elevation in the Little Colorado River basin. The higher elevations have the greatest plant cover and highest rainfall. From the upper elevations at Mt. Baldy to the lower elevation at the convergence of the Colorado River, vegetative communities' transition from conifer and

pinion forests to juniper woodlands, upper grasslands and sage, and finally desert grasslands and desert brush. The animal population is likewise varied from elk, mule deer and white tail deer, mountain lion and bear in upper elevation, desert mule deer and rabbits and other rodents in the lower elevations.

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

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

Roman and Greek law. Some historians believe that the doctrine has even earlier progenitors in the rules of travel on rivers and waterways in ancient Egypt and Mesopotamia. This rule evolved through common law in England which established that the king as sovereign owned the beds of commercially navigable waterways in order to protect their accessibility for commerce, fishing and navigation for his subjects. In England, the beds of 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

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.

Constitution as no determination had been made of what interest the state had in such lands and what was the reasonable value thereof so that it could be determined that the state was getting full value for the interests it was conveying. The Superior Court entered judgment in favor of the defendants and an appeal was taken. In its decision in *Hassell*, the Court of Appeals held that this statute violated the public trust doctrine and the Arizona Constitution and further set forth guidelines under which the state could set up a procedure for determining the navigability of rivers and watercourses in Arizona. In response to this decision, the Legislature established the Arizona Navigable Stream Adjudication Commission and enacted the statutes pertaining to its operation. 1992 Arizona Session Laws, Chapter 297 (1992 Act). The charge given to the Commission by the 1992 Act was to conduct full evidentiary public hearings across the state and to adjudicate the State's claims to ownership of lands in the beds of watercourses. *See generally* former A.R.S. §§ 37-1122 to -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 what watercourses were not navigable as of February 14, 1912.
2. Based only on evidence of navigability or nonnavigability, determine whether watercourses were navigable as of February 14, 1912.
3. In a separate, subsequent proceeding pursuant to section 37-1128, subsection B, consider evidence of public trust values and then identify and make a public report of any public trust values that are now associated with the navigable watercourses.

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

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

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

Thus, in compliance with the statutes, the Commission is required to collect evidence, hold hearings, and determine which watercourses in existence on February 14, 1912, were navigable or nonnavigable. This report pertains to the 356-mile reach of the Little Colorado River from headwaters on the north slope of Mt. Baldy to its confluence with the Colorado River near Cape Solitude. 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 Puerco River from the New Mexico border to its confluence with the Little Colorado River in Apache and Navajo 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 37-1123B. 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

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).

highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

A.R.S. § 37-1101(5).

The foregoing statutory definition is taken almost verbatim from the U. S. Supreme Court decision in *The Daniel Ball*, 77 U.S. (10 Wall) 557, 19 L.Ed. 999 (1870), which is considered by most authorities as the best statement of navigability for title purposes.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. 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, reviewed evidence and records regarding the navigability and nonnavigability of the Little Colorado River from its headwaters on the north slope of Mt. Baldy in southern Apache County through Navajo and Coconino Counties to its confluence with the Colorado River west of Cameron, Arizona. Evidence consisting of studies, written documents, newspapers and other historical accounts, pictures and testimony were submitted. There were a number of separate documentary filings, the most comprehensive of which was the Arizona Stream Navigability Study for the Little Colorado River and Puerco River prepared by a

project team consisting of SFC Engineering Company ("SFC") in association with JE Fuller/Hydrology and Geomorphology, Inc. ("JEF") and SWCA, Inc., Environmental Consultants ("SWCA"), under contract with the Arizona State Land Department dated January 1999. It was revised and updated in June of 2004 by JE Fuller/Hydrology and Geomorphology, Inc. Also submitted was the very useful and comprehensive Draft and Final Report on the Little Colorado River From the Colorado River Confluence to Sunrise prepared by Stantec Consulting, Inc. in association with JE Fuller/Hydrology and Geomorphology, Inc. under contract with the Arizona State Land Department dated April 21, 2000; a slide show presentation prepared by Patricia Q. Deschamps PE, RLC, at Navigant Consulting, Inc., on the entire Little Colorado River. Documents were also submitted by David Baron of the Arizona Center for Law in the Public Interest; a report on the Little Colorado River submitted by the State Land Department and SFC Engineering, Inc.; and a report on the Little Colorado River from the Eastern Arizona Counties Organization submitted by Martin Moore, Apache County Development; and letters, reports and documents submitted by Chuck Krantz, Colby Muckelroy, Candace Hughes and Nancy Orr. The list of evidence and records, together with a summarization is attached as Exhibit "E." A public hearing was held on April 26, 2005, at St. Johns, Arizona, in Apache County, and on April 25, 2005 at Holbrook, Arizona, in Navajo County, and on July 14, 2005 in Flagstaff, Arizona in Coconino County for the public to present testimony and evidence on the issue of navigability of the Little Colorado River. Various individuals appeared at the hearings in St. Johns, Holbrook and Flagstaff and gave testimony. A public hearing was also held on October 20, 2005, 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 Little Colorado River Watershed

The Little Colorado River, particularly the middle reach, has a long and rich history as a corridor for trade and travel, although it is not mentioned as being used for commercial trade or commerce by boat. Its upper reach from the head waters on the north slope of Mt. Baldy is a bubbling mountain stream with trout. Its middle reach is in the high plateau, semi-arid region with some dams and reservoirs until it reaches Holbrook where it is joined by the Puerco River and from there it flows along the 35th parallel which was one of the main corridors of travel in the prehistoric and historical times. From Winslow, it flows generally north and crosses the Navajo Reservation to its confluence with the Colorado River. The flow of the Little Colorado River is considered as perennial but erratic and was sufficient to provide water to prehistoric inhabitants for farming and water stops for traveling. The middle reach was used as a major path for travel among the prehistoric Indian cultures.

Archaeological evidence shows that the Little Colorado River basin has had extensive human occupation from the earliest paleoindian times (9500 B.C. - 11,500 B.P.).⁵ The numerous archaeological sites and remains in and near the valley of the Little Colorado River have long attracted the attention of scholars and archaeologists and have provided a great deal of data and research in archaeology. Over 4,000 archaeological sites have been recorded in the Little Colorado and Puerco River valleys and over 200 such sites have been excavated. Approximately 50 projectile points of the Clovis type have been found at one site on the upper Little Colorado River providing evidence of use of the region in the early paleoindian period when hunters exploited the now extinct megafauna such as woolly mammoths and longhorned bison.

⁵ The paleoindian period is generally recognized to be between 9500 B.C. or 11,500 B.P. (before present) to approximately 6,000 B.C. or 8,000 B.P. The paleoindian period was followed the archaic period 6,000 B.C. to 8,000 B.C. or 8,000 B.P to 100 to 200 A.D. when the classical cultures called Anasazi and Mogollon began to develop.

During the archaic period (6000 to 500 B.C.) after the extinction of the megafauna, the occupants of the region hunted and gathered more modern species of plants and animals. Maize or corn was first introduced into the region as early as 1500 B.C., which allowed the development of a sedentary settlement system with seasonally occupied dwellings. Pottery was introduced around 500 A.D., which increased the trend toward sedentism and by approximately 700 A.D. most of the population was living in small farming communities that were occupied year round.

The culture in the Little Colorado River valley was greatly influenced by the traditional Anasazi and the Chaco Canyon Culture as evidenced by pottery type and kivas, including as early as 800 A.D. the construction of great kivas, a semi-subterranean circular structure 50 feet or larger in diameter. Some community buildings called great houses with floor plans and masonry similar to that of the large pueblos of Chaco Canyon have been found. Concentrations of villages have been found in the Little Colorado River valley in the Petrified Forest, and one of the largest collections of prehistoric ruins called Homolovi is located near Winslow, Arizona, just to the west of the confluence of the Puerco River and Little Colorado River. Archaeological surveys have recorded some 280 sites in this relatively small area. While the people of the Little Colorado River valley are closely related to or classified as a part of the Anasazi Culture, some influence from the Mogollon Culture is indicated, which culture lies to the south in the White Mountains area. The Hopi Indian tribe of today considers the Homolovi Ruins to be ancestral Hopi sites. The people of the Little Colorado River valley were relatively unhealthy and were afflicted with poor nutrition, high infant mortality, and had a low average age at death. Tree ring studies (dendrochronology) indicate that the annual precipitation in the Little Colorado River valley was relatively stable from 400 A.D. to 800 A.D., but from approximately 800 A.D.

to 1200 or 1250 A.D., annual precipitation was highly variable from year to year and from 1276 A.D. for about 25 or 30 years, the area experienced a severe drought.

Archaeologists have established a series of dates following the archaic period relating to recognized development in the Anasazi Culture which commenced between 1 and 200 A.D. The association between the late archaic period and the first manifestations of Anasazi and Mogollon Culture is poorly understood. Most archaeologists agree that the transition occurred some time between 1 A.D. and 200 A.D. It is possible that early Anasazi and Mogollon groups developed from archaic populations through the adoption of agriculture and adaption to a semi-sedentary lifestyle. As pointed out above, maize or corn agriculture was first introduced to the southwest approximately 1500 B.C. as indicated by findings in New Mexico. Radiocarbon datings from ruins in the Petrified Forest indicate the beginning of cultivation of maize in the area some time between 900 B.C. and 100 B.C. Archaeologists generally accept the dating period sequence for the Anasazi Culture which was established at the Pecos Conference in the 1920's.⁶ It has not been conclusively demonstrated that the Anasazi populations evolved from earlier indigenous groups, but it seems most likely that this is what occurred, together with some infusion of new ideas from other areas such as mesoamerica or central Mexico.

Pottery began to be manufactured and generally used in the latter part of the Basketmaker period (A. D. 500 - 700) as the culture became more sedentary. In the earlier Anasazi period, people lived in pithouses that were partially sunk into the ground, but later constructed surface houses and the pit structures took on ceremonial functions such as the kivas. The Pueblo period is characterized by the construction of

⁶ The generally accepted dates for each period are as follows: Basketmaker II (A.D. 200 - 500), Basketmaker III (A.D. 500 - 700), Pueblo I (A.D. 700 - 900), Pueblo II (A.D. 900 - 1100), Pueblo III (A.D. 1100 - 1200), Pueblo IV (A.D. 1200 - 1540), and Pueblo V (A.D. 1540 - present). Basketmaker I was left open for anticipated future discoveries of evidence of the early transition between archaic and early Anasazi, but no satisfactory firm documentation has been found.

above-ground architecture and the production of painted pottery. During the Pueblo II period (A.D. 900 - 1050), large villages were constructed with great houses in the style of Chaco Canyon. Also, great kivas 50 feet or 15 meters in diameter were constructed. A system of satellite photography has identified a road system from Chaco Canyon, one of which runs down the Puerco River into Arizona and then follows the Little Colorado River after the Puerco River joins it. Although there was apparent wealth during the Pueblo period, the population, as shown by archaeological studies of graves, was remarkably unhealthy with poor nutrition and low life expectancy. During the Pueblo III period the Chacoan style great houses continued to be used, but pueblos with large central plazas similar to the Pecos Pueblo were also constructed. The Pueblo IV period (A.D. 1300 - 1450) is characterized by large plaza-oriented pueblos, the best examples of which are located in the Petrified Forest National Park near Holbrook, Arizona and the Homolovi ruins and Chevelon ruins near Winslow. Large sites such as Casas Malpais have excavated near St. Johns and Springerville. Small amounts of land were also irrigated on the upper Little Colorado River and at Holbrook, and at the mouths of Chevelon and Cottonwood Creeks east of Winslow. Also the Canyon Diablo area in the Leupp and Tolchaco area had some farming due to irrigation agriculture.. After the severe drought that commenced in 1276 and lasted for 25 years, the whole area, including the Little Colorado River watershed basin lost significant population. While there is evidence of continued occupation up through the historic period, the population was smaller and more concentrated in large pueblos. There is significant evidence of irrigation agriculture at all of the sites in the middle and upper reaches of the Little Colorado River such as Petrified Forest, Navajo Springs and Homolovi, Lyman Lake and St. Johns, and many minor sites with ditches and acequias still in evidence when the first modern settlers arrived.

On the lower Little Colorado River reach, below Sunrise/Leupp, there are ruins and evidence of pre-Columbian occupation. This early Native American occupation is especially evident at Wupatki National Monument north and a little east of Flagstaff, the eastern boundary of which is the Little Colorado River. More than 2,700 sites have been photographed, mapped and analyzed in the Monument. While the people that lived at Wupatki were essentially of the Anasazi culture, they had been greatly influenced by the Hohokam in the south and developed into a separate culture known as the Sinagua. This trait is evidenced by the ball courts in the various ruins which are seen as an influence from Meso-America through the Hohokam culture. Evidence is also present of the Cohonino culture from the west. While the occupation of this area by pre-Columbian residents goes back at least as far as 700 A.D., the growth and maturation of the area occurred after that date. In 1065 and 1066 A.D., Sunset Crater Volcano, which is south and a little east of Wupatki, erupted and spread volcanic ash all over the area. The result of this increased farming potential and population since the volcanic ash retains water and is rich in minerals. No doubt this eruption had a great deal to do with the success of the inhabitants of Wupatki, but the great drought commencing in 1276 A.D. reached this area also and caused a general depopulation with many of the inhabitants migrating south to the Verde Valley or up river to Homolovi and other places.

The middle and lower reaches of the Little Colorado River watershed basin has very few trees and there is no evidence of any prehistoric intentional floating of logs down the river. Logs have been found in the ruins at Homolovi near Winslow and other sites, which probably floated down the Little Colorado River and/or Puerco River during floods and were picked up as driftwood and used in the construction of the pueblos at that site. There is no evidence whatsoever of use of the Little Colorado River or Puerco river by the prehistoric cultures for boating or travel on the water. On the

other hand, the Little Colorado River basin was a major corridor or thoroughfare for communication between the Hopi mesas and the Zuni Indian tribe, as well as between the Hopi, Zuni and Rio Grande Pueblos. In prehistoric times, travel was exclusively by foot. Prior to the arrival of Coronado in 1540, the American Indians had no horses, mules or draft animals, such as oxen. The trails existing in the Little Colorado River watershed have continued down into historic times.⁷ The Hopis make an annual pilgrimage from the pueblos on the Hopi mesas to the Grand Canyon down the "salt trail," a part of which goes down the Little Colorado River Gorge. This pilgrimage is a rite of passage for young Hopi males to obtain sacred salt for religious ceremonies.

Pottery shards and other artifacts show there was trade from the Kayenta and Anasazi in the north, Cohonino culture from the west, the Sinagua culture from the Flagstaff area and the Verdi Valley from the southwest. There was also evidently trade from the Mogollon culture from the south in the White Mountain area and evidence of trade from the Chaco Canyon and Rio Grande Pueblos from the east.

B. Historical Development of the Little Colorado River Watershed

Historical documentation of the Little Colorado River watershed is extensive and covers over 450 years. The first European exploration of the area took place in 1539 when Friar Marco de Niza and Esteban followed the established trails from southern Arizona as far north as the Zuni region. The next year (1540) Coronado made his famous trek into the southwest establishing his headquarters at the Zuni city of Hawikuh, and later sent explorers across the Little Colorado River watershed to the Hopi pueblos. The trade routes used between the Hopi and Zuni pueblos were in use and documented as early as the Coronado Expedition. Coronado sent two expeditions from Hawikuh to the Hopi villages, one under Pedro de Tovar who visited several of the Hopi villages, and a second under Capt. Cardenas who went on to the Colorado

⁷ U.S. on behalf of Zuni Tribe of New Mexico v. Platt, 730 F.Supp. 318 (D.Ariz. 1990).

River and first saw the Grand Canyon. Both of these expeditions crossed the Little Colorado River and Puerco River, although neither of them described them. In 1540-42, the time of the Coronado Expedition, Hopi and Zuni Indians lived in the area. They are probably the descendants of the Anasazi Culture of the Four Corners and Kayenta area and the Mogollon Culture of the White Mountains area. Most archaeologists and anthropologists believe that the Navajo are relatively recent arrivals in the southwest, having migrated into the region after the Coronado Expedition. The Navajos and Apaches speak mutually intelligible dialects of a single language in the Athabascan family of languages. The Hopi language is of the Uto-Aztecan family and is related to the Pima and Papago languages of southern Arizona. The Zuni speak a language that seems unrelated to either Uto-Aztecan or Athabascan. Historical sources indicate that by 1582 Espejo encountered people in northern New Mexico who are believed to be the first arrivals of the Navajo people and who probably migrated into northern New Mexico from the northeast plains area. The numbers of Navajo increased during the 1600's and by 1700 they were a major population in the area. Their kin, the Apaches, settled to the southeast in the mountain and desert areas of New Mexico and Arizona.

In 1582 Antonio de Espejo led an expedition into the southwest following a different route from Coronado in that he came up the Rio Grande. Traveling overland, he followed the Rio Puerco and the Little Colorado River to the Zuni villages and on to the Hopi Mesas. At Oraibi, one of the oldest Hopi villages, he learned of mines to the south and in April of 1583 led a small expedition south, following the Hopi Trail into the Verdi Valley, and reached the prehistorically worked mines, which were apparently in the vicinity of Jerome, Arizona. Thereafter, he returned to Santa Fe.

No other expeditions were made by the Spaniards into the southwest until 1598 when Don Juan de Onate colonized New Mexico along the upper Rio Grande and began his own exploration of the southwest. He sent Marcos Farfan de las Godas with a

small party to investigate the mines described by Espejo, and they most likely followed the route of the Puerco River valley to Holbrook and the Little Colorado to Winslow, then southwest to the Mogollon Rim and west to the Verdi Valley.

In 1680, the Pueblo Indians revolted and drove the Spaniards out of New Mexico and Arizona as far south as El Paso, Texas. Three attempts were made at reconquering the southwest between 1680 and 1692, but only the third was successful when Don Diego de Vargas in the fall of 1692 reconquered the Pueblos of New Mexico. The Hopi pueblos were never reoccupied by the Spaniards, but one of them, Awatovi, allowed a Spanish mission to be established in its confines and gave assurances of allegiance to de Vargas and New Spain. In the early 1700's the conservative leaders of the Hopi villages under the leadership of Oraibi conducted a surprise attack on Awatovi and killed all of the men and took the women and children, spread them among the other Hopi villages, and burned Awatovi to the ground. Apparently this was done because the Hopis felt that the people of Awatovi were becoming too devoted to Spain and the Catholic Church, abandoning their old ways and religion. In 1716, Governor Martinez led an expedition and camped at the site of Awatovi, and there attempted to negotiate and force the Hopis into submission. After two and a half weeks of attempts at persuasion, threats and even force, he returned to Santa Fe having been unsuccessful. His route followed the Little Colorado River, at least part of the way, until he turned north to the ruined pueblo of Awatovi. Other early Spanish explorers who traveled along the Little Colorado River watershed or crossed it were Escalante in 1775, Garces in 1776, and D'Anza in 1780. None of these expeditions recorded the Little Colorado River and Puerco River as being anything other than an ephemeral or intermittent stream. Most of the accounts ignore it as it was not even considered a good source of water.

In 1821, Mexico won its independence from Spain. The Mexican government sponsored few expeditions into northern Arizona, being more concerned with Santa Fe

and the cities along the Rio Grande basin in New Mexico. Some expeditions against the Navajos were undertaken but with only limited success. Mexico tried to discourage incursions into its territories by citizens of the United States which was rapidly expanding westward, but fur trappers moved into Taos and Santa Fe while they were still a part of Spain and began trapping along the Gila River and its tributaries in the 1820's. In the dry desert southwest the mountainmen trappers generally rode horseback. There is little evidence of their using boats and no evidence at all of boating on the Puerco or Little Colorado Rivers. Normally the trappers' routes began in southern New Mexico, and down the Gila River, but often they would return along the trails of the 35th Parallel, thus leading up the Little Colorado River and Puerco River watershed area. None of the accounts of the mountainmen during this era refers to any trapping or even significant flowing water in the Little Colorado River.

The Mexican-American War culminated in 1848 by the Treaty of Guadalupe Hidalgo with the cession of New Mexico and Arizona north of the Gila River from Mexico to the United States. Following the war in 1848, Colonel Edward Newby led a campaign against the Navajos from northern New Mexico in which he describes the trek down the Puerco River, which is singular only because of his description of the pre-Columbian ruins. In 1849, Colonel John M. Washington led a surveying expedition through the region. He traveled down the Puerco River and may have crossed into Arizona before leaving the Puerco River basin to go north to Canyon de Chelly. He returned by crossing the Chuska Mountains to the north and passed by Chaco Canyon. In 1851, Lorenzo Sitgreaves conducted a survey to determine reasonable routes of travel from Fort Defiance and the Zuni pueblo to the Colorado River and, in particular, Fort Yuma. He certainly crossed the Little Colorado River basin. Little mention of the flow condition of the Little Colorado River and its tributaries was made in any of their reports.

In 1853-54, Emil Weeks Whipple surveyed along the 35th Parallel for a railroad route from Fort Smith, Arkansas to Los Angeles, California. In late 1853, he left Zuni, traveling down the Zuni River, camping at Jacob's Well and Navajo Springs, both of which are in the Little Colorado River watershed basin and are good water sources. The main line of the Santa Fe Railroad generally now follows the route surveyed by Whipple. In his report, he mentions the Little Colorado as having some possibilities for supporting human subsistence but states it is not navigable. Other explorers during the 1850's period were Francis Xavier Aubrey, a Santa Fe trader who made trips across northern Arizona to California, and Edward F. Beale who surveyed a wagon road from the Arkansas River to California, again following generally the Whipple surveyed route. Beale's comments on the middle reach of the river were that he found no water except in occasional small pools, which was not drinkable. He stated that the river had few cottonwood trees along its banks and for a short distance on the hillsides there were some scattered cedars, but very little other growth. He stated that the Little Colorado River and its tributaries had very little water but at times after rains it probably runs but like most western rivers, it infiltrates or sinks very soon through the porous soil. Other American explorers of this era were Lt. Joseph Christmas Ives (1857-58), Rose Brown, and the Bailey Wagon Trains, all of which when mentioned reported the middle reach of Little Colorado River as being intermittent or ephemeral in flow.

In 1863 Arizona was created as a separate territory from New Mexico, and on December 29 of that year the new officers of the Arizona Territorial Government took their oaths of office at Navajo Springs, which is near the Puerco River just south of Interstate 40, Navajo Exit No. 325, 39 miles east of Holbrook and 14 miles east of the Petrified Forest exit. Governor John M. Goodwin and the rest of the government officials, accompanied by Gen. James H. Carlton with a military escort, then went on down the Puerco River to its confluence with the Little Colorado and on to Sunset

Crossing and then headed south across the Verde Valley to establish the new capital. In 1867 and 1868, William Jackson Palmer conducted surveys along the 32nd and 35th Parallels to evaluate these routes for a railroad to the Pacific Ocean. He traveled down the Puerco River and the middle reach of the Little Colorado River until it turns north at Winslow in November of 1867 and arrived in California in January of 1868. He described the rivers as being dry at that time. In 1870 Gen. George Stoneman, who was military Commander of the Department of Arizona, toured all of the military posts in Arizona. In the northern leg of his tour he camped near the confluence of the Little Colorado River and Puerco Rivers before cutting south to visit what later became Fort Apache, and he notes nothing of importance with regard to either river.

Colonization of the area by settlers of European descent may have begun as early as the 1860's, although the Mormon settlements in the area began approximately a decade later. Juan Baca and his family is said to have settled in Round Valley near Springerville and Eager in 1862. Basque shepherders also settled in the area of Springerville in 1865. There is no record of any substantial colonization of the Puerco River basin within Arizona during this time. In 1870 Solomon Barth was awarded a contract to haul supplies to Camp Apache (later Fort Apache) from the railhead at Dodge City, Kansas. He traveled part way down the Puerco River, but probably turned south away from the river toward the mountains before getting far into Arizona. He then crossed the Little Colorado River on his way to Pinetop and Fort Apache. In the 1860's and 1870's, Mormon colonists sent by Brigham Young from Utah explored the area and established the towns of Joseph City, St. Johns, Springerville, Taylor, Snowflake, and other locations, all of which are in the Little Colorado River watershed basin. Many settled near Springerville and St. Johns and by taking water from the Little Colorado River for irrigation, grew grains and put in orchards. In the middle and lower reach of the Little Colorado River, the farmers complained that the water was very

muddy and filled their ditches and ponds with sediment. The dams they built to contain the river and divert its water for irrigation frequently were washed out due to floods.

The Atlantic & Pacific began construction of a railroad across northeastern Arizona in 1881, generally following the 35th Parallel route previously surveyed by Whipple, Beale, and Palmer. The railroad construction reached the present site of Holbrook in September of 1881, and Camp Supply was established at that location from which supplies could be hauled by wagon south to Fort Apache. The railroad generally paralleled the Puerco River from Gallup, New Mexico, to Holbrook then went on west paralleling the Little Colorado River until the river turned north near Winslow. The railroad then went on to Flagstaff and from there on into California. Cattle and sheep were driven through the area in the 1860's and 1870's and cattle and sheep ranching became a major industry with the arrival of the railroad. To help pay for the railroad, Congress in 1866 granted railroad companies millions of acres of land alongside the routes they built. The Atlantic & Pacific Railroad received odd numbered sections of land for 40 miles on each side of the railroad right-of-way. The railroads thus acquired 14,325,760 acres of land in Arizona. Many of these acres were sold to small cattlemen who set up ranching operations that could use the railroad for shipping their cattle and sheep. In 1884 the Atlantic & Pacific Railroad sold one million acres to the Aztec Land & Cattle Company, which was one of the largest ranches, known as the Hashknife Outfit from its distinctive brand. It ran cattle from Holbrook to Mormon Lake and from the Little Colorado to the Mogollon Rim. It was in operation from 1883 to 1902. The headquarters of the Aztec Land & Cattle Company was on the south side of the Little Colorado River, not far from the confluence with the Puerco River. There was some farming the Little Colorado River near Holbrook and Joseph City mostly by the Mormon settlers and also many of them would put in gardens, orchards and

pastureland. By 1880, most of the land north of the Little Colorado River was encompassed in the Navajo Indian Reservation and most of the land south of the Little Colorado River was used for grazing of cattle or sheep. The 1880's saw overstocking of the range primarily by sheep which reduced the grass and forage and resulted in environmental deterioration.

In the 1880's Springerville and St. Johns were the center of a classic range war between sheepherders and cattlemen. Cowboys from the Aztec Land and Cattle Company also were involved in the Pleasant Valley War, the Graham-Tewksbury Feud of the late 1880's, which was another classic sheepherders and cattlemen war.

Various studies were done with the idea of putting in dams to irrigate land all along the Little Colorado, but most of them were abandoned due to the lack of good locations to build large dams and the erratic and unpredictable nature of the flooding on the Little Colorado River. By the 1880's, a total of approximately 3,000 acres of land have been brought under cultivation by irrigation on the Little Colorado River in Round Valley, Springerville and St. Johns. Due to the small population and mountainous areas, transportation was slow to develop on the southern part of the Little Colorado River basin, but the Little Colorado River and Puerco River did provide transportation corridors which served the public until the railroad arrived in the 1880's.

During the 1880's and 1890's a number of leading archeologists surveyed the area looking for ruins. These included Adolph Bandoleer, Cosmos Mendolef; and Jesse Walter Fewkes of the Smithsonian Institution. In the summer of 1896, Fewkes excavated the Homolovi Ruins and commented on the conditions of the Little Colorado River:

The Little Colorado River was dry during the work at Homolovi and was crossed and re-crossed almost anywhere, the sole obstruction being the steep banks, which were several feet high. Later in the summer, however, it became a raging torrent impassible save in one or two places and even these were dangerous on account of the many quicksands.

All of the early accounts of the Little Colorado River are that it is an intermittent stream throughout its middle and lower reaches in normal times but during periods of heavy precipitation, such as late summer and possibly in the winter, it will flood and cannot be crossed. Thus it is described as a erratic and unpredictable stream. Its upper reach is described as normally a small stream or creek, but it was dammed up by the early settlers to irrigate their farms and orchards. Also a number of early observers comment quite explicitly on the quicksands found in the river, which made it very dangerous even at low flow. Herbert Gregory, a geologist for the U.S. Geological Survey, conducted a geological and hydrographic reconnaissance of "Navajo Country" in 1909 to 1913. In his reports, he described the rivers as follows:

The Puerco-Little Colorado is an intermittent stream, from its source at the Continental Divide in New Mexico to Holbrook in Arizona it is marked at low water by a dry bed interrupted by stretches of stream rarely exceeding a mile in length. I have been informed that during parts of certain years no flowing water is to be found in the Puerco from Gallup westward to its mouth. At Holbrook it joins the upper Little Colorado, a perennial stream from the White Mountains. Between Hardy and Winslow the Little Colorado receives the waters of Chevelon Fork and Clear Creek, tributaries from the central Arizona highlands which give the Little Colorado its perennial character throughout the 33-mile course from Holbrook to Winslow, and make this section, including the settlements at Holbrook, St. Joseph, and Winslow the only part of the Puerco-Little Colorado Valley that has attained commercial importance. From Winslow to Colorado river, a distance of over 100 miles, the flow of the Little Colorado is seasonal, and during years of normal precipitation it reaches a stage where no running water is to be found except on the floor of the canyon near the junction with its master stream.

* * *

[However,] during the season of daily rains . . . the forbidding dry, hot valleys leading to the Little Colorado are transformed into a series of silt-laden rivers exceeding 100 miles in length, and the Little Colorado itself becomes a river of commanding proportions, ranking with the Gila and the San Juan in the volume of water carried to the Colorado.

In the lower reach of the Little Colorado River (from Winslow to the confluence with the Colorado River), there was little commercial enterprise excepting for trading posts established to supply the Navajos with goods that they needed. Herman Wolf's

Trading Post was established 13 miles downstream from Leupp . In 1905, John Walker established a trading post at Tolchaco that was abandoned in the 1920's. Also, a mission was established at Tolchaco in 1900 by William R. Johnston. A trading post was also established at Black Falls. One of the more famous Indian trading posts is the Cameron Trading Post located in Highway 89 near the intersection with State Route 64, which goes to the South Rim of the Grant Canyon. Cameron is located on the Little Colorado just before its entrance into the Little Colorado river Gorge and is a frequent stopping place for tourists and others and is the only bridge across the lower reach of the Little Colorado River. Since 1955 and the advent of modern neoprene rubber boats and modern kayaks a number of people have boated the Little Colorado River Gorge below Cameron to the confluence with the Colorado River. This boating can only be accomplished when the river is flowing and in that state it is frequently dangerous with boaters and other obstructions that frequently damages the rafts or the kayaks.

Although the Little Colorado and Puerco Rivers watershed has been a major transportation corridor, both prehistorically and historically, no one has ever used the river itself for purposes of transportation. The early explorers traveled by foot, horseback and wagon. With the arrival of the railroad in 1881, it became a major mode of transportation and by the time of statehood, with an improved road system, automobiles and trucks became increasingly important. Roads and trails ran along the Little Colorado and Puerco Rivers and crossed the river at a series of fords or crossings. Boats and rafts were used only rarely, and then primarily to cross a flooded stream.

C. Boating Attempts, Historical and Modern, on the Little Colorado River

There is no evidence that the prehistoric Indians ever used or attempted to use the boats, rafts or barges on the Little Colorado River. Likewise, the early Spanish explorers left no record of attempting to float or travel on the river by means of a boat or raft. The mountainmen or trappers of the 1820's to 1840's traveled by horseback,

mule or on foot; they used canoes on the Colorado River but not on any of the rivers in Arizona, such as the Gila, Salt, Verde or Little Colorado.

The reports submitted to the Commission list only six isolated accounts of attempted boating on the Little Colorado River during historical times. All but one account involved crossing the river between the towns of Winslow (Sunset Crossing) and St. Joseph. There were no accounts of historical boating on the upper reach of the Little Colorado River or the lower reach of Little Colorado River. None of these boating attempts prove that the Little Colorado River was ever navigable in its ordinary and natural course.

In 1858, explorer Lieutenant Joseph Christmas Ives explored the Little Colorado River. He reportedly used a portable raft to cross the river. His remarks on the crossing of the river reveal that the party pulled the portable boats across, as he wrote "packstraps were tied together to reach across, and a single person could easily pull over the boat and a load weighing a couple of tons. The mules swam over to enable them to reach and emerge from the river across the quicksand banks." Thus, it appears from his remarks that the river was more of a hindrance to transportation than as a means to facilitate it.

The next record of boating on the Little Colorado River involved the floating of a wagon across the river in 1875, when Lieutenant John Wyer Summerhayes and his group traveled from Camp Apache to Fort Whipple. Because of quicksand, one of the wagons became stuck in the middle. According to the account, men began to take the wagon apart and covered the wagon in canvas to fashion a boat. A couple of soldiers that had already crossed the stream on horseback tied ropes to the wagon to help pull it to the other side of the river. The rest of the baggage, two ambulances and another wagon were pulled across the river by rope.

The third boating account involved Mormon settlers who rafted across the river during floods. Subsequent to the first Mormon colony that was established in 1876, annual flooding hit the communities often leading to the ruin of dams. During flooding in 1878 in Woodruff, the river overflowed after seventeen consecutive days of rain and caused the local dam to wash away. During the flood in September, it was reported that boats and rafts were used to travel between the various towns. There was no indication that the Mormon settlers ever used boats or rafts either before or after this one incident during the floods.

Both of the remaining accounts of people using a boat or raft to cross over the Little Colorado River are unsubstantiated. The first report was about a ferry at Wolf's Crossing, which was near Wolf's Trading Post established in 1868. The trading post operated until about 1903. Although one historian mentioned the ferry at Wolf's Crossing, which was two miles south of Tolchaco, no other history of the Wolf Trading Post or Tolchaco described the ferry. Next, there was one personal account recalling a story that a raft was located near the Little Colorado River for use to cross the river when flooded. There was no other historical documentation of this "makeshift ferry."

The final instance of the use of boats on the Little Colorado River involved a group of Bostonians, who rafted downstream from Sunset Crossing to the junction with Canyon Diablo in the spring of 1876. Two groups of Bostonians, called the first and second "Boston Parties," were recruited by the Arizona Colonization Company of Boston to promote settling in the Little Colorado River Valley. According to the report, the first Boston Party, which arrived in April 1876, was "appalled at the harshness of the Little Colorado River Valley and would not have settled there even if the Mormons had not already taken the best lands." They left the area, and some used a raft to float from Sunset Crossing, near present-day Winslow, to Canyon Diablo, just upstream of Leupp. However, not all in the first Boston Party took this route. Others accompanied

the wagons to Canyon Diablo. This single account of boating downstream does not indicate that the Little Colorado River was a "highway for commerce."

There were also a couple of early explorers and settlers that speculated about the potential for log flotation on the river, but there is no evidence that this ever actually occurred. Furthermore, historical evidence indicates that at least four groups of explorers in the area did not believe that the Little Colorado River was navigable because they "carried or constructed boats that they used on the Colorado River, but not on the Little Colorado River." One trapper (George Yount) used canoes on the Colorado River, yet not on the Little Colorado River. The same is true for the explorer Aubrey, who crossed the Colorado on a raft and later a boat, but did not use either on the Little Colorado. Beale also used boats on the Colorado River, but not on the Little Colorado River. Additionally, it was noted that in 1902 miners transported a boat overland from Flagstaff to Lees Ferry for work being conducted on the Colorado River. The author of this account also published a photograph depicting the oxen hauling the boat across the Little Colorado River.

Modern records and stories indicate that there has been recreational boating on the Little Colorado River gorge below Cameron. There are stories of four trips by either kayakers or rafters floating the river below Cameron to the mouth of the river since 1955. One such account from 1972, however, indicates that the kayaking trip was unsuccessful because "the river dried up" and the boaters were left to carry the kayaks the rest of the trip. On the lower Little Colorado River, there have been accounts of kayaking during times of flooding on the stretch of the river from below Grand Falls downstream to the Black Falls.

Although there have been isolated boating events on the Little Colorado River, the overwhelming weight of the evidence suggests that the river is not and was not "navigable." There is no evidence of regular travel in the river or using the river for

commerce, such as transporting goods, prior to statehood. Nor was the Little Colorado River "susceptible" to navigation. A handful of intermittent boating accounts in recent history does not make it more likely than not that the Little Colorado River was navigable or susceptible to navigation on February 14, 1912.

The historical accounts of crossing river seems to indicate that the Little Colorado River, when in flood, was more of an obstacle or impediment to travel. The use of ferries on a river does not establish that the river is a useful channel of transportation or commerce. *North Dakota v. United States*, 770 F.Supp. 506 (D.N.D. 1991), *aff'd* 972 F.2d 235 (8th Cir. 1992) (noting that ferries that cross the river are the "functional equivalent of bridges," which "establishes that the river is an obstruction to commerce which must be overcome"). These historical accounts in the record indicate that the river was an obstacle to cross rather than an aid in transportation in the area or as a means of conducting any commerce.

Boating on the Little Colorado River following statehood does not offer any more proof that the river was used as a "highway for commerce." Isolated accounts of boating via low-draft boats, such as kayaks or canoes, since 1955 do not indicate that the Little Colorado River is susceptible to navigability. In fact, one of the accounts from 1972 reveals that the trip was a failure because the river dried up and the boaters had to carry their kayaks. Other stories of kayakers boating the lower Little Colorado River during floods do not indicate that the river was navigable. Occasional use during exceptional times does not support a finding of navigability. *United States v. Crow, Pope & Land Enis, Inc.*, 33F.Supp. 25, 32 (N.D. Ga. 1972) ("The water must be susceptible for use as a channel of useful commerce and not merely capable of exceptional transportation during periods of high water.") (citing *Brewer-Elliott Oil & Gas Co. v United States*, 260 U.S. 77 (1922)).

No evidence exists to show that the Little Colorado River was ever used as a "highway for commerce" over which trade and travel were conducted in the customary mode of trade and travel on the water, nor was it susceptible for such use.

D. Geology, Geomorphology and Hydrology

The Little Colorado Basin occupies the northern one-third portion of the Colorado Plateau, approximately a 150,000 square mile area in northern Arizona, northeastern Utah, southwestern Colorado and northwestern New Mexico. During the Mesozoic Era, prior to 65 million years ago, this area was essentially a low-lying plain sometimes submerged under the sea and at other times a flood plain crossed by sluggish rivers and on occasion a desert with blowing sand dunes. During this time period, many thousands of feet of sediment accumulated that forms the layers of the various types of sedimentary stone seen in northern Arizona and readily identified in the Grand Canyon. Regional uplift of the entire area, including the Little Colorado River Basin is thought to have occurred during the Laramide Orogeny in the late cretaceous and early tertiary period, 65 million to 75 million years ago. Following this regional uplift, the area experienced downward cutting by the various rivers, alternating with periods of deposition and erosion, as well as modification from the basalt flows of various volcanoes.

Most of the basin is at an altitude higher than 5,000 feet, but there are few peaks that exceed 11,000 feet. The horizontal, sedimentary rocks were gently warped during Cenozoic time producing a series of broad uplifts with intervening basins. The plateau is a land of canyons more common here than in other parts of the United States and erosion has produced enumerable escarpments and structural benches. Retreating escarpments are considered the most characteristic feature of much of the river basin. Mountains are formed by the intrusion of igneous rock of volcanic origin and exist

within the province, but mountain ranges are lacking, except for the Chuska Mountains on the Navajo Reservation to the north.

In the upper portion of the Rio Puerco in New Mexico along the Continental Divide and the upper reach of the Little Colorado in the White Mountains, high-forested plateaus are formed, but except for these high altitudes, the climate is semi-arid to arid.

Many of the historical accounts of the Little Colorado River describe it as a perennial or intermittent stream which flows generally when there is a great deal of precipitation. In 1775 Escalante described the Puerco River as follows: "In an arroyo bed, which is dry most of the time about a mile south of the road, there are three wells of water but it is not very good." In 1858 Beale described the confluence of the Puerco River with the Little Colorado as containing six inches of water in depth and about 20 feet in width. The upper Little Colorado River at the confluence with the Zuni River was described in 1851 at the time of the Sitgreaves expedition as an insignificant stream divided into several small channels flowing through a narrow valley destitute of timber but covered by a thick growth of rank non-nutritious grass. The Little Colorado River near Woodruff was described as running through a deep and rock canyon much as it does today. The middle Little Colorado River downstream of the confluence with the Puerco River was described in 1851 as flowing now between bluff sandy banks fringed with cottonwood trees and presenting at length the appearance of a river but still with little water in it. In 1858, Beale described the Little Colorado River at the confluence with the Puerco as follows: The Little Colorado comes from the southeast. It was a discolored and shallow stream, some 100 yards or so from bank to bank, but the water was not wider than as many feet and not given over a foot in depth. In 1853, Whipple described the river at Joseph City as "the stream is now small but rapid; its waters are fresh and clear and sufficient for the irrigation of a considerable portion of the low

plants that border it. Its sinuous course through the bottoms is marked by a line of small alamos." At this location, Whipple estimated the channel to be 30 feet wide with 8 to 10 foot high alluvial banks and a river bottom that could be marshy with willow thickets or covered with loose pulverized soil.

Historical studies show that precipitation intensity in northern Arizona increased in about 1880 and lasted until about 1940. From 1942 through 1961, precipitation was distinctively below the long-term median. Tree ring studies of the general area also show significant changes in precipitation over the period for which tree ring studies have been made. When precipitation, and thus river flow, increases significantly there is significant channel degradation through channel cutting and erosion. The tree ring evidence and other records indicate that the decade between 1905 and 1915 was probably one of the wettest in 500 years in central and northern Arizona. The channels were lightly vegetated, wide and sandy, with an abraded pattern. The soil in the Little Colorado River watershed is mostly impervious, low porosity clays, often with a light sand cover. In general the abundance of the clay soil in the Little Colorado River watershed allows appreciable runoff with little infiltration into the groundwater. A recent study which would probably be similar to the historic view of the Little Colorado River from 1880 on describes the river as follows: "Streamflow in the Little Colorado River is very erratic with almost no flow for several months at a time. Climate and drainage area characteristics are not conducive to a continuous flow and little or no stream flow occurs, except during and immediately after rain. Floods are usually produced by thunderstorms and have sharp peaks and short durations. Runoff increases rapidly in response to rainfall excess on the tributaries and the river. The Little Colorado River watershed is also the major producer of summer runoff and

sediment in the middle reach of the Little Colorado River."⁸ Very large floods occurred in 1905, 1915 and 1916, which resulted in significant bank cutting and maintenance of wide abraded channels. Around the time of statehood tamarisk was introduced to assist in holding back erosion. The tamarisk would be taken out by large floods, but the citizens living along the river would replant through the 1930's. The downstream slope of the Little Colorado River is relatively steep which results in high sediment loads and thus a deep alluvial bed.

The Little Colorado Basin is the second largest in Arizona after the Gila River Basin. At its mouth at the confluence with the Colorado River, the Little Colorado River drains approximately 27,800 square miles in northwestern New Mexico and northeastern Arizona. Two major tributaries join the Little Colorado River above Holbrook; the first is the Zuni River, which rises in western New Mexico and joins the main river at Hunt, Arizona. The second is the Puerco River, which joins the Little Colorado two miles east of Holbrook. The Puerco rises at the Continental Divide in the Cibola National Forest east of Gallup, New Mexico and flows west/southwest through an area north of the Zuni Mountains and south of the Chuska Mountains to its confluence with the Little Colorado River at Holbrook. Silver Creek also joins the Little Colorado River near Holbrook flowing from the south and draining the area around Snowflake and Taylor. The tributaries of the Little Colorado on the reach between Winslow and Holbrook include Leroux and Cottonwood Washes from the north, and Clear Creek and Chevelon Creek to the south. Clear Creek and Chevelon Creek, which drain the Mogollon slope, significantly impact on the hydrology of the Little Colorado River at Winslow. Tributaries to the reach of the Little Colorado River downstream toward the Grand Canyon include Polacca, Corn Creek Wash and Canyon Diablo

⁸ Kolbe, T.R., 1991, Fluvial changes of the Little Colorado River, northeast Arizona, and their effect on settlement patterns of Homol'ovi III Pueblo, a P-IV flood-plain hamlet: M.S. Thesis, Northern Arizona University, 130 p.

Wash. There are many springs within the basin which also contribute to the flow in the Little Colorado River. The total length of the Little Colorado River is 356 miles with an average stream bed slope of 26 feet per mile, which varies greatly depending on which reach of the river one is looking at.

The Mogollon Rim to the south and west dramatically influence the climate of the Little Colorado Basin. This orographic barrier effectively cuts off much of the moist air from the Gulf of Mexico to the south and the Pacific Ocean to the west. The Little Colorado River Basin experiences a bi-seasonal precipitation pattern. Longer duration showers derived from moist Pacific air masses and frontal storms occur primarily in the winter and spring months. Winter precipitation occurs mostly between November and May, moving into the basin from the north and west. Winter run off results from precipitation falling as rain and in the higher elevation as snow. Approximately one-half of the winter precipitation falls as snow and usually melts within days in most areas. Winter storms produce about 40% of the total basin precipitation and most of the usable surface water supply. Summer run off results from localized high intensity convective precipitation occurring throughout the basin. Summer convective storms move in from the south and west. The period from July to September is the primary rainy season. Several days to several weeks of daily rain fall is reported at almost all stations. Average annual precipitation ranges from 8 to 12 inches per year in the lower elevation valleys and plateaus to 16 to 24 inches in the forested portions in the mountains to more than 30 inches per year in the relatively small percentage of the basin in the highest areas of the watershed along the Mogollon Rim and into the White Mountains. Precipitation decreases toward the interior of the watershed with declining elevation. Eighty percent (80%) of the basin receives less than 12 inches of precipitation per year.

The Little Colorado River Basin has a history of over-appropriated water supply. The limited supply and sporadic flood occurrences determine the pattern of water use. Water must be stored during times of excess flow for use in times of deficiency. A report in 1976 indicated that approximately 20,000 acres of irrigated land was in the entire basin and additionally, water is exported out of the basin from two locations on the Mogollon Rim. The dams that have been constructed on the main stream Little Colorado River are relatively small and give only little local flood protection. For larger magnitude, low frequency floods such as a hundred year event, the flood protection provided by these structures is minimal. Two dams are located on the main stream above Holbrook. Zion Dam about 50 miles upstream from Holbrook was completed in 1905, but destroyed by a flood and has been continually rebuilt since then. The reservoir behind the dam has a capacity of about 13,000 acre feet. Lyman Dam, about 20 miles upstream of Zion Dam was originally completed in 1912, but it, too, collapsed soon thereafter and has had to be rebuilt a number of times since then. It has a present capacity of 30,600 acre feet. It has lost a good deal of its storage capacity due to sedimentation since the 1920's. Penzance Dam is located between Joseph City and Holbrook. The first diversion dam here was built in 1876, but washed out by flood the following month and has had to be continually rebuilt. There are a number of geological survey gauges which have operated intermittently and only in some years on the Little Colorado but they do give an idea of the stream flow for the periods of measurement. The U.S.G.S. gauge on the Little Colorado River at Woodruff provided an estimated of annual average flow prior to statehood of 52 cubic feet per second (cfs). The U.S.G.S. gauge on the Little Colorado River at Holbrook had an average annual stream flow of 133 cfs during the period prior to statehood. The gauge also provided an annual peak discharge of 20,200 cfs at Holbrook on November 27, 1905. Presumably, the flood of 1905 that washed out the Zion and Woodruff dams also damaged the

gauges on the Little Colorado River at those locations. The gauging station at Grand Falls in the lower reach of the Little Colorado River reported an annual average flow of 388 cfs between 1914 and 1958. At the U.S.G.S. station at Cameron, Arizona, which is closest to the confluence of the Colorado River, the gauge reported an average stream flow between 1905 and 1914 of 316 cfs.

There has been a good deal of litigation on water and water rights in the Little Colorado River basin. One of the main decisions on these issues is called the Norvell Decree,⁹ which litigation started in 1904, while Arizona was a territory and in 1918, the State Superior Court entered a "final decree." It has been modified a number of times with supplemental orders. This decree and its progeny allocated all of the water in the upper reach of the Little Colorado River and determined that there was no further water to allocate.

An interesting geological site on the lower reach of the Little Colorado River is the Grand Falls of the Little Colorado. It is located approximately 35 miles north and east of Flagstaff, Arizona and can be reached only over dirt roads that in bad weather may not be passable. The Grand Falls were created approximately 20,000 years ago by a 10 mile lava flow from Merriam Crater. The basalt lava flowed into the canyon of the Little Colorado and dammed it up completely. The river filled behind the dam and left a great deal of sediment there before finding its way around the lava flow into the old streambed. The falls themselves are approximately 190 feet high and would be a natural wonder if there were enough water in the Little Colorado River. Many people looking at the Grand Falls during the summer monsoon season have called it the Chocolate Falls because of the great amount of muddy sediment carried in the river at that point. In 1878 or 1879, Frank Harte drove a herd of cattle into the area and set up a ranch on the south side of the river at Grand Falls. In 1884, William Roden arrived in

⁹*The St. Johns Irrigation Company, et al. v. Round Valley Water & Storage & Ditch Company, et al.*, Superior Court of the State of Arizona, Final Decree, April 29, 1918. and Modifications.

the area with several thousand head of sheep. He also built a house on the north side of Grand Falls. Subsequent drought and flooding in the 1890's led to erosion of the Little Colorado River and much of the grass was lost to overgrazing and the drought.

The Little Colorado River is located in a rock canyon and flows from Grand Falls to a place called Black Falls at which a ford across the river served as an important crossing during the early days. A small dam was built out of the black basalt rock and thus occurred the name of Black Falls. A number of attempts by the federal government to establish an irrigation project at that location were not wholly successful. From Black Falls, the river flows on to Cameron, which was another crossing over the river in the early days, but which frequently flooded out. In 1912, the federal government built a suspension bridge across the river at Cameron that provided a good crossing for U.S. 89 and a way of transport for people between Flagstaff and Tuba City and then on into Utah. From Cameron, the Little Colorado River flows into the gorge. The various obstructions and pools in the lower gorge, as well as the slope has caused the river to lose a great deal of its sediment and the water became clear. At Blue Springs and below the color of the river becomes blue due to the minerals it picks up from the springs and mineral deposits in the gorge. At the confluence with the Colorado, it is warm and a bright turquoise blue in non-flood times, in contrast to the cold, brown Colorado River.

In summary, the prestatehood condition of the Little Colorado River before damming and diversions was characterized in its upper region as perennial but with little water. In other words, a nice trout creek. The middle and lower reaches of the Little Colorado River were intermittent or ephemeral and heavily silt laden. In this area, the river was not considered a reliable source of drinking water for the early explorers. They generally obtained water at wells near the river. It was not susceptible to regular use of rafts or even canoes, except during high water. The use of larger

vessels could not have occurred on the Little Colorado River due to the shallow shifting water and natural obstructions, including quicksand.

Dr. Richard Shelton, a longtime professor at the University of Arizona, discusses the rivers of Arizona as follows:

It has seldom been pointed out, probably because it's so obvious, that while many of the river valleys of Arizona and of the desert Southwest have been used extensively as highways, the rivers themselves, with the brief exception of the lower Colorado, have never been used as waterways for general transportation. They are not suitable for navigation as are the rivers of the East, the Northwest, and the Mississippi River drainage. They are either too shallow or too swift and brutal, too filled with rapids or too fickle about which channel they choose to follow. Many of them are intermittent – they flood or they dry up. Explorers and settlers as well as trappers and soldiers followed the valleys of the Gila, the Santa Cruz, and the San Pedro [Little Colorado], but they were never able to float down the rivers for any great distance. . . .¹⁰

Based upon all of the evidence presented to the Commission, it appears that at the time of statehood the Little Colorado River was not navigable nor susceptible to navigability or commercial trade and travel. No evidence of such use or potential use has been identified prior to statehood and since then. There is no historical evidence of any profitable commercial enterprise conducted on water using the Little Colorado River for trade or travel prior to and at the time of statehood. Likewise, there is no historical evidence of flotation of logs downstream for commercial purposes. The intermittent flow, sandbars and sand islands in the streambed would be an impediment to navigation. Certainly, the Grand Falls of the Little Colorado River, with its 190-foot drop, would be a major impediment to navigation. The Little Colorado River is not listed in the Rivers and Harbors Act of 1899. The customary mode of transportation in the region of the Little Colorado River was not by boat. Prior to and at the time of statehood, travel was by foot, horseback, muletrain, wagon and stagecoach, and after 1881, by train when the Atlantic & Pacific Railroad reached Holbrook and beyond to the West. At the time of statehood and immediately thereafter, trucks and automobiles

¹⁰ Going Back to Bisbee, Richard Shelton, University of Arizona Press, Tucson, Arizona 1992, page 124.

were also used as the road system was expanded and improved. No evidence was presented as to whether the homesteads or other federal land patents in the Little Colorado River basin were covered by the Desert Land Act of 1877.

E. Title Issues on the Navajo Indian Reservation

In the hearings on the Little Colorado River, a question was raised as to whether the State of Arizona had jurisdiction to hold these hearings since a good portion of that river flows through the Navajo Indian Reservation, which was federal land set aside prior to statehood for the specific benefit of the Navajo Nation and its members.

The Legislature of Arizona, following the decisions of the Arizona Court of Appeals in *The Center for Law v. Hassell*, 172 Ariz. 356, 837 P.2d 158 (App. 1991), *review denied*, Oct. 6, 1992, and *Defenders of Wildlife v. Hull*, 199 Ariz. 411, 18 P.3d 722 (Ariz. App. 2001), passed the statutes under which the Commission now operates, A.R.S. § 37-1121 to A.R.S. § 37-1132. (2001 Arizona Session Laws, Ch. 166, Sec. 1)

The Arizona Navigable Stream Adjudication Commission ("ANSAC") was established by these laws and directed to hold hearings and make a particularized assessment of the public trust claims that the State of Arizona might have to all beds and banks up to the high water mark of streams and watercourses in the State of Arizona. The Commission must find that a watercourse was navigable at statehood in order for the State to have a public trust ownership claim to the beds and the banks of a watercourse. The fact that a stream flows through an Indian Reservation established before statehood does not in and of itself take away a state's public trust claim. This issue was directly dealt with in the case of *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), which dealt with the ownership of the bed and banks of the Little Big Horn River, which flowed through the Crow Indian Reservation. In that opinion, the Supreme Court stated:

Though the owners of land riparian to nonnavigable streams may own the adjacent riverbed, conveyance by the United States of land riparian to a

navigable river carries no interest in the riverbed. *Packer v. Bird*, 137 U.S. 661m 672, 11 S.Ct., 210, 212, 34 L.Ed. 819; *Railroad Co. V. Schurmeir*, 7 Wall. 272, 289, 19 L.Ed. 74; 33 U.S.C. § 10; 43 U.S.C. § 931. Rather, the ownership of land under navigable waters is an incident of sovereignty. *Martin v. Waddell*, 16 Pet. 367, 409-411, 10 L.Ed. 997. As a general principle, the Federal Government holds such lands in trust for future States, to be granted to such States when they enter the Union and assume sovereignty on an "equal footing" with the established States.

Of course, a key point is that for title to the beds and banks of a watercourse to pass to the state under the equal footing doctrine on the day of statehood, the watercourse must be navigable and the Legislature has empowered ANSAC to hold hearings to determine whether or not the watercourses of the state are in fact navigable.

In the *Montana* case, the Supreme Court held that the Little Big Horn River was in fact navigable and thus title did pass to the State of Montana when it became a state on November 8, 1889. The Reservation of Crow Tribe of Indians through which the Little Big Horn River passes was established prior to Montana's statehood and thus the issue was whether the United States which previously held title to all of the land, both riparian and under the rivers and watercourses, had conveyed title to the Crow Indians when it established the Reservation. The Court goes on to state:

It is now established, however, that Congress may sometimes convey lands below the high-water mark of a navigable water, "[and so defeat the title of a new State,] in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory." *Shively v. Bowlby*, 152 U.S. 1, 48, 15 S.Ct. 548, 566, 38 L.3d. 331.

But, because control over the property underlying navigable waters is so strongly identified with the sovereign power of government, *United States v. Oregon*, *supra*, at 14, 55 S.Ct., at 615, it will not be held that the United States has conveyed such land except because of "some international duty or public exigency." *United States v. Holt State Bank*, 270 U.S., at 55, 46 S.Ct., at 199. See also *Shively v. Bowlby*, *supra*, at 48, 14 S.Ct., at 566. A court deciding a question of title to the bed of a navigable water must, therefore, begin with a strong presumption against conveyance by the United States, *United States v. Oregon*, *supra*, at 14, 55 S.Ct., at 615, and must not infer such a conveyance "unless the intention was definitely declared or otherwise made plain," *United States v. Holt State Bank*, *supra*, 270 U.S., at 55, 46 S.Ct., at 199, or was rendered "in clear and especial words," *Martin v. Waddell*, *supra*, at 411, or "unless the claim confirmed in

terms embraces the land under the waters of the stream," *Packer v. Bird*,
supra, at 672, 11 S.Ct., at 212.

The Fort Laramie Treaties of 1851 and 1868, which established the Crow Indian Reservations did not contain wording giving the clear intention of the United States to convey to the Crow Indians title to the bed of the Little Big Horn River. Likewise, no evidence was presented to the Commission that the Treaties establishing the Navajo Indian Reservation contained any such clear and specific conveyance of title of the beds and banks under navigable rivers.

Accordingly, while the Commission feels it has jurisdiction to consider the issue of navigability of the Little Colorado River, even those parts that pass through the Navajo Indian Reservation, in view of the findings and determination made by the Commission that the Little Colorado was not navigable nor susceptible of navigability as of the date of statehood, February 14, 1912, ANSAC does not have to reach the issues decided in the Montana case as to whether the treaty establishing the Navajo Reservation had such precise and specific wording as to convey such title under navigable waters. Since the Little Colorado River is found not to be navigable or susceptible to navigability, the State of Arizona has no public trust claim and the beds and the banks are part of reservation land.

VIII. Findings and Determination

The Commission conducted a particularized assessment of equal footing claims the State of Arizona might have to the bed and banks, up to the high-water mark, of the Little Colorado River, and based on all of the historical and scientific data and information, documents, and other evidence produced, finds that the Little Colorado River was not used or 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 as of February 14, 1912.

The Commission also finds that the Little Colorado River, while considered to be a perennial stream, has an almost insignificant flow during the dry seasons of the year. As of February 14, 1912 and currently, it flows/flowed primarily in direct response to precipitation and snowmelt.

The Commission also finds that there is no evidence of any historical or modern commercial boating or floating of logs having occurred on the Little Colorado River.

The Commission also finds that there is no evidence of any commercial fishing having occurred on the Little Colorado River.

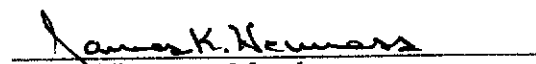
The Commission further finds that all notices of these hearings and proceedings were properly and timely given.

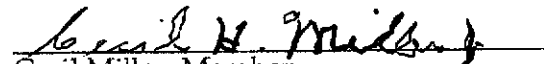
In view of the foregoing, the Commission, pursuant to A.R.S. § 37-1128A, finds and determines that the Little Colorado River in Apache, Navajo and Coconino Counties, Arizona, was not navigable nor susceptible to navigability as of February 14, 1912.

DATED this 17 day of November 2009.


Earl Eisenhower, Chair

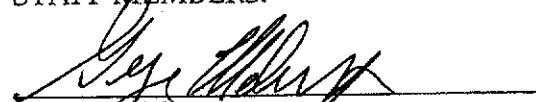

Dolly Echeverria, Vice Chair 11/18/09


James Henness, Member


Cecil Miller, Member

Jay Brashear, Member
Deceased September 15, 2007

STAFF MEMBERS:


George Mehnert
Executive Director

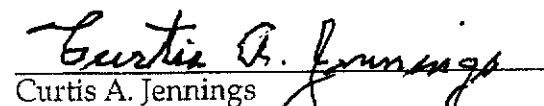

Curtis A. Jennings
Legal Counsel to the Commission

EXHIBIT A

State of Arizona)
County of Apache)

ss.

Affidavit of Publication

White Mountain Independent

STATEMENT OF INTENT For Navajo and Apache Counties 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 Little Colorado River and Puerco River in Navajo County, Arizona, the Little Colorado River and Puerco River in Apache County, Arizona, and all of the small and minor watercourses in each county. There will be a hearing in Holbrook, Arizona regarding Navajo County watercourses and a hearing in St. Johns, Arizona regarding Apache County watercourses. There will be a hearing in each county regarding the Little Colorado River and a hearing in each county regarding the Puerco River. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Little Colorado River and Puerco River in both Navajo and Apache Counties. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by April 26, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Navajo County, Arizona and in Apache 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 all small and minor watercourses in Navajo County and in Apache County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by April 26, 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.

The list of small and minor watercourses in Navajo County includes:
Bognal Wash, Bear Creek - Navajo, Bear Flat Creek, Bear Wash, Begashibito Wash, Beashbitto Wash, Bidanochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon - Navajo, Black River, Blairs Spring Wash, Bluebird Canyon, Bookbark Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C I Wash, Canyon Creek 1, Garr L Wash, Carizo Creek, Castle Creek - Navajo, Chavelon Canyon, Cbecua Creek, Clear Creek 1, Cobath Wash, Cortcho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Courduroy Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Cutoff Wash, Day School Wash, Day Wash, Doctor Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Diggar Wash, Dinnebito Wash, Dinnebito Wash E, Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Ellison Creek, Fern Feather Wash, Fish Creek, Five-mile Wash - Navajo, Foot Canyon, Foresdale Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Whi Yain Wash, Hay Hollow Draw, Hass Wash, Hog Wash, Humpy Wash, Indian Creek - Slickhorn Canyon 2, Jadito Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Kaams Canyon, Laguna Creek, Laroux Wash, Linden Wash, Lithodandron Wash, Little Milky Wash, Lone Pine Creek, Lukai Wash, Mania Wash, Madonalds Canyon, Meeah Wash - Navajo, Mexican Hollow Wash, Middle Cedar Creek, Moenkopi Wash, Mud Creek, Nakai Canyon, Narrow Wash, Nash Creek, Neskahi Wash, North Fork White, Oak Creek - Navajo, Ojelo Wash, Orabi Wash, Orabi Wash W Flk, Parrish Creek, Painted Creek, Phoenix Park Wash, Plecca Wash, Fire Creek - Navajo, Pinedale Wash, Pate Creek, Polacca Wash, Porter Creek, Porter Tank Draw, Potatoe Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arroyo, Sabito Wash, Sak Creek - Navajo, Scott Wash, Sears Wash, Severn-mile Draw, Shorto Wash, Show Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboat Wash, Stinson Wash - Navajo, Swamp Creek, Tanner Wash - Navajo, Tees Toll Wash, The Canal, Thompson Creek - Navajo, Tso Chizai Wash, Tsoai Canyon, Turkey Canyon - Navajo, Uritav

I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at St. Johns, County of Apache, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

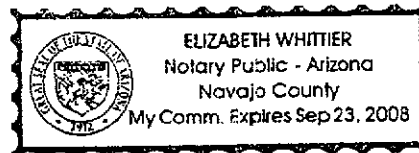
- March 08, 2005
- March 15, 2005
- March 22, 2005

White Mountain Independent

Sworn to me this day of

March 23, 2005, A.D. 2005

Notary Public



State of Arizona)
County of Navajo)

ss.

Affidavit of Publication White Mountain Independent

STATEMENT OF INTENT For Navajo and Apache Counties 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 Little Colorado River and Puerco River in Navajo County, Arizona, the Little Colorado River and Puerco River in Apache County, Arizona and all of the small and minor watercourses in each county. There will be a hearing in Holbrook, Arizona regarding Navajo County watercourses, and a hearing in St. Johns, Arizona regarding Apache County watercourses. There will be a hearing in each county regarding the Little Colorado River and a hearing in each county regarding the Puerco River. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Little Colorado River and Puerco River in both Navajo and Apache Counties. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by April 26, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Navajo County, Arizona and in Apache 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 all small and minor watercourses in Navajo County and in Apache County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by April 26, 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.

The list of small and minor watercourses in Navajo County includes:

- Bagnal Wash, Bear Creek - Navajo, Bear Flat Creek, Bear Wash, Bergashilto Wash, Beshito Wash, Bidanochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon - Navajo, Black River, Blair Spring Wash, Bluebird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Birni, Corn Creek, C. I. Wash, Canyon Creek, 1st, Carr, L. Wash, Carco Creek, Castle Creek - Navajo, Chavelon Canyon, Cibecu Creek, Clear Creek, 1st, Cobain Wash, Corcho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Coundury Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Outdool Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Digler Wash, Dinnebito Wash, Dinnebito Wash E., Bodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Elison Creek, Fern Feather Wash, Fish Creek, Five Mile Wash - Navajo, Foot Canyon, Forestgate Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, He Whi Yair Wash, Hay Mofow Draw, Hess Wash, Hog Wash, Humpy Wash, Indian Creek, Jacks Canyon 2, Jadoo Wash, Jim - Camp Wash, Joseph City Wash, Jumpoff Canyon, Kearns Canyon, Laguna Creek, Leroux Wash, Linden Wash, Lithodendron Wash, Little Milky Wash, Lone Pine Creek, Lukas Wash, Mariah Wash, Modonalds Canyon, Nasa Wash, Navajo, Maccan, Hollow Wash, Middle Cedar Creek, Moaropi Wash, Mud Creek, Naker Canyon, Narrow Wash, Nash Creek, Neekars Wash, North Fork White, Oak Creek - Navajo, Ojito Wash, Orabi Wash, Orabi Wash W.F.K., Parnish Creek, Petriford Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Plute Creek, Polacca Wash, Pomer Creek, Porter Tank Draw, Potatoe Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arajo, Sabito Wash, Salt Creek - Navajo, Scott Wash, Sears Wash, Severnile Draw, Short Wash, Snow Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboat Wash, Stinson Wash - Navajo, Swamp Creek, Tanner Wash - Navajo, Tees Toh Wash, The Canal, Thompson Creek - Navajo, Tee Chizzi Wash, Tsooi Canyon, Turkey Canyon - Navajo, Turkey Creek 1, Tynde Creek, V Eighteen Wash, Walnut Creek - Navajo, Washboard Wash, Wepo Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West

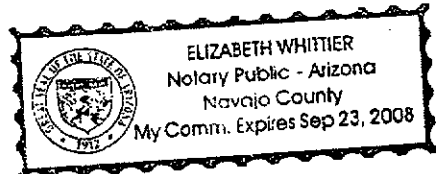
I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at Show Low, County of Navajo, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

- March 08, 2005
- March 15, 2005
- March 22, 2005

White Mountain Independent

Sworn to me this day of

March 23, 2005, A.D. 2005

Notary Public

AFFIDAVIT/PROOF OF PUBLICATION

STATE OF ARIZONA

} ss.

County of Coconino

Bobbie Crosby being duly sworn, deposes and says:

That she is the legal clerk of the Arizona Daily Sun a newspaper published at Flagstaff, Coconino County, Arizona; that the

Legal 6703

a copy of which is hereunto attached, was first published in said newspaper in its issue dated the 23 day of March, 2005, and was published in each one issue of said newspaper for three consecutive weeks the last publication being in the issue dated the 6 day of April, 2005.



[Signature]

Subscribed and sworn to before me this 8th day of April, 2005

[Signature]

Notary Public

My Commission expires 6/2008

Legal No. 6703 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 Little Colorado River in Coconino 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 Little Colorado River in Coconino County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by May 23, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Coconino 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 following watercourses in Coconino County, Arizona: Shonto Wash, Sinclair Wash, Sixtymile Creek, Slate Creek - Coconino, Snake Gulch, Soap Creek - Cochine, Sour Water Wash, South Canyon, South Fork Soap, Sowals Canyon, Spring Valley Wash, Square Butte Wash, Standing Water Wash, Stone Creek - Coconino, Stone House Wash, Strawberry Creek, Sycamore Creek 1, Taah Liti Wash, Tanner Wash - Coconino, Tapeats Creek, Tappan Wash, Tatabaiso Wash, Tataboysa Wash, Thunder River, Tiger Wash - Coconino, Tin Can Wash, To Hujisho, Tcbachi Wash, Toms Creek, Tonahkaad Wash, Trinity Creek, Tse To Baah Naal, Tucker Flat Wash, Tule Tank Wash, Tura Creek, Turkey Creek - Coconino, Unkar Creek, Vishnu Creek, Volunteer Wash, Wall Creek, Wallace Canyon, Walnut Creek - Coconino, Warm Springs Canyon, Webber Creek, West Canyon Creek, West Caazaet Creek, West Chevelon Canyon, West Clear Creek, West Fork Oak Creek - Coconino, West Webber Creek, Wet Beaver Creek, White Creek, White Sage Wash, White Water Wash, Wildcat Canyon, Wildcat Canyon - Coconino, Willow Creek - Coconino, Woods Canyon, Woody Wash, Yager Canyon, Yeager Canyon, Yellow Butte Was, Yellow Jacket Canyon, Youngs Canyon, a - Seg 503 Coconino, a - Seg 9 Coconino, b - Seg 30 Coconino, c - Seg 21 Coconino, c - Seg 32 Coconino, and all other named and unnamed small and minor watercourses.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.a2streambeds.com>. The e-mail address is stfams@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. PUB: Mar. 23, 30 Apr. 6, 2005 6703

AFFIDAVIT/PROOF OF PUBLICATION

STATE OF ARIZONA

} ss.

County of Coconino

Bobbie Crosby being duly sworn, deposes and says:

That she is the legal clerk of the Arizona Daily Sun
a newspaper published at Flagstaff, Coconino County, Arizona; that the

Legal 6844

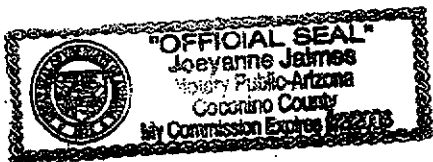
_____ a copy of which is
hereunto attached, was first published in said newspaper in its issue dated

the 13 day of May, 2005, and was

published in each one issue of said newspaper for three

consecutive weeks the last publication being in the issue dated the

27 day of May, 2005.



[Signature]

Subscribed and sworn to before me this

1st day of June, 2005

[Signature]
Notary Public

My Commission expires _____

9/2/2008

Legal No. 6844
STATEMENT OF INTENT State of Arizona
Navigable Stream Adjudication Commission
This is the second occasion this Statement of Intent has been published. Initially, it contained an evidence due date of May 23, 2005 because that was the scheduled date for the hearing on Coconino County watercourses. However, the hearing date has been changed and the hearing will be held in July 2005, therefore we are republishing the Statement of Intent a second time with an evidence due date of July 12, 2005.
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 Little Colorado River in Coconino 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 Little Colorado River in Coconino County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by July 12, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Coconino 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 all small and minor watercourses in Coconino County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by July 12, 2005. All evidence submitted to ANSAC will be

EXHIBIT B

State of Arizona)
County of Apache)

ss.

Affidavit of Publication

White Mountain Independent

19221. Navigable Stream Adjudication Commission
Pursuant to A.R.S. § 37-126 (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 Apache County. The hearings will be held in Apache County on April 26, 2005 beginning at 10:00 a.m. in an order established by the Board in the Apache County Supervisors Meeting Room located at 75 West Cleveland, St. Johns, Arizona. The following are presently known hearings scheduled:
The Little Colorado River and the Pueblo River, and all of the small and minor watercourses in Apache County. The list of small and minor watercourses in Apache County includes:
Agua Sal Creek, Alamo Wash, Apache, Amity Ditch, Aspen Wash, Avecho, Auer Creek, Eador Creek 1, Apache, Balala Wash, Bar H Creek, Basin Creek, Badground Creek, Bear Cienega Creek, Beaver Dam Wash, Apache, Becker Creek, Benny Creek, Bent Knee Wash, Benton Creek, Apache, Bashito Wash, Big Bongo Creek, Big Dam Wash, Big Ditch, Big Hollow Wash, Big Wilderness Wash, Bill Riley Creek, Bisil Ah Wash, Bluer Water Wash, Black Creek, Black Horse Wash, Black Mountain Wash, Apache, Black Five, Black Rock Canyon, Black Soil Wash, Blackhorse Creek, Blackrock Wash, Eufl Cienega Creek, Bog Creek, Boggy Creek, Boing Over Wash, Bonevats Creek, Bonito Creek, Brown Creek, Brown Wash, Apache, Bull Wash, Bull Creek, Bull Creek, Apache, Burnt Corn Creek, Burnt Corn Creek, Apache, Burnt Pinon Wash, Burnwater Wash, Burro Wash, Apache, Burnly Creek, Campbell Blue Creek, Carey Valley Wash, Canyon Creek 2, Canyon De Chelly, Canyon Del Muqui, Deber Creek, Centro Wash, Cedar Lake Wash, Centerline Creek, Chantona Draw, Chertan Draw, Churnev Wash, Chino Creek, Chino Wash, Cienega Creek, Cienega Creek 1, Apache, Cienega Creek 2, Apache, Cienega Creek 3, Apache, Cienega Creek 4, Apache, Cold Spring Wash, Apache, Coleman Creek, Colter Creek, Concho Creek, Cono Creek, Apache, Cono Creek, Cottonwood Wash, Apache, Coxe Wash, Coyote Creek 1, Apache, Coyote Creek 2, Apache, Coyote Creek 3, Apache, Coyote Wash, Apache, Crazy Creek, Crooked Creek, Daus Creek, Dead Wash, Deep Creek, Apache, Deer Creek, Apache, Diamond Creek, Dry Creek, Apache, Dry Falls Wash, Dry Wash, Earl Creek, East Fork Black, East Fork Dry Wash, East Fork Little, East Fork White, Elk Canyon, Emser Wash, Esa Creek, Frecox Creek, Fish Creek, Apache, Fish Wash, Flash Creek, Gonsberry Creek, Gothic Creek, Grapevine Creek, Grasswood Wash, Great Wash, Hall Creek, Handscabble Wash, Rasodillo Creek, Hay Creek, Hatter Branch, He, Hlabone Creek, Hibbons Wash, Home Creek, Horse Creek, Apache, Horse Wash Wash, Horseshoe Creek, Hosteen Tso Wash, Hughes Creek, Hulsey Creek, Humcane Creek, Jackson Creek, Mado Wash, Jaracosa Draw, Jarvis Wash, Jenson Wash, K.L. Creek, Kintchee Creek, Kit St. Wash, Laguna Creek, Lang Creek, Leo Valley Creek, Linderon Wash, Little Bog Creek, Little Bonito Creek, Little Creek, Little Diamond Creek, Little Milk Wash, Izard Wash, Lora Cienega Creek, Lone Tule Wash, Long Cienega, Lower Lyman Ditch, Lukachukai Creek, Lukachukai Wash, Mamee Creek, McDonald Creek, McNary Ditch, Meadow Wash, Addilo Layman Ditch, Milk Creek, Apache, Milk Creek 1, Apache, Milky Wash, Apache, Morgan Creek, Mineral Creek, Apache, Miranal Ditch, Apache, Moon Creek, Morgan Canyon, St. Morrison Creek, Nazini Wash, Nenemie Wash, No Name Creek, North East Fork, North Fork, Diamo, North Fork White, Nutrioso Creek, Oak Ridge Wash, Open Draw, Creek, Oak Wash, Ord Creek, Oso Draw, Paca Creek, Pacheta Creek, Paddy Creek 1, Paddy Creek 2, Palacade Creek, Paradise Creek, Pansop Creek, Perry Creek, Picnic Creek, Pine Springs Wash, Pine Wash, Finny Hill Creek, Pistol Creek, Apache, Poker Gap Creek, Polecca Wash, Porcupine Creek, Pueblo Colorado, Puciter Creek, Quartzite Wash, Quering Wash, Ramoad Wash, Red Clay Wash, Red Wash 1, Red Wash 2, Red Water Wash, Reservation Creek, Riggs Creek, Rock Canyon, Apache, Rocky Arroyo, Romero Creek, Rosey Creek, Rudd Creek, Run Wash, Sable Wash, Sage Horse Wash, Sand Creek, Apache, Sarosoa Wash, Scattered Wilcox, Sepulveda Creek, Seven Springs Wash, Sharp Creek, Apache, Sheep Dip Creek, Show Low Creek, Sitting Giant Rd, Slick Rock, Smith Creek, Show Stake Creek, Soldier Creek.

I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at St. Johns, County of Apache, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

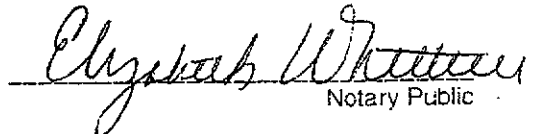
March 22, 2005

White Mountain Independent

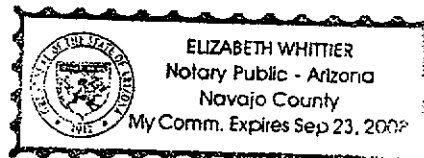


Sworn to me this day of

March 23, 2005, A.D. 2005



Notary Public



2005
 State of Arizona
 Navigable Stream
 Adjudication Commission
 Pursuant to A.R.S. § 37-1126
 (A), notice is hereby given
 that the Navigable Stream
 Adjudication Commission
 will hold public hearings to
 receive physical evidence
 and testimony relating to the
 navigability or non-
 navigability of all watercours-
 es in Apache County. The
 hearings will be held in
 Apache County on April 26,
 2005 beginning at 10:00 a.m.
 in an order established by
 the chair in the Apache Coun-
 ty Supervisors Meeting
 Room located at 75 West
 Cleveland, St. John's, Arizo-
 na. The following are presen-
 ted the only hearings sched-
 uled.

The Little Colorado River and
 the Puerco River, and all of
 the small and minor water-
 courses in Apache County.
 The list of small and minor
 watercourses in Apache
 County includes:

Alamo Wash - Apache
 Amity Ditch - Aspen
 Wash - Apache
 Auger Creek - Apache
 Badger Creek 1 - Apache
 Balakal Wash - Bar H Creek
 Basin Creek - Battleground
 Creek - Bear
 Cienega Creek - Apache
 Reaver Dam Wash - Apache
 Becker Creek - Benny
 Bent Knee Wash - Bognin
 Creek - Apache
 Beshing
 Wash - Big Bonito Creek - Big
 Dam Wash - Big Ditch - Big Hol-
 low Wash - Big Wildermes
 Wash - Bill Riley Creek - Bis-H
 ah Wash - Sister Water Wash -
 Black Creek - Black Horse
 Wash - Black Mountain Wash -
 Apache
 Black River - Black
 Rock Canyon - Black - Soil
 Wash - Blackhorse - Creek
 Blackrock Wash - Burf
 Cienega Creek - Dog Creek
 Boggy Creek - Boiling Over
 Wash - Boreyard Creek - Boni-
 to - Creek - Brown - Creek
 Brown Wash - Apache
 Bull Wash - Bull Creek - Bull
 Creek - Apache
 Burnt Corral Creek - Apache
 Burnt Pinon Wash -
 Burntwater Wash - Burro
 Wash - Apache
 Butterfly
 Creek - Campbell Blk - Canyon
 Cane Valley Wash - Canyon
 Creek 2 - Canyon - De Chilly
 Canyon Del Muert - Carnero
 Creek - Carrizo Wash - Cedar
 Lake Wash - Centerite Creek -
 Chambers - Draw - Cheney
 Draw - Chimney Wash - Chinle
 Creek - Chinte Wash - Cienega
 Creek - Cienega Creek 1 -
 Apache
 Cienega Creek 2 -
 Apache
 Cienega Creek 3 -
 Apache
 Cienega Creek 4 -
 Apache
 Cold Spring Wash -
 Apache
 Coleman Creek -
 Colter Creek - Concho Creek -
 Coon Creek - Apache
 Corn
 Creek - Cottonwood Wash -
 Apache
 Cove Wash - Coyote
 Creek 1 - Apache
 Coyote
 Creek 2 - Apache
 Coyote
 Creek 3 - Apache
 Crazy Creek -
 Wash - Apache
 Crooked Creek - Davis
 Creek -
 Dead Wash - Deep Creek -
 Apache
 Deer Creek -
 Apache
 Diamond Creek - Dry
 Creek - Apache
 Dry Farms
 Wash - Dry Wash - Earl
 Creek -
 East Fork Black - East Fork
 Dry Wash - East Fork - Little
 East Fork White - Elk Canyon
 Black 2 - West Fork - Little
 West Gypsum Creek - West
 Turkey Creek - Wheatfields
 Creek - Whiskey Creek - White
 Rock Wash - White Spring
 Wash - Whitewater - Arroyo
 Wide Ruin Wash - Wild Cow
 Wash - Wildcat Creek 1 - Wild-
 cat Creek 2 - Williams
 Creek -
 Willow Creek - Apache
 Willow Spring Wash - Woods
 Creek - Yellow Water - Zuni
 River - a - Seg 17 Apache - b -
 Seg 15 Apache - c - Seg 10
 Apache - d - Seg 13 Apache - d -
 Seg 21 Apache, as well as
 all other named and un-
 named small and minor
 watercourses.

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. An
 unbound original plus seven
 bound copies of documenta-
 ry evidence is to be submit-
 ted. ANSAC offices are locat-
 ed at 1700 West Washington,
 Room 304, Phoenix, AZ
 85007. The telephone num-
 ber is (602) 542-9214. The
 web site address is
<http://www.azstreams.com>.
 The e-mail address is
streams@mindspring.com.
 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,
 Phoenix, Ariz.

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.

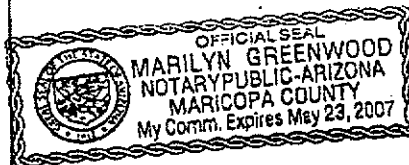
The Arizona Republic

March 22, 2005

Sworn to before me this
 22ND day of
 March A.D. 2005

Diana Chavez

Marilyn Greenwood
 Notary Public



Phoenix - North
 480-952-1565

State of Arizona)
)
) ss.
County of Navajo)

Affidavit of Publication

White Mountain Independent

NOTICE OF PUBLIC HEARING
In Navajo County, April 25, 2005
State of Arizona

Navigable Stream Adjudication Commission
Pursuant to A.R.S. § 97-1126(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 Navajo County. The hearings will be held in Navajo County on April 25, 2005 beginning at 2:00 p.m. in an order established by the chair in the Navajo County Supervisors' Chambers located at 100 E. Carter Drive (2 miles S. of Holbrook on Hwy 77 south). The following are presently the only hearings scheduled.

The Little Colorado River and the Puerco River, and all of the small and minor watercourses in Navajo County. The list of small and minor watercourses in Navajo County includes:

Begnal Wash, Bear Creek - Navajo, Bear Flat Creek, Bear Wash, Begashitto Wash, Beshtito Wash, Bidahochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon - Navajo, Black River, Bears Spring Wash, Bluebird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C.J. Wash, Canyon Creek, Carrizo Wash, Carrizo Creek, Castle Creek - Navajo, Chevalon Canyon, Cibecue Creek, Clear Creek 1, Cobain Wash, Concho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Coladuroy Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Cutoff Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Damaris Creek, Digger Wash, Dinnebito Wash, Dinnable Wash, E. Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Wash, Lower Wash, E. Captain Wash, Ellison Creek, Fort Feather Wash, Fish Creek, Fivemile Wash - Navajo, Fobb Canyon, Goodale Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Wai Yain Wash, Hay Hollow Draw, Hesse Wash, Hog Wash, Humpy Wash, Indian Creek, Jacks Canyon 2, Jactilo Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Keams Canyon, Laguna Creek, Laronx Wash, Lindon Wash, Lithodendron Wash, Little Milky Wash, Lone Pine Creek, Lukai Wash, Marika Wash, McDonalds Canyon, Mesa Wash - Navajo, Mescon Hollow Wash, Middle Cedar Creek, Moenkopi Wash, Mud Creek, Nekai Canyon, Nanoy Wash, Nari Creek, Naskahi Wash, North Fork White, Oak Creek - Navajo, Oleo Wash, Orabi Wash, Orabi Wash N.F.P., Parish Creek, Parnish Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Pike Creek, Polacca Wash, Porter Creek, Porter Tank Draw, Potlatch Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arroyo, Sabito Wash, Salt Creek, Navajo, Scott Wash, Sears Wash, Sevenside Draw, Show to Wash, Show Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboat Wash, Swanton Wash, Navajo, Swamp Creek, Tame Wash - Navajo, Teas Fork Wash, The Canal, Thompson Creek - Navajo, The Crizzl Wash, Tsegi Canyon, Turkey Canyon - Navajo, Turkey Creek 1, Tyende Creek, V. Eighteen Wash, Walnut Creek - Navajo, Washboard Wash, Wepe Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West Turkey Creek, West Twin Wash, White-Lo-De-Sah Wash, White River, Wide Run Wash, Wildcat Canyon, Wildhorse Wash, Willow Creek - Navajo, Willow Wash - Navajo, as well as all other named and unnamed small and minor watercourses.

Interested parties may submit evidence to the commission office prior to the hearing and/or during the appropriate public hearing. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence. An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is streams@minispring.com.

Evidence submitted in advance of the hearing will be available for public inspection during regular Commission office hours of 9:00 a.m. to 5:00 p.m., Monday thru Friday, except

I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at Show Low, County of Navajo, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

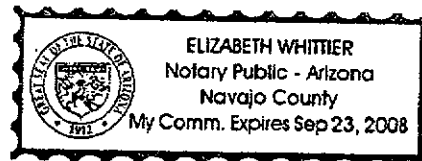
March 22, 2005

White Mountain Independent
Diane R. Janot

Sworn to me this day of

March 23, 2005, A.D. 2005

Elizabeth Whittier
Notary Public



1 county

Affidavit of Publication

State of Arizona.)
)ss.
County of Navajo,)

I, Francie Payne, being duly sworn, depose and say: I am

NOTICE OF PUBLIC HEARING
In Apache County April 26, 2005
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 Apache County. The hearings will be held in Apache County on April 26, 2005 beginning at 10:00 a.m. in an order established by the chair in the Apache County Supervisors' Meeting Room located at 75 West Cleveland, St. Johns, Arizona. The following are presently the only hearings scheduled:

The Little Colorado River and the Puerco River, and all of the small and minor watercourses in Apache County.

The list of small and minor watercourses in Apache County includes:

Agua Sal Creek, Alamo Wash, Apache, Army Ditch, Aspen Wash, Apache, Auger Creek, Badger Creek 1, Apache, Balakai Wash, Bar H Creek, Basin Creek, Battleground Creek, Bear Cienega Creek, Beaver Dam Wash, Apache, Becker Creek, Beany Creek, Bent Knee Wash, Benton Creek, Apache, Beshino Wash, Big Bonito Creek, Big Dam Wash, Big Ditch, Big Hollow Wash, Big Wilderness Wash, Bill Riley Creek, Big Lab Wash, Bitter Water Wash, Black Creek, Black Horse Wash, Black Mountain Wash, Apache, Black River, Black Rock Canyon, Black Soil Wash, Blackhorse Creek, Blackrock Wash, Bluff Cienega Creek, Bog Creek, Boggy Creek, Boiling Over Wash, Boneyard Creek, Bonito Creek, Brown Creek, Brown Wash, Apache, Buell Wash, Bull Creek, Bull Creek, Apache, Burnt Corn Creek, Burnt Coral Creek, Apache, Burnt Pinda Wash, Burnwater Wash, Burro Wash, Apache, Butterfly Creek, Campbell Bluff Creek, Carr Valley Wash, Canyon Creek, Canyon, Chilly Canyon, Del Mister, Casino Creek, Casino Wash, Cedar Elm Wash, Cementite Creek, Chambers Draw, Chesny Draw, Chimney Wash, Chino Creek, Chino Wash, Cienega Creek, Cienega Creek 1, Apache, Cienega Creek 2, Apache, Cienega Creek 3, Apache, Cienega Creek 4, Apache, Cold Spring Wash, Apache, Coleman Creek, Colter Creek, Concho Creek, Coon Creek, Apache, Coon Creek, Cottonwood Wash, Apache, Cove Wash, Coyote Creek 1, Apache, Coyote Creek 2, Apache, Coyote Creek 3, Apache, Coyote Wash, Apache, Crazy Creek, Crooked Creek, Davis Creek, Deep Wash, Deep Creek, Apache, Deer Creek, Apache, Diamond Creek, Dry Creek, Apache, Dry Farm Wash, Dey Wash, Earl Creek, East Fork Black, East Fork Dry Wash, East Fork Little, East Fork White, Elk Canyon, Erosion Wash, Est Creek, Firebox Creek, Fish Creek, Apache, Fish Wash, Fish Creek, Gooseberry Creek, Gothic Creek, Grapevine Creek, Greasewood Wash, Green Wash, Hall Creek, Hardscrabble Wash, Haspidito Creek, Hay Creek, Heifer Branch, Hiptone Creek, Hipbone Wash, Home Creek, Horse Creek, Apache, Horse Mesa Wash, Horseshoe Creek, Hostetler Wash, Highby Creek, Hulsey Creek, Hurricane Creek, Jackson Creek, Judio Wash, Jerosa Draw, Jarvis Wash, Jimson Wood Wash, K, L Creek, Kinichsee Creek, Kit/Silk Wash, Laguna Creek, Lang Creek, Lee Valley Creek, Lithodendron Wash, Little Bog Creek, Little Bonito Creek, Little Creek, Little Diamond Creek, Little Milky Wash, Lizard Wash, Lofe Cienega Creek, Lone Tule Wash, Long Cienega, Lower Lyman Ditch, Lukachukai Creek, Lukachukai Wash, Mason Creek, McDonald Creek, McVay Ditch, Meadow Wash, Middle Lyman Ditch, Milk Creek, Apache, Milk Creek 1, Apache, Milky Wash, Apache, Milligan Creek, Mineral Creek, Apache, Mineral Ditch, Apache, Moon Creek, Morgan Canyon St, Morrison Creek, Nazim Wash, Nincinle Wash, No Name Creek, North East Fork, North Fork Diamo, North Fork White, Nutrioso Creek, Oak Ridge Wash, Opea Draw Creek, Oraibi Wash, Oro Creek, Oso Draw, Pace Creek, Pachola Creek, Paddy Creek 1, Paddy Creek 2,

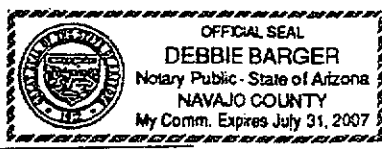
General Manager of THE HOLBROOK TRIBUNE-NEWS, a newspaper of general circulation published at Holbrook, County of Navajo and State of Arizona; that the Legal #8595 Notice of Public Hearing in Apache County April 26, 2005

attached hereto, was published in said newspaper, THE HOLBROOK TRIBUNE-NEWS, for 1 issues, and said notice was published in the regular and entire issue of every number of the paper during the period of the time of publication and was published in the newspaper proper and not in a supplement, the first

publication being dated March 23, 2005 and the last publication being dated March 23, 2005.

Publication Dates: 3/23
Francie Payne

SUBSCRIBED AND SWORN TO before me this 23rd day of March, 2005.



Debbie Barger
NOTARY PUBLIC
My commission expires July 31, 2007

In Navajo County April 25, 2005
 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 navigability or non-navigability of all watercourses in Navajo County. The hearings will be held in Navajo County on April 25, 2005 beginning at 9:00 p.m. in an order established by the chair in the Navajo County Supervisors' Chambers located at 100 E. Carter Drive (2 miles S. of Holbrook on Hwy. 70 south). The following are presently the only hearings scheduled.

The Little Colorado River and the Puerto River, and all of the small and minor watercourses in Navajo County. The list of small and minor watercourses in Navajo County includes:

Bernal Wash, Bear Creek, Navajo, Bear Flat Creek, Bear Wash, Begashibito Wash, Beshbito Wash, Bidanochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon - Navajo, Black River, Blairs Spring Wash, Bluebird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C.I. Wash, Canyon Creek, L. Carr, L. Wash, Carrizo Creek, Castle Creek - Navajo, Chevalon Canyon, Clear Creek 1, Coibath Wash, Concho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Courduroy Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Curofoot Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Dinebito Wash, Dinebito Wash, Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, S. Capitlan Wash, Ellison Creek, Fern Feather Wash, Fish Creek, Five Mile Wash - Navajo, Foot Canyon, Forestdale Wash, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Wni Yalin Wash, Hay Hollow Draw, Hess Wash, Hog Wash, Henry Wash, Indian Creek, Jacks Canyon 2, Jadito Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Keams Canyon, Lanana Creek, Leroux Wash, Linden Wash, Lithodendron Wash, Little Milky Wash, Lone Pine Creek, Luka Wash, Manilla Wash, McDonalds Canyon, Mesa Wash - Navajo, Mexican Hollow Wash, Middle Cedar Creek, Moenkopi Wash, Mud Creek, Naizi Canyon, Narrow Wash, Nash Creek, Neskahi Wash, North Fork White, Oak Creek - Navajo, Ojito Wash, Oraibi Wash, Oraibi Wash # 2, Parson Creek, Petrified Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Pulte Creek, Polacca Wash, Porter Creek, Porter Tank Draw, Potatoe Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arroyo, Sabko Wash, Salt Creek - Navajo, Scott Wash, Seeds Wash, Sevenmile Draw, Shorto Wash, Show Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Stearnboard Wash, Sunton Wash - Navajo, Swamp Creek, Tunner Wash - Navajo, Tees Toh Wash, The Canal, Thompson Creek - Navajo, Tse Chino Wash, Tsegi Canyon, Turkey Canyon - Navajo, Turkey Creek - 1, Tyende Creek, V Eighteen Wash, Walnut Creek - Navajo, Washboard Wash, Wepp Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West Turkey Creek, West Twin Wash, White-Yol-Da, Sah Wash.

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by Area
 Residential Rentals

\$ 2,495.56

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

March 22, 2005

[Signature]

Sworn to before me this
 22ND day of
 March A.D. 2005



[Signature]
 Notary Public

AFFIDAVIT/PROOF OF PUBLICATION

STATE OF ARIZONA

} ss.

County of Coconino

Bobbie Crosby being duly sworn, deposes and says:

That she is the legal clerk of the Arizona Daily Sun

a newspaper published at Flagstaff, Coconino County, Arizona; that the

Legal 6925

a copy of which is

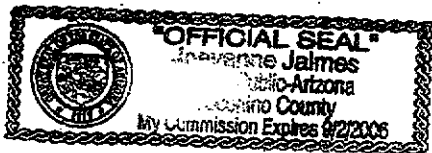
hereunto attached, was first published in said newspaper in its issue dated

the 10 day of June, 2005, and was

published in each one issue of said newspaper for one

consecutive day the last publication being in the issue dated the

10 day of June, 2005.



[Signature]
Subscribed and sworn to before me this
10th day of June, 2005

[Signature]
Notary Public

My Commission expires 9/27/2006

Legal No. 6925
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 Coconino County. The hearings will be held in Flagstaff, Arizona on July 14, 2005 beginning at 10:00 a.m. in an order established by the chair, in the Coconino County Supervisors' Meeting Room located at 219 E. Cherry, Flagstaff, Arizona, 86001. The following are presently the only hearings scheduled. The Lower Colorado River, and all of the small and minor watercourses in Coconino County. The list of small and minor watercourses includes but is not limited to:
Court Wash, Barbershop Canyon, Basalt Creek, Bear Canyon, Begashibito Wash, Bekihatso Wash, Big Wash - Coconino, Billy Goat Wash, Bitter Spring Wash, Black Tank Wash, Blacktail Canyon Creek, Bonita Creek - Coconino, Boucher Creek, Boulder Creek - Coconino, Brady Canyon, Bright Angel Creek, Bright Angel Wash, Burro Canyon Wash, Campbell Francis Canyon Creek 1, Canyon Diablo, Carbon Creek, Cardenas Creek, Cataract Creek, Cathedral Wash, Cedar Creek 1, Cedar Wash - Coconino, Chaiyahi Creek, Chevelon Canyon, Chino Wash, Chuar Creek, Citadel Wash, Clear Creek 1, Clear Creek 2, Clover Creek - Coconino, Coconino Wash, Comanche Creek, Corduroy Wash, Corn Creek Wash, Cottonwood Creek, Coconino, Coyote Wash, Coyote Wash 1, Coconino, Crackerbox Canyon, Cremation Creek, Crystal Creek, Curve Wash, Deadman Wash - Coconino, Deer Creek - Coconino, Deer Tank Wash, Devil Dog Canyon, Diamond Creek 1, Dinnebito Wash, Downtown Wash, Doney

EXHIBIT C

Hearing Memorandums

Hearing No. 05-007-NAV

Page No.

1

Arizona Navigable Stream Adjudication Commission

Little Colorado River Opening and Response Memorandums

Entry Number	Date	Entry	Entry By
		Opening Memorandums	
1	8/12/05	S.R.P.-Mark McGinnis	George Mehnert
2	8/18/05	ACLPI-Joy Herr-Cardo;;p	George Mehnert
		Response Memorandums	
1	9/08/05	S.R.P.-Mark McGinnis	George Mehnert

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

April 25, 2005, at 3:00 P.M., in Holbrook, 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 April 25, 2005 at 3:00 p.m. in the Navajo County Supervisors' Chambers located at 100 E. Carter Drive (2 miles S. of Holbrook on Hwy 77 South), Holbrook, 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. March 29, Yavapai County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY, 05-006-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.
7. BUDGET AND COMMISSION STATUS UPDATE.
8. HEARINGS UPDATE.
9. CALL FOR PUBLIC COMMENT (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
10. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
11. ADJOURNMENT.

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

Dated this 15th day of March, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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

April 26, 2005, at 10:00 A.M., in St. Johns, 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 April 26, 2005 at 10:00 a.m. in the Apache County Supervisors Meeting Room located at 75 W. Cleveland, St. Johns, 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. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY, 05-009-NAV.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.
6. BUDGET AND COMMISSION STATUS UPDATE.
7. HEARINGS UPDATE.
8. CALL FOR PUBLIC COMMENT (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
10. ADJOURNMENT.

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

Dated this 16th day of March, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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

July 14, 2005, at 10:00 a.m., in Flagstaff, 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 July 14, 2005 at 10:00 a.m. in the Coconino County Supervisors Meeting Room located at 219 East Cherry Street, Flagstaff, 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. April 25, 2005, Navajo County.
 - B. April 25, 2005, Navajo County Executive Session.
 - C. April 26, 2005, Apache County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-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. ADJOURNMENT.

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

Dated this 7th day of June, 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

Holbrook, Arizona, April 25, 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 3:01 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. March 29, 2005, Yavapai County.

Motion by: Cecil Miller Second by: Jim Henness

Motion: To approve the minutes of March 29, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN

NAVAJO COUNTY, 05-006-NAV. Cheryl Doyle of the State Land Department and Engineer Jon Fuller appeared.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.

Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #4 applied to all of today's hearings, and Engineer Jon Fuller appeared.

6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV. Cheryl Doyle

of the State Land Department indicated the prepared statement she read

regarding item #4 applied to all of today's hearings, and Engineer Jon Fuller appeared.

7. **BUDGET AND COMMISSION STATUS UPDATE.**

The Director indicated that the Commission's budget status has not changed and that the Commission has transferred \$7,000.00 to the State Land Department to help pay the costs of the Engineers the State Land Department hires on contract and who write reports and testify at Commission hearings.

8. **HEARINGS UPDATE.**

The Chair, the Commissioners and the Director discussed the remaining evidentiary hearings, following those in Navajo and Apache Counties, including those in Coconino County, La Paz County, Mohave County, and Maricopa County. Coconino County: Small and Minor Watercourses and the Little Colorado River. La Paz County: Bill Williams and Santa Maria Rivers. Mohave County: Big Sandy, Bill Williams, Santa Maria, and Virgin Rivers, and Burro Creek. Maricopa County: Small and Minor Watercourses and the Agua Fria, Gila, Hassayampa, Upper Salt, and Verde Rivers.

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

(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.) Quirn Smith who indicated he was a resident of Show Low, Arizona, asked what the Commission does. Chairman Eisenhower briefly explained the hearings process and history of the Commission and Commission Attorney Curtis Jennings included a more detailed historical explanation of the Commission including legal history as well.

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

The Commission decided it would hold the hearings in Coconino County on July 12, 2005, and would take an overnight trip to Mohave and La Paz

Counties on hold hearings in those counties on August 9 and 10, 2005, respectively.

Commissioner Henness made a motion to go into Executive Session to obtain legal advice.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To go into Executive Session to obtain legal advice.

Vote: All aye.

The Commission entered into Executive Session at approximately 4:22 p.m. and exited Executive Session at approximately 4:30 p.m./

11. **ADJOURNMENT.**

Motion by: Cecil Miller Second by: Jim Henness

Motion: To adjourn.

Vote: All aye.

Meeting adjourned at approximately 4:31 p.m.

Respectfully submitted,



George Mehnert, Director

April 28, 2005



JANET NAPOLITANO
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION
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GEORGE MEHNERT
Executive Director

MEETING MINUTES

St. Johns, Arizona, April 26, 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 10:03 a.m.

2. ROLL CALL.

See above.

3. ROLL CALL.

- 3. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY, 05-009-NAV.** Cheryl Doyle of the State Land Department read a prepared statement, and Engineer Jon Fuller appeared.

- 4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.** Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #3 applied to all of today's hearings, and Engineer Jon Fuller appeared.

- 5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.** Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #3 applied to all of today's hearings, and Engineer Jon Fuller appeared.

- 6. BUDGET AND COMMISSION STATUS UPDATE.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.

7. **HEARINGS UPDATE.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.
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.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.
10. **ADJOURNMENT.**
Motion by: Jim Hennes Second by: Cecil Miller
Motion: To adjourn.
Vote: All aye.
Meeting adjourned at approximately 10:29 a.m.

Respectfully submitted,



George Mehnert, Director
April 28, 2005



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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

July 14, 2005, at 10:00 a.m., in Flagstaff, 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 July 14, 2005 at 10:00 a.m. in the Coconino County Supervisors Meeting Room located at 219 East Cherry Street, Flagstaff, 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. April 25, 2005, Navajo County.
 - B. April 25, 2005, Navajo County Executive Session.
 - C. April 26, 2005, Apache County.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV.**
5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-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. **ADJOURNMENT.**

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

Dated this 7th day of June, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

July 14, 2005, at 10:00 a.m., in Flagstaff, Arizona

(First Amended Agenda)

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public on July 14, 2005 at 10:00 a.m. in the Coconino County Supervisors Meeting Room located at 219 East Cherry Street, Flagstaff, 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.

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1. CALL TO ORDER.
2. ROLL CALL.
3. APPROVAL OF MINUTES (discussion and action).
 - A. April 25, 2005, Navajo County.
 - B. April 25, 2005, Navajo County Executive Session.
 - C. April 26, 2005, Apache County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
6. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY (DISCUSSION AND ACTION).
7. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY (DISCUSSION AND ACTION).
8. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY (DISCUSSION AND ACTION).
9. NAVIGABILITY DETERMINATION OF THE PUERCO RIVER (DISCUSSION AND ACTION).
10. CALL FOR PUBLIC COMMENT (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
11. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
12. ADJOURNMENT.

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

Dated this 6th day of July, 2005, George Mehnert, Director, Arizona Navigable Stream Adjudication Commission.



JANET NAPOLITANO
Governor

STATE OF ARIZONA
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GEORGE MEHNERT
Executive Director

MEETING MINUTES
Flagstaff, Arizona, July 14, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

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 10:06 a.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. April 25, 2005, Navajo County.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To approve the minutes of April 25, 2005.

Vote: All aye.

B. April 25, 2005, Navajo County Executive Session.

Motion by: Cecil Miller Second by: Jim Henness

Motion: To approve the Executive Session Minutes of April 25, 2005.

Vote: All aye.

C. April 26, 2005, Apache County.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To approve the minutes of April 26, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV. Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist for the State Land Department, Jon Fuller. The Chair announced this hearing was closed for the purpose of taking evidence.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.

Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist for the State Land

Department, Jon Fuller. The Chair announced this hearing was closed for the purpose of taking evidence.

6. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY (DISCUSSION AND ACTION).

Motion by: Jay Brashear Second by: Jim Henness

Motion: That all of the Small and Minor Watercourses in Yavapai County were non-navigable as of statehood.

Vote: All aye.

7. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY (DISCUSSION AND ACTION).

Motion by: Cecil Miller Second by: Jim Henness

Motion: That all of the Small and Minor Watercourses in Navajo County were non-navigable as of statehood.

Vote: All aye.

8. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY (DISCUSSION AND ACTION).

Motion by: Jim Henness Second by: Cecil Miller

Motion: That all of the Small and Minor Watercourses in Apache County were non-navigable as of statehood.

Vote: All aye.

9. NAVIGABILITY DETERMINATION OF THE PUERCO RIVER (DISCUSSION AND ACTION).

Motion by: Jim Henness Second by: Jay Brashear

Motion: That Puerco River was non-navigable as of statehood.

Vote: All aye.

10. CALL FOR PUBLIC COMMENT (comment sheets).

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

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

The Commissioners, representatives of the State and of the Salt River Project spoke regarding hearing dates. The Chair concluded that likely future hearing dates beyond those scheduled in Mohave and La Paz Counties on August 8, 2005 and August 9, 2005, respectively, will be hearings regarding the navigability of the Agua Fria River, the Hassayampa River and the Maricopa County Small and Minor Watercourses during September 2005. Commissioner Brashear asked about Roosevelt Lake, since it existed at time of statehood. The Chair said Roosevelt Lake will likely be considered during the hearing regarding the Gila County Small and Minor Watercourses. The Chair indicated that hearings will likely be held during October 2005 regarding the navigability of the Upper Salt River and of the Gila County Small and Minor Watercourses. The Chair stated that hearings will likely be held during November 2005, on two consecutive days, regarding the navigability of the Gila River and the Verde River.

12. ADJOURNMENT.

Motion by: Cecil Miller Second by: Jim Henness
Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 11:05 a.m.

Respectfully submitted,



George Mehnert, Director
July 14, 2005



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD
October 20, 2005, at 9:30 a.m. in Phoenix, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on October 20, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.05(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).
September 21, 2005, Maricopa County, Phoenix, Arizona.
4. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.
5. Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV.
6. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (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. Commission budget and continuation.
10. ADJOURNMENT.

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

Dated this 19th day of September, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



JANET NAPOLITANO
Governor

STATE OF ARIZONA
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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

October 20, 2005, at 9:30 a.m. in Phoenix, Arizona

First Amended Agenda

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on October 20, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

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

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

1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of September 21, 2005, Maricopa County.
4. Jurisdiction regarding Roosevelt Lake, including motion entitled "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILITY OF ROOSEVELT LAKE", and all other motions filed relating to this matter in both 04-008-NAV and 04-010-NAV (discussion and action).
5. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.
6. Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV.
7. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
8. Determination of the navigability of the Little Colorado River 05-007-NAV (discussion and action).
9. Determination of the navigability of the Big Sandy River 05-011-NAV (discussion and action).
10. Determination of the navigability of the Bill Williams River 05-012-NAV (discussion and action).
11. Determination of the navigability of Burro Creek 05-003-NAV (discussion and action).
12. Determination of the navigability of the Santa Maria River 05-005-NAV (discussion and action).
13. Determination of the navigability of the Virgin River 05-013-NAV (discussion and action).
14. 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.)
15. Future agenda items and establishment of future hearings and other meetings.
16. Commission budget and continuation.
17. ADJOURNMENT.

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

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



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GEORGE MEHNERT
Executive Director

MEETING MINUTES

Phoenix, Arizona, October 20, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

Cecil Miller was absent, and Commissioner Henness had to leave early at approximately 11:45 a.m.

STAFF PRESENT

George Mehnert.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 9:36 a.m.

2. ROLL CALL.

See Above.

3. APPROVAL OF MINUTES (discussion and action).

A. September 21, 2005, Maricopa County

Motion by: Jim Henness Second by: Earl Eisenhower

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

- 4. Jurisdiction regarding Roosevelt Lake, including motion entitled "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILILTY OF ROOSEVELT LAKE", and all other motions filed relating to this matter in both 04-008-NAV and 04-010-NAV (discussion and action).** The Office of the Attorney General, on behalf of their client the State Land Department filed a response to the original motion on October 20, 2005. The Chair accepted the Attorney General response, continued the matter to a later meeting, and granted the Salt River Project's Attorney a week to reply to the Attorney General's response to the original motion.

5. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.

Persons who presented evidence or spoke regarding this matter: Jon Fuller, Dennis Gilpin, David Weedman, Stanley Schumm and Douglas Littlefield, Ph.D. Also, attorneys Mark McGinnis and Rebecca Goldberg, Laurie A. Hachtel, John Ryley and Joe Sparks spoke or examined witnesses.

6. **Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV.** Persons who presented evidence or spoke regarding this matter: Jon Fuller.
7. **Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).** The Chair continued this matter to a future meeting.
8. **Determination of the navigability of the Little Colorado River 05-007-NAV (discussion and action).**
 Motion by: Jay Brashear Second by: Dolly Echeverria
 Motion: The Little Colorado River was not navigable as of statehood. Vote:
 All aye.
9. **Determination of the navigability of the Big Sandy River 05-011-NAV (discussion and action).**
 Motion by: Dolly Echeverria Second by: Jay Brashear
 Motion: The Big Sandy River was not navigable as of statehood.
 Vote: All aye.
10. **Determination of the navigability of the Bill Williams River 05-012-NAV (discussion and action).**
 Motion by: Jay Brashear Second by: Dolly Echeverria
 Motion: The Bill Williams River was not navigable as of statehood.
 Vote: All aye.
11. **Determination of the navigability of Burro Creek 05-003-NAV (discussion and action).**
 Motion by: Dolly Echeverria Second by: Jay Brashear
 Motion: Burro Creek was not navigable as of statehood.
 Vote: All aye.
12. **Determination of the navigability of the Santa Maria River 05-005-NAV (discussion and action).**
 Motion by: Jay Brashear Second by: Dolly Echeverria
 Motion: The Santa Maria River was not navigable as of statehood.
 Vote: All aye.
13. **Determination of the navigability of the Virgin River 05-013-NAV (discussion and action).**
 Motion by: Jay Brashear Second by: Dolly Echeverria
 Motion: The Virgin River was not navigable as of statehood. Vote:
 All aye.
14. **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.)

15. **Future agenda items and establishment of future hearings and other meetings.**

16. **Commission budget and continuation.**

The Director and the Chair commented that the Commission is very weak insofar as budget is concerned and that the Commission will appreciate the support of everyone to continue the Commission for two additional so that it can complete its work.

17. **ADJOURNMENT.**

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To adjourn.

Vote: All aye.

Meeting adjourned at approximately 1:55 p.m..

Respectfully submitted,



George Mehnert, Director

October 21, 2005

EXHIBIT E

Evidence Log

Hearing No. 05-007

Page No.

1

Arizona Navigable Stream Adjudication Commission

Little Colorado River—3 Counties

Navajo Cy April 25, 2005—Apache Cy April 26, 2005—Coconino Cy July 14, 2005

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	2/18/97	David Baron ACLPI	Letter from David Baron dated February 18, 1997.	George Mehnert
2	10/14/97	Evidence on hand at AN-SAC	LCR Report from State Land Department and SFC Engineering, etc.	George Mehnert
3	2/18/98	Evidence on hand at AN-SAC	LCR Report from Eastern Arizona Counties Organization, Martin Moore Apache County Development.	George Mehnert
4	January 1999 Revised June 2004	Evidence on hand and revision.	LCR Report from JE Fuller Hydrology.	George Mehnert
5	2/18/2000	Evidence on hand.	LCR Draft Report Colorado River Confluence to Sunrise.	George Mehnert
6	4/21/2000	Evidence on hand.	LCR Final Report Colorado River Confluence to Sunrise.	George Mehnert
7	6/15/04	Chuck Kranz	Letter to Commission regarding several water-courses.	George Mehnert
8	7/20/04	Coby Muckelroy	Letter to Commission regarding several water-courses.	George Mehnert
9	5/1/2004	Candace Hughes	Letter to Commission regarding several water-courses.	George Mehnert
10	7/11/04	Nancy Orr	Letter to Commission regarding several water-courses.	George Mehnert