BEFORE THE

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE	)
NAVIGABILITY OF THE UPPER	)
SALT RIVER FROM THE	)
CONFLUENCE OF THE WHITE	)
AND BLACK RIVERS TO GRANITE	)
REEF DAM, GILA AND MARICOPA	)
COUNTIES, ARIZONA	)
	)

REPORT, FINDINGS AND DETERMINATION REGARDING THE NAVIGABILITY OF THE UPPER SALT RIVER FROM THE CONFLUENCE OF THE WHITE AND BLACK RIVERS TO GRANITE REEF DAM

In Memoriam
Commissioner Jay Brashear
May 22, 1932 – September 15, 2007

BEFORE THE

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE NAVIGABILITY OF THE UPPER SALT RIVER FROM THE CONFLUENCE OF THE WHITE AND BLACK RIVERS TO GRANITE REEF DAM, GILA AND MARICOPA COUNTIES, ARIZONA	)	No. 04-008-NAV

REPORT, FINDINGS AND DETERMINATION REGARDING THE NAVIGABILITY OF THE UPPER SALT RIVER FROM THE CONFLUENCE OF THE WHITE AND BLACK RIVERS TO GRANITE REEF DAM

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 Upper Salt River from the confluence of the White and Black Rivers to the Granite Reef Dam was navigable or nonnavigable for title purposes as of February 14, 1912. Proper and legal public notice was given in accordance with law and hearings were held at which all parties were afforded the opportunity to present evidence, as well as their views, on this issue. The Commission having considered all of the historical and scientific data and information, documents and other evidence, including the oral and written presentations made by persons appearing at the public hearings and being fully advised in the premises, hereby submits its report, findings and determinations.

I. PROCEDURE

On August 31, September 7 and September 14, 2004 in the Payson Roundup; on September 1, September 8 and September 15, 2004 in the Arizona Silver Belt; and on August 25, September 1 and September 8, 2005 in the Arizona Republic, in accordance with A.R.S. § 37-1123B, the Commission gave proper notice by publication of its intent to study and consider the issue of navigability or nonnavigability of the Upper Salt River from the confluence of the White and Black Rivers to the Granite Reef Dam for title purposes as of February 14, 1912. Copies of the Notices of Intent to Study and Receive, Review and Consider Evidence on the issue of navigability of the Upper Salt River in Gila and Maricopa Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonably available evidence received pursuant to the Notices of Intent to Study and Review and Consider Evidence, the Commission scheduled public hearings to receive additional evidence and take testimony regarding the navigability or nonnavigability of the Upper Salt River in Maricopa and Gila Counties. Public notice of these hearings were given by legal advertising on October 8, 2004 in the Payson Roundup, October 13, 2004 in the Arizona Silver Belt and October 8, 2004 in the Arizona Republic 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). A hearing was held on November 15, 2004 in the City of Globe, Arizona, the county seat of Gila County and on October 20, 2005 in the City of Phoenix, the county seat of Maricopa County, since the law requires that such hearings be held in the counties in which the watercourse being studied is located. Attached hereto as Exhibit "B" are copies of the notices of the public hearings.

All parties were advised that anyone who desired to appear and give testimony at the public hearings could do so and, that in making its findings and determinations as to navigability and nonnavigability, the Commission would consider all matters

presented to it at the hearings, as well as other historical and scientific data, information, documents and evidence that had been submitted to the Commission at any time prior to the hearings, including all data, information, documents, and evidence previously submitted to the Commission. Following the public hearing held on October 20, 2005 in Phoenix, Arizona, the parties were advised that they could file post-hearing memoranda pursuant to the Commission's Rules. Eight (8) separate post-hearing memoranda were filed by the parties including the State Land Department, Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association, the San Carlos Apache Tribe and the Arizona Center for Law in the Public Interest on behalf of its clients, Defenders of Wildlife, Donald Steuter, Jerry Van Gasse, and Tim Vaaler. Attached hereto as Exhibit "C" is a list of the eight (8) post-hearing memoranda filed by the various parties.

On May 24, 2006, at a public hearing in Phoenix, Arizona, after considering all of the evidence and testimony submitted and the post-hearing memoranda filed with the Commission, and the comments and oral 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 Upper Salt River from the Confluence of the White and Black Rivers in Gila County to the Granite Reef Dam in Maricopa County was nonnavigable as of February 14, 1912. A copy of the notice of this hearing is also attached as a part of Exhibit "B." Copies of the minutes of the November 15, 2004 hearing in Globe, Arizona, the October 20, 2005 hearing in Phoenix, Arizona, and the May 24, 2006 hearing in Phoenix, Arizona, are attached hereto as Exhibit "D."

II. THE UPPER SALT RIVER FROM THE CONFLUENCE OF THE WHITE AND BLACK RIVERS TO GRANITE REEF DAM

The Salt River (Rio Salado) commences at the confluence of the White and Black Rivers, a few miles southwest of Ft. Apache or White River on the Ft. Apache Indian Reservation in Gila County, Arizona at approximately latitude 33° 44′ North and

longitude 110° 13′ 43″ West at an elevation of approximately 4,344 feet above sea level.. Some have argued that the Black River flows into the White River and it retains this name for a few miles until it is joined by the Salt River Draw and runs over some salt deposits, at which time the name Salt River is applied to it. For our purposes, we will consider the Salt River commencing where the Black and White Rivers combine into a single stream. The Upper Salt River flows generally in a westerly direction a distance of approximately 153 miles until it reaches Granite Reef Dam located approximately in the center of Section 13, Township 2 North, Range 6 East of the Gila and Salt River Base and Meridian, approximately at latitude 33° 31′ North and longitude 111° 41′ West in Maricopa County, Arizona. This is the reach of the river that is the subject of this report. This 153-mile reach of the Upper Salt River is located entirely within Gila and Maricopa Counties, Arizona, although the Upper Salt River watershed extends through approximately 12,000 square miles of central and eastern Arizona. The watershed ranges in elevation from 12,643 feet at Humphreys Peak north of Flagstaff and 11,590 feet at Mt. Baldy in the White Mountains near Greer, Arizona to 1290 feet above sea level at the base of Granite Reef Dam.

The Upper Salt River watershed is bounded by the Mogollon Rim to the north, the Mazatzal Mountains to the west, the Superstition Mountains and the Gila River watershed to the south, and the White Mountains to the east. The Upper Salt River is a perennial stream and its major tributaries, including the White River and Black River, are Carrizo Creek, Cibecue Creek, Canyon Creek, Cherry Creek, Pinal Creek, Tonto Creek, and the Verde River. This study reach of the Upper Salt River experiences at lower elevations a hot dry climate, typical of the upper Sonoran Desert, with grasslands, oak, juniper and pine trees at higher elevations. The mean precipitation and temperature does not vary significantly within the study limits, although climate varies somewhat with elevation within the watershed. Precipitation occurs during two major seasons: in late summer as intense localized thunderstorms; and in winter as large-scale

cyclonic storms which originate over the Pacific Ocean. Winter storms tend to produce the largest peak and volume flows on the Upper Salt River, with over 90% of the largest storms occurring in the winter months. A map of the Upper Salt River watershed is attached hereto as Exhibit "E."

Prior to statehood the Upper Salt River was a perennial stream fed by a number of perennial, intermittent, and ephemeral streams, as well as springs and other underground water sources. Because of the geographic, geological, and man constructed dams and reservoirs, the study reach of the Upper Salt River has been divided into three separate reaches:

A. The Upper Reach -- White and Black River confluence to Roosevelt Reservoir. The geomorphologic and hydrologic condition of the upper reach is closest to its prestatehood condition of the three Upper Salt River reaches, and has been least impacted by human modifications of the channel and watershed. This reach is located within the Ft. Apache and San Carlos Indian Reservations, Tonto National Forest, and the Salt River Canyon Wilderness Area. For a portion of its run, the river forms the boundary between the Ft. Apache Indian Reservation and Tonto National Forest. In this reach, the Upper Salt River is generally bounded by steep walled bedrock canyons that lack a geologic floodplain. Perennial tributaries that join the Upper Salt River within this reach include Carrizo Creek, Cibecue Creek, Canyon Creek, Cherry Creek and Pinal Creek.

B. The Middle Reach -- Roosevelt Reservoir to Stewart Mountain Dam. The hydrology of the middle reach has been substantially altered by the construction of four major water supply dams with their attendant reservoirs: Roosevelt Dam was constructed before statehood (Roosevelt Lake); Horse Mesa Dam (Apache Lake), Mormon Flat Dam (Canyon Lake), and Stewart Mountain Dam (Saguaro Lake) were constructed after statehood in the 1920's. The natural condition of the Upper Salt River has been altered by these dams and reservoirs to the extent that the entire length of the

middle reach consists of reservoir ponding areas or is affected by reservoir backwater. This reach is located entirely within the Tonto National Forest. The river and reservoirs are bounded by steep walled bedrock canyons and except for the Tonto Basin, there is no geologic floodplain. In addition to Tonto Creek, a number of relatively small perennial and intermittent tributaries flow into the Upper Salt River in this reach.

C. **The Lower Reach** -- Stewart Mountain Dam to Granite Reef Dam. The flow in the lower reach of the Upper Salt River has been significantly affected by the Salt River Project water management and power generation practices, water rights requirements, and flood control practices on the upstream reservoirs. Unlike the upper and middle reaches, the lower reach is primarily bounded by stable pleistocene-aged alluvial terraces rather than bedrock. Except for the Verde River, no significant perennial or intermittent tributaries join the Upper Salt River in this reach. This reach is located within the Tonto National Forest, Salt River-Pima Maricopa Indian Community, and includes a minor amount of private land.

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 Ariz. 356, 837 P.2d 158 (App.1991), review denied October 6, 1992.

> An ancient doctrine of common law restricts the sovereign's ability to dispose of resources held in public trust. This doctrine, integral to watercourse sovereignty, was explained by the Supreme Court in *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). A state's title to lands under navigable waters is a title different in character from that which the State holds in lands intended for sale. . . . It is a title

> held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.

Id. at 452, 13 S.Ct. at 118; *see also Martin v. Waddell*, 41 U.S. (16 Pet.) at 413 (describing watercourse sovereignty as "a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, as well for shellfish as floating fish"). *Id.*, 172 Ariz. at 364, 837 P.2d at 166.

This doctrine is quite ancient and was first formally codified in the Code of the Roman Emperor Justinian between 529 and 534 A.D.[1] The provisions of this Code, however, were based, often verbatim, upon much earlier institutes and journals of Roman and Greek law. Some historians believe that the doctrine has even earlier progenitors in the rules of travel on rivers and waterways in ancient Egypt and 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 nonnavigable 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

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

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).
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> 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 nonnavigable 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 nonnavigable 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

[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 Sessions Law, Chapter 127.

of those rivers could obtain a quitclaim deed from the State Land Commissioner for all of the interest the state might have in such lands by the payment of a quitclaim fee of $25.00 per acre. The Arizona Center for Law in the Public Interest filed suit against Milo J. Hassell in his capacity as State Land Commissioner, claiming that the statute was unconstitutional under the public trust doctrine and gift clause of the Arizona Constitution as no determination had been made of what interest the state had in such lands and what was the reasonable value thereof so that it could be determined that the 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 37-1128.

The 1992 Act provided that the Commission would make findings of navigability or nonnavigability 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. 178 ("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 nonnavigability 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.3d 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 the issue of navigability of all watercourses within the State.

IV. ISSUES PRESENTED

The applicable Arizona statutes state that the Commission has jurisdiction to determine which, if any, Arizona watercourses were "navigable" on February 14, 1912 and for any watercourses determined to be navigable, to identify the public trust values. A.R.S. § 37-1123. A.R.S. § 37-1123A provides as follows:

> A. The commission shall receive, review and consider all relevant historical and other evidence presented to the commission by the state

land department and by other persons regarding the navigability or nonnavigability of watercourses in this state as of February 14, 1912, together with associated public trust values, except for evidence with respect to the Colorado River and, after public hearings conducted pursuant to section 37-1126:

> 1. Based only on evidence of navigability or nonnavigability; determine which watercourses were not navigable as of February 14, 1912.
>
> 2. Based only on evidence of navigability or nonnavigability; determine which watercourses were navigable as of February 14, 1912.
>
> 3. In a separate, subsequent proceeding pursuant to section 37-1128, subsection B, consider evidence of public trust values and then identify and make a public report of any public trust values that are now associated with the navigable watercourses.

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

> A. After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming 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.
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> B. With respect to those watercourses that the commission determines were navigable, the commission shall, in a separate, subsequent proceeding, identify and make a pubic 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 153-mile reach of the Salt River from the confluence of the White and Black Rivers on the Ft. Apache Indian Reservation in Gila County, Arizona to the Granite Reed Dam in Maricopa County, Arizona. 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 Upper Salt River from the confluence of the White and Black Rivers on the Ft. Apache

Indian Reservation in Gila County, Arizona to the Granite Reed Dam in Maricopa County, Arizona, as of February 14, 1912.

Public trust values were not considered in these hearings but will be considered in separate, subsequent proceedings, if required. A.R.S. §§ 37-1123A3 and 37-1128B. In discussing the use of an administrative body such as the Commission on issues of navigability and public trust values, the Arizona Court of Appeals in its decision in *Hassell* found that the 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 bedlands, it first must be determined whether the land was acquired through the equal footing doctrine. However, for bedlands 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 *Hassell*.

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**. (emphasis added)

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 overbears, 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 F.Supp. 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 (2nd Cir. 1969); *Goose Creek Hunting Club, Inc. v. United States*, 207 Court of Claims, 972 F2d 235 (8th Cir. 1992).[3]

[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).

VI. STANDARD FOR DETERMINING NAVIGABILITY

The statute defines a navigable watercourse as follows:

> "Navigable" or "navigable watercourse" means a watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

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 which are generally used by the authorities in applying the federal test for

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[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).

navigability to assist it in determining whether this 153-mile reach of the Salt River was 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 man-made 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.
>
> 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, and reviewed evidence and records regarding the navigability and nonnavigability of the Upper Salt River from the confluence of the White and Black Rivers to Granite Reef Dam. Evidence consisting of studies, written documents, maps, newspapers and other historical accounts, pictures,

and testimony were submitted. There were thirty-five (35) separate documentary filings, including the Preliminary and Final Report and Study prepared by SFC Engineering Company in association with George V. Sabol Consulting Engineers, Inc., J. E. Fuller/Hydrology and Geomorphology, Inc., and SWCA, Inc. Environmental Consultants, submitted by the Arizona State Land Department, a report with pictures and graphs by Dr. Stanley A. Schumm, Ph.D., P.G., entitled "The Geomorphic Character of the Upper Salt River," and a report entitled "The Assessment of the Navigability of Parts of the Upper Salt River and Tonto Creek Between Granite Reef Dam and the Inundation Lines of Roosevelt Lake as of the Date of Statehood" by Dr. Douglas R. Littlefield, Ph.D.. Documents were also submitted by the Arizona Center for Law in the Public Interest, the Central Arizona Paddlers Club, Maricopa County Department of Transportation, United States Department of Agriculture, U. S. Forest Service (Tonto National Forest), Eastern Arizona Counties Organization, and the attorney for the Land Title Associations of Arizona and numerous other individuals and organizations. The Commission also considered documents and papers submitted in connection with the hearings on Gila County and the Lower Salt River insofar as they pertained to the issue of navigability on the Upper Salt. The list of evidence, records, studies and documents submitted is attached as Exhibit "F". Public hearings were held at Phoenix, Arizona, in Maricopa County on October 20, 2005, and at Globe, Arizona, in Gila County on November 15, 2004, for the public to present testimony and evidence on the issue of navigability of the Upper Salt River from the confluence of the Black and White Rivers to Granite Reef Dam as of the date of statehood. Six witnesses appeared at the hearings and gave testimony. At least 3 of the witnesses were acknowledged experts in the fields of hydrology, hydraulics, geomorphology and history. Others were well-informed individuals in the areas of environment law, land use and development and surveying. The hearings were recorded by electronic recorder and in addition, a transcript was made by a court reporter who attended the hearings and that transcript of testimony

and what was said at the hearings is also available for review and the Commission considered this.[5] The minutes of these hearings are attached hereto as Exhibit "D".

A. Prehistoric or Pre-Columbian Conditions on the Upper Salt River Watershed (See Generally Exhibit F4, 5/30/97 and F 28. 11/26/04, Section 2).

Archaeological evidence shows that the Upper Salt River, and in particular the Tonto Basin, has been visited by humans from the earliest Paleoindian times (9500 B.C. - 11,500 B.P.)[6] Two clovis type projectile points (circa 9500-9000 B.C.) have been found, one along the east side of Tonto Creek near Punkin Center and the other at Gila Pueblo. These points suggest that early paleoindian big game hunters passed through the area in pursuit of food. Evidence of the archaic period (6000 B.C. to 1 A.D.) is more widespread although site density is low and often occur away from the river. Sites that were near the river were probably obscured by flooding and later occupations. These archaic sites are characterized by large dense scatters of diverse lithic materials used for hunting and caring for and processing meat and other food and probably represent base camps and work areas.

The early or pre-classic periods are represented primarily by the Hohokam Tradition in the western portion of the Upper Salt River and the Mogollon Culture phenomena in the eastern portion. A recent excavation known as the Eagle Ridge Site, located east of Roosevelt Lake on a small ridge on the north side of the Upper Salt River, has been determined to be the earliest documented ceramic or pottery period site in the Tonto Basin. It provides definitive evidence for an indigenous pre-Hohokam population which used the site between 300 B.C. and 100 A.D. The site contains evidence of maize (corn) agriculture, wild plant gathering, and hunting. Data from this site shows similarities to Hohokam, Mogollon and Anasazi Culture groups suggesting

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[5] When a document in the record or a quote therefrom is referred to in this report, it will be referred to the number given it in Exhibit F, with a title, if appropriate, followed by the page number. The testimony of a witness given at the hearing will be designated as TR (Transcript of Record) followed by the page number, and line numbers if necessary.

[6] The paleoindian period is generally considered to be between 9500 B.C. or 11,500 B.P. (before present) to approximately 6000 B.C. or 8000 B.P.

that there was an early pansouthwestern culture at the same time as regional differentiation was emerging. The core of the Hohokam Tradition, which begins as early as 300 B.C. to 100 A.D., is in the Phoenix Basin along the lower Salt and middle Gila Rivers. See Emil W. Haury's Prehistory of the American Southwest, J. Jefferson Reid and David E. Doyle (Eds.), the University of Arizona Press, Tucson 1986. As the Hohokam developed their large-scale agricultural irrigation system and the population increased, there was a general expansion of Hohokam traits outside the Phoenix area, including settlements and sites found on the upper Verde River and other streams, as well as on the Upper Salt, and in particular in the Tonto Basin. This expansion occurred primarily between 750 and 950 A.D.

The Mogollon Tradition was centered in the mountainous regions of western New Mexico and eastern Arizona. Pottery from this Tradition is found in the Tonto Basin area dating between A.D. 300 and A.D. 700. By A.D. 1000, the Mogollon Tradition had developed masonry and cobble-lined structures of more than one story.

Some archaeologists believe that after A.D. 1000 there was a tradition of blending Mogollon and Anasazi traits in east central Arizona and western New Mexico that is called the Western Pueblo Tradition and is characterized by multi-room surface masonry structures enclosed in compounds with formal kivas. Others believe this is merely a localized branch of the Mogollon Culture adapted to the riverine environment. These sites are found mostly in the eastern portion of the study area.

In the Classic Period after 1000 A.D., numerous Hohokam sites are found in the middle and lower reaches, having numerous rooms and being multi-storied. In the latter part of the Classic Period, after 1200 A.D., platform mounds are found and some ball courts which, together with different and finer pottery, are indicative of the culture known as the Salado Tradition. Platform mound sites in the Tonto Basin and certain cliff dwellings such as the Tonto National Monument are examples of this Tradition. There is disagreement among archeologists as to whether the Salado culture arose out

of the earlier Hohokam culture or was influenced by an influx of Anasazi people, or possibly a migration of people from meso-America. The latter would account for the ball courts and the platform mounds as they are indicative of Mexico and meso-America.

Although there is significant evidence of prehistoric irrigation in the Tonto Basin and in the lower reach of the Upper Salt River, there is no evidence whatsoever of the use of the Upper Salt River by prehistoric cultures for boating or travel on the water. Nor is there any evidence of attempted floating of logs for use in construction of pueblos. In prehistoric times all travel was almost exclusively by foot.

After approximately A.D. 1450 there is no evidence of prehistoric occupation on the Upper Salt River. The cause for abandonment of major occupation sites is unknown, although explanations for the collapse of the culture system include population decimation by disease, environmental degradation (drought), and overstressing of a complex and probably fragile social system. The tree ring studies have shown that the average flow of the river and presumably rainfall from A.D. 740 to 1370 was somewhat less than the modern average flows. However, most of the prehistoric irrigation agriculture occurred during the Classic Period (1150 to 1450). There is also evidence of significant droughts during the late 1300's and early 1400's.

Some time around 1500, the earlier Mogollon, Hohokam, Salado peoples were replaced by the Yavapai Culture and the area remained very sparsely populated. The Yavapais were a Yuman-speaking people who probably descended from the Cerbat Archaeological Culture that occupied southern California and northwestern Arizona south of the Colorado River from about A.D. 700 on. After A.D. 1300 the Cerbat apparently evolved into the historic Hualupai, Havasupai and Yavapai Tribes. In the late 1600's and early 1700's the Athabascan speaking western Apaches migrated into the area and to a certain extent displaced the Yavapai, although there was intermarriage between the two peoples. Both the Yavapai and Apache were relatively nomadic, living

by hunting and gathering and occupying temporary sites consisting of brush wikieups and overhanging rocks. The Apaches exist today living on the Ft. Apache and San Carlos Indian Reservations in the Upper Salt River watershed. The Yavapais are also an identified tribe today, living on reservations to the east of Phoenix and are intermixed with the Apache.

There is no evidence in the archeological record that would indicate that any of the prehistoric cultures located in the study area used the Upper Salt River as a means of transportation by boat or other watercraft and there has been no documented use of the River for commercial trade and travel or for regular floatation of logs. All travel in the study area during this period was by foot.

B. Historical Development of the Upper Salt River Region

The first Europeans came into the area just prior to and with the Coronado Expedition of 1540. The Coronado Expedition's route in the Upper Salt River area has been variously reconstructed and some scholars suggest that it crossed the Salt River below the junction of the White and Black Rivers, but others think it more likely that Coronado crossed above this junction. Records of the Coronado Expedition indicate that the only native peoples encountered in this area were the Yavapais since the Apache had not yet migrated in from the north and east. After the Coronado expedition when the Spaniards began to colonize northern New Mexico, the records begin to show indigenous peoples other than the Yavapais. In 1582, the Espejo Expedition to the north of the study area encountered nomadic peoples in western New Mexico and northern Arizona which were probably ancestors of the modern Navajo and also may have been the first Apache representatives in the area. Navajos are also Athabascan speaking peoples and related to the Apache. There was no colonization of the Upper Salt River area by the Spanish people and relatively few expeditions actually came into the study area for the next 100 years.

In 1699 Father Kino traveled to the Salt River below the study area and possibly went up the Salt as far as the current location of Granite Reef Dam. He named the rivers in the area after the four evangelists, calling the Salt River after Matthew, but later it was also referred to as the Salt River and the Rio Azul. Padre Luiz Velarde also traveled through the area in 1716, as did Padre Ignacio Xavier Keller in 1737, but did not set up missions or make any permanent settlements. Father Jacobo Settlemeyer traveled through the area in 1744 and commented in his reports of the confluence of the Salt and the Gila as having a number of creeks, marshes, fields of reed grass, and abundant growth of alders and cottonwood. Father Ignaz Pfefferkorn visited the Salt River Valley in 1763, as did Father Francisco Garces in 1775, and they noted that the Salt River, together with the Verde River, provided a great deal more water than did the Gila River into which it flowed at the western end of the Salt River Valley. Other than the foregoing, the Europeans did not explore the study area until the 1820's and no permanent settlements were established until the 1860's. None of these individuals used the river for trade or travel. All travel during this period was by foot or mule or horseback.

Mexico won its independence from Spain in 1821 and despite attempts to discourage incursions into its territories by citizens of the United States, fur trappers began exploring the southwest in the 1820's. These mountain men generally rode horseback or walked through the southwest and did not use canoes, rafts or other types of boats on the Upper Salt River or other Arizona rivers except for the Colorado. In 1826 four groups of trappers came down the Gila River trapping primarily beaver. Two of the parties split and traveled up the Salt River trapping beaver as they went. Ewing Young split off from this party and went up the Verde River, while the main party under the leadership of James Ohio Pattie continued up the Salt River. Pattie described the Upper Salt River as having much water and abounding with beavers. He said it is a most beautiful stream bounded on each side with high walls and rich bottoms.

Trapping in the Upper Salt River area continued throughout the late 1820's, 1830's and 1840's, but very few specific and definite records were left by these mountain men.

In 1846 war broke out between the United States and Mexico which ended with the Treaty of Guadalupe Hidalgo in 1848 and the cession of the American southwest above the Gila River from Mexico to the United States.[7] A number of military expeditions passed through southern Arizona during the Mexican-American War, such as the expedition of the Army of the West in 1846 led by Gen. Stephen Watts Kearny down the Gila River through Arizona on their way to California. Also, the Mormon Battalion passed through southern Arizona during this war but traveled mostly south of the Gila River. Because of the rugged territory, none of these expeditions passed through the Upper Salt River area. In 1849, Lt. Edward G. Beckwith led a military expedition west from Zuni across the Little Colorado River to the head of Chevelon Creek, then passing south over the Mogollon Rim along Carrizo Creek and reaching the Salt River between Canyon Creek and Tonto Creek. He reported that because of the rough and impassable territory, they were obliged to leave the river and make their way over mountains to the Gila River. The military surveys conducted during the 1850's primarily for railroad routes did not cross into the Upper Salt River area due to the difficult and impassable terrain.

In the first half of the 1860's the United States military presence in the southwest was greatly reduced due to the requirement for manpower to fight the Civil War in the east. Until the troops were again posted to the area following the War, some of the settlers took matters into their own hands and conducted vigilante type operations against the Indians. In 1865 Ft. McDowell was established on the Verde River, eight miles above its confluence with the Salt River, and in 1867, Camp Reno was established on Tonto Creek, about 15 miles above its confluence with the Salt River. The military post along the White River that later became Ft. Apache was established in 1870 and,

[7] In 1853, the Gadsden Purchase took place whereby the United States purchased from Mexico the land south of the Gila River to the present international boundary with Mexico.

with these posts as a base, the Army undertook an active campaign to pacify the Apache Indians. In 1870, General George Stoneman, the military Commander of the Department of Arizona, toured all of the military posts in Arizona. He crossed through the Upper Salt River area on this tour but made little note of the condition of the river. In the winter campaign of 1872-73, General George Crook cleared the Tonto Apaches from the Tonto Basin and forced them to locate on the San Carlos Reservation. There were continuing military campaigns on a limited scale thereafter which did not end until the surrender of Geronimo in 1886 at Ft. Bowie in southern Arizona.

Soon after the establishment of Ft. McDowell in 1865, the soldiers cleared 150 acres of bottomland for cultivation and irrigated it with Verde River water. In 1867 Jack Swilling, a Confederate Army veteran, and others cleared out an old Hohokam canal opposite the Tempe Buttes and commenced farming in the Salt River Valley. Others followed soon afterwards, and a community grew up around these canals which eventually became the City of Phoenix. Although the Tonto Basin was exploited primarily for ranching, virtually all of the ranchers maintained gardens, orchards and small fields for domestic use and some experimented with farming on a larger scale in order to sell the product to the military. Other than the Tonto Basin, there was little farming, and for that matter even ranching, in the Upper Salt River area.

Rumors of rich mineral deposits began to be heard in the Arizona Territory in the 1860's in the area of the Upper Salt River. Some silver deposits were found near Sombrero Butte, but mining could not become established until the hostile Apache Indians were pacified. The Silver Queen Mine near Superior was established in 1871 and began shipping rich ore by wagon to San Francisco for refining. Two silver deposits were also discovered near Globe, Arizona, and with the influx of miners into that area, the Globe Mining District was formed in 1875, which ran from the Gila to the Salt River and from the San Carlos Reservation to Pinal Creek. A salt works was established where Salt River Draw flows into the Salt River (some miles below the

confluence of the White and Black Rivers) where the river acquires its load of salt. The salt was packed out by way of the Salt River Canyon and freighted to larger markets. A second mining district called the Pioneer Mining District was established in the mid or late 1870's along Pinto, Pine and Smelter Creeks to the west of the Globe Mining District. The silver deposits begin to play out in the 1880's and copper replaced silver as the predominant mining industry. Asbestos mining also became important on the Upper Salt River in about 1911, and manganese was also mined in the Canyon. Many of the mines, particularly those mining copper to the south of the Salt River around Globe, Miami and Superior, are still in operation at this time.

After the pacification of the Indians in the Tonto Basin in 1873, a number of ranchers moved herds in and established successful livestock operations. By the 1880's, it is estimated that 2,000 head of cattle and a like number of sheep grazed in the vicinity of the Tonto Basin and the middle reach of the Upper Salt River. In the 1880's Mormons from the Salt River Valley grazed livestock along the Salt River and La Barge Creek which became known as Mormon Flat. This was abandoned later and Mormon Flat Dam was built near the site in the 1920's. Because of the isolation, some of the ranches in this area established post offices and schools to serve the people in the surrounding area. Usually such a settlement was given a name, and it was considered to be a town, but they were sparsely populated and these so-called settlements have now disappeared to a great extent. Many of the ranchers along the Salt River above the present site of Roosevelt Dam in the Tonto Basin were bought out by the U. S. Government in 1903 when construction of the Roosevelt Dam began. Those who had ranches that were not flooded by the lake backed up by the dam remained and some of them still operate on some private land and forest service leased land. In the Tonto Basin and vicinity, even with Roosevelt Lake, ranching reached its peak in the 1920's when an estimated 82,000 cattle grazed in that region.

Many of the early settlers (1870 to 1900) described the river as a flowing stream and very beautiful, but none said it was navigable. There were serious droughts in the 1880's through the early 1900's interspersed with periods of severe floods. Neither the military in its campaigns against the Apaches, nor the early settlers or missionaries used the Salt River for any form of transportation and certainly no trade or commerce or successful floating of logs occurred on the river. The mode of transportation by these people was foot, horseback or mule and wagon.

It is generally agreed that the Tonto Basin and surrounding area was overgrazed in the 1880's, but recent analyses have indicated that such overgrazing and vegetation removal was not the sole cause of the arroyo cutting that began in the late 1800's. Changes in the amount and timing of precipitation and natural processes of the streams are now thought to have assisted in this arroyo cutting, even if there had been an absence of grazing. Certainly the construction of Roosevelt Dam affected the Salt River floodplain above and below the dam, and it has been commented that prior to such construction the Salt River floodplain supported a mature gallery of cottonwood and willow, most of which were gone soon after the dam was completed and filled. Early European settlers removed large areas of bottomland mesquite and riparian gallery forest to open up land for pastures and farms and to obtain wood for fuel and construction in the Tonto Basin. Although the entire southwest went through a drought in the 1890's, there were some major floods in the 1880's, 1890's and early 1900's that contributed significantly to the arroyo cutting. With regard to the effect of floods, see footnote 19, page 57 below.

The most prominent uses of the Upper Salt River have been ranching, farming, mining and hydroelectric power production. All of the earliest travelers through the Upper Salt River region from Coronado to statehood were over land. Generally this meant by foot or pack train, but even pack trains of mules were limited due to the steep canyons. In 1878 a wagon road was built from Ft. McDowell up river to Tonto Creek

and Camp Reno. Also, in 1879 a road was built that ran east from Globe to the San Carlos River. Four roads did radiate out from Ft. Apache after it was built in 1870, one of which went north to eventually hook up with the railroad at Holbrook. Another road, the General Crook Trail, ran north and then west along the Mogollon Rim from Ft. Apache to Camp Verde. Another ran southwest from Ft. Apache to the Black River and then over to the east side of the San Carlos Mountains to the Indian Reservation at San Carlos. The fourth road ran south and east to the mouth of Bonita Creek and then west to the Gila River near Ft. Thomas. The Apache Trail from Mesa or Apache Junction up to the Roosevelt Dam site and then down to Globe was first built as a wagon road but was later improved as more equipment was needed for the construction of the dam. The road was built by Apache laborers and thus acquired its name. In 1904 a stage traveled over this road between Globe and Roosevelt, which service was extended from Roosevelt to Mesa in 1905. Automobiles began to be used over this trail in 1906 and a regular stage company was chartered in 1914 to provide transportation from the railroad head at Globe to the railroad in Phoenix, using the Apache Trail. No railroads have ever been built in the Upper Salt River country, and the nearest railheads are at Globe and Phoenix, Arizona. By 1910, the highway route from Magdalena, New Mexico, through Springerville was well enough established that it was incorporated into the first transcontinental automobile route. From Springerville the road went south and crossed the Salt River at Salt River Canyon, then into Globe, on to Phoenix and then to Los Angeles.

Other than as noted above, there has been little development on the Upper Salt River study area even to this day, except for the construction of dams and their attendant reservoirs. The upper reaches of the study area, above Stewart Mountain Dam, excepting the Tonto Basin, are very mountainous and have deep canyons, such that surveyors did not even survey the area. Except for a few homesteads, all of this area lies within or adjacent to the Ft. Apache Indian Reservation and Tonto National

Forest. There is some mining in the area, but it is mainly ranching with some small gardens and fields for alfalfa, etc., attendant to a ranch operation. Even ranching is not practicable in the very mountainous area of the study area because of the difficulty in rounding up and getting the cattle out. No settlements or towns have developed on the upper two reaches above Roosevelt Lake and even the ranches are few and far between. This part of the river is bounded on both sides by the Ft. Apache Indian Reservation and Tonto National Forest. Roosevelt Lake and the three lower lakes are used for recreation and camping along side them in good weather is common, as well as boating and fishing on the lakes. Other than this, there has been no attempts at commercial travel on the Upper Salt River or attempts to use the river as a highway for commerce. Up to statehood, all travel in this area was by foot, horseback, mule or wagon and later by automobiles as the road improved.

C. Conditions Around Statehood: Opinions of Pioneers Who Lived or Traveled in the Area at that Time.

Since the issue in this matter is whether the Upper Salt River was navigable or susceptible to being navigable on the day Arizona became a state on February 14, 1912, almost 100 years ago, it seems important to determine what the residents of the area who lived through this period and others who traveled and explored the area thought as to whether the Salt River was navigable. The Commission heard testimony on this and hearings on other nearby watercourses from various historians and others who had heard from ancestors, relatives and others who lived near the time of statehood as to their opinions of the navigability of the Upper Salt River. For example, United States Sen. Carl Hayden, who was born in 1877 and grew up at Hayden's Ferry, now a part of Tempe on the Lower Salt River, described the entire river as an erratic and unpredictable stream and observed that the very large floods of 1890's and 1900's erased decades of human effort to farm and otherwise toil along the edge of the river, including properties owned by his family. He told that in 1873, his father Charles Hayden attempted to float logs down the Upper Salt River to establish a lumber mill in

Tempe, but he could not get the logs through the steep narrow canyons in reaches one and two of the Upper Salt and the project was declared a failure by Mr. Hayden. One of the reasons he stated he did not want to enter the family business was because of the dry riverbed. Senator Hayden always considered the Salt River as a non-navigable stream, and that the major problem in relation to it was flood control.

In his decision on March 31, 1892, Judge Joseph H. Kibbey, in the case captioned *M. Wormser, et al., Plaintiffs v. Salt River Valley Canal Co., et al., Defendants*, No. 708 District Court of the Second Judicial District of the Territory of Arizona, in and for the County of Maricopa, was deciding the rights of downstream water users and canal companies in the Salt River Valley against upstream appropriators (presumably some of whom were on the Upper Salt River) for the purpose of enjoining them from diverting water from the Salt River in derogation of the rights of the downstream users who claimed prior appropriation. The Plaintiffs alleged in their complaint, which was amended three times, that the Salt River was a natural nonnavigable stream. Judge Kibbey decided that the Spanish system of prior appropriation water law would hold over the common law system of riparian water rights and noted that from 1848, when the United States acquired this land, until 1863, when the territory of Arizona was established, that Arizona was a part of New Mexico which had express laws governing the appropriation and use of water for irrigation.

Judge Kibbey also discussed the Act of 1866 relating to the disposal of public lands containing valuable minerals and the Desert Land Act of 1877, both of which gave priority to the use of water on lands to be conveyed under those acts. Most of the homesteads located at both the Upper and Lower Salt River areas had passed into private ownership at the time of his decision, pursuant to the Desert Land Act. The Desert Land Act provides in part as follows:

> [T]he right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon a bona fide appropriation: and all surplus water over and above such actual appropriation and use, together with the water of all lakes,

> rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights.

Act of March 3, 1877, 19 Stat. 377, 43 United States Code §321 (emphasis added). Judge Kibbey decided that the territorial laws could grant a person the right to appropriate water but that such right of appropriation was subject to restrictions, and he went on to apply the law of prior appropriation to decide the dispute in principal between users of the water but does not attempt to settle the rights of individual consumers. He does find "... that the right of appropriation of water for the cultivation of land becomes permanently appurtenant to that land, for without it the land is worthless; without the land the appropriation could not have been made."

Eighteen years later, Chief Justice Kent, sitting as a district judge, on March 1, 1910, while Roosevelt Lake was filling, wrote an opinion in the case of *Patrick T. Hurley, Plaintiff, The United States of America, Intervenor, vs. Charles F. Abbott and 4,800 Others, Defendants,* No. 4564, District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa. The Kent decree logically followed the Kibbey decree inasmuch as the Kibbey decree set forth rights to water from the Salt River between the various canal companies that were parties to the action but did not attempt to define the rights of the individual landowners, which the Kent decree does. Justice Kent also described the Salt River as a nonnavigable stream and notes that the actual maximum normal flow of the Salt River in miner's inches is considerably less than the total practical carrying capacity of all of the various canals that divert water from the river. He also observes in his opinion that for the past years, prior to his decision, more land in the Valley has been attempted to be cultivated than the water available and the normal flow of the river would supply. He then divided the normal flow of the river by miner's inches to the owners of property using legal descriptions of the property making practical use of the same in order of priority of appropriation.[8]

[8] The measurement of a miner's inch is 1/40 part of one cubic foot of water flowing per second of time.

The findings of these two judges, Judge Kibbey and Justice Kent, show that both of them considered the Salt River, certainly the Lower and by inference the Upper Salt River, as being nonnavigable. The first legislature of the Territory of Arizona in 1863, after separation from the Territory of New Mexico, passed a resolution acknowledging that the only navigable river in the territory was the Colorado River.

Because of the inhospitable mountain terrain and deep canyons of the upper two reaches of the Upper Salt River (above Stewart Mountain Dam), there was very little settlement in this area. Some Mormons did come upstream from Levi near Mesa and grazed livestock at the confluence of the Salt River and LaBarge Creek, an area that became known as Mormon Flat. They later abandoned this area when Mormon Flat Dam was constructed. A number of ranches were established in the Tonto Basin area and some settlements were even developed where a post office or school would be located. Many of these were abandoned when Roosevelt Lake began to fill, but there is still some ranching and farming in the Tonto Basin area. An 1896 study of water supply and appropriations on the Salt River described 1,670 acres of irrigated lands above the future site of Roosevelt Dam. A later survey showed 740 acres of this land was initially submerged under the reservoir. Additional land was taken out of private ownership when the dam was raised in the 1990's and the lake expanded.

Adolph Bandelier, the famous archeologist, visited the Tonto Basin in 1883 and again in 1892 and other areas in the Upper Salt River looking at areas of prehistoric settlement and prehistoric irrigation. He describes his trips in and out of the canyon, some on horseback and some on foot, but never does he state that the river was navigable or useful as a highway of commerce. He described the Salt River as a "broad, blue rushing stream wider than the Gila, with a clear and very alkaline waters." He called it the finest large river in the southwest and stated that it "flowed through beautiful green valley planted with grain emerald green" (probably the Tonto Basin). He described the Salt River above the Tonto Basin: "The course of the Upper Salt River

is almost without interruption through clefts, and the impression was conveyed to me that it was generally uninhabitable for sedentary natives."

In 1871, A. A. Humphrey surveyed the southwest and went up the Little Colorado River and then crossed over to Camp Apache and down to the Salt River Canyon. Hiram Hodge, in 1877, described the Salt River was follows:

> At low water, it is a clear, beautiful stream having an average width of 200 feet for a distance of 100 miles above the junction with the Gila and the depth of 2 feet or more.

But neither stated that the river was navigable.

Lt. Daniel Lockwood comments on the Salt River Canyon to the southwest of his camp and described the Army's understanding of the terrain through which they would have to remove Apaches the following year.

> The country to the southwest is rough, and broken by deep canons, which have their outlets in the Salt, or Prieto, River; the latter is the name given to the Salt River above the point where its course lies through the salt-beds that completely change its character. At the point where the trail crosses it, the river breaks through a deep canon, the southern bank being 1,950 feet above the water; reaching the summit, a broad rolling plateau is seen, which is a continuation of the Natanes Mountains. To the west, the irregular line of the opposite wall of an extensive box canon was readily discerned, where the river's course is extremely tortuous. The walls appear to be red sandstone; the country beyond, to the west, was very much broken and cut up by vast canons, which headed off in the direction of the Sierra Ancha, and particularly near Sombrero Butte. The confusion created by nature was truly wonderful.

Another individual whose views were cited to the Commission was Arthur Powell Davis, director of the Reclamation Service, later to become the U.S. Bureau of Reclamation, who stated that during the construction of Roosevelt Dam, consideration was never given to using the Salt River as a highway to carry men or material to the site. That was the reason why the Apache Trail, a road from Apache Junction to the dam site, was constructed. A number of explorers and travelers described the Upper Salt River in the late 19th and early 20th centuries. In general, these observers saw a perennial stream, although its flow was highly variable, both seasonally and annually.

Following the end of the Mexican War in 1848, federal officials were anxious to determine the value of what the United States had gained in the vast territory it had taken from Mexico. It was desirable to determine where cross-country railroads could be built and also to prepare the region for orderly occupation of American settlers in order to solidify control of the new territory. The government undertook formal surveys through the General Land Office. A series of manuals containing instructions for the surveyors was issued starting with the 1851 edition, which instructed that surveys were to be performed in the same manner as surveys had been made of earlier federal territories, which had been enacted by the Continental Congress in 1787 and later adopted by the Congress in 1789 after the Constitution was adopted (Ordinance of 1787, the Northwest Territorial Government, Article 4, 1 Statute 50). Thus, all land was to be surveyed and divided into townships and ranges. Each township being six miles square and containing 36 sections of 640 acres each. In Arizona, the base was established that the confluence of the Gila and Salt River and was known as the Gila and Salt River Base and Meridian. All townships and ranges were to be counted from that point. The first survey performed in Arizona was by the Mexican Boundary Commission in 1851 as a location of the U.S./Mexico border prior to the Gadsden Purchase in 1853, which established the present boundary between the United States and Mexico. A subsequent survey of the U.S./Mexican border was required because of the Gadsden Purchase.

Dr. Douglas Littlefield, an acknowledged expert on history of the American West, in particular water rights and river-related issues, who performed a number of navigability studies on the Salt River, the Verde River and the Gila River, testified and presented his report on the Upper Salt River.[9] He described the various survey manuals from 1851 to construction of the Roosevelt Dam and the surveyors' notes. These

[9] "Assessment of the Navigability of Parts of the Upper Salt river and Tonto Creek between Granite Reef Dam and the Inundation Lines of Roosevelt Lake Prior to and on the Date of Arizona's Statehood, February 14, 1912." by Dr. Douglas R. Littlefield, Ph.D, October 5, 2005. (F29, Chapter I, pp. 9-44)

instructions to surveyors uniformly held that navigable rivers and lakes were to be meandered by the federal surveyor, although the manual did not specify the definition of navigability, but left it to the discretion and opinion of the individual surveyor. The 1851 manual was supplemented or replaced by the manual of 1855 and 1864. Other manuals were issued in 1881, 1890, 1894 and 1902. The net result of all of these manuals were that a navigable stream was to be meandered on both banks and other notes were to be kept regarding the stream. Nonnavigable streams less than three chains in width were to be meandered on one bank only.

Following the instructions of the manuals to the surveyors, the surveys of the Tonto Basin, including the upper limits of Roosevelt Lake inundation area, and Lower Tonto Creek and the third reach just above the Granite Reef Dam were made between 1868 and 1911. These surveys were conducted in such a manner that it was indicated that the surveyors did not believe any of these streams or areas covered, including the Upper Salt River, were navigable. While the surveyors' opinions as shown by their action are not determinative of the issue of navigability, their actions and opinions are probative and support the position that the watercourses were not navigable. *Lykes Bros., Inc. v. United States Army Corps of Engineers*, 64 F.3d 630 (11th Cir. 1995).[10] Major portions of the Upper Salt River, particularly in the mountains and deep ravines above the Tonto Basin and areas below Roosevelt Dam to the site of Stewart Mountain Dam were not surveyed because these lands were located in national forests, Indian reservations or contained lands withdrawn from the public domain for various purposes, such as the Salt River Project. One of the surveyors, Theodore S. White, in

[10] "The Corps also contends that in 1871 public land survey performed by a disinterested surveyor, J.C. Tannehill, shows that there was a well-defined channel through Cowbone Marsh because, in mapping the area, Tannehill drew a solid line through his depiction of Cowbone Marsh. However, the line Tannehill drew is accompanied by "meander" readings on one side. Surveyors were required to meander both sides of what they concluded were navigable rivers, and to meander one bank of what the surveyor thought were well-defined natural arteries of "internal communication." Because Tannehill only meandered one bank of Fisheating Creek, the district court found that Tannehill had determined Fisheating Creek to be nonnavigable. Given the instructions under which Tannehill operated, his meandering of only one bank of Fisheating Creek is probative of whether Fisheating Creek was navigable in 1871." 64 F.3d at 635. See, also *Denison v. Stack*, 997 F.2d 1356, 1364-65 (11th Cir. 1993). Although we recognize that surveyors do not settle questions of navigability, the surveyors' actions are probative.

placed on the navigable rivers without consent of Congress. 33 U.S.C. § 401, *et seq.*; *Economy Light & Power Co. v. U.S.*, 256 U.S. 113, 41 S.Ct. 409, 65 L.Ed. 847 (1921).

Congress passed the Reclamation Act of 1902 which, among other things, provided for the construction of Roosevelt Dam. Mapping of the Tonto Basin site for the proposed dam began immediately after the Act was signed by the President. Prior to construction of the dam itself, a diversion dam, a 19-mile power canal, a power house and a 146-mile road from Globe to the dam site and then to Mesa, Arizona, was constructed. Also built was a telephone line from Globe and Mesa to the dam site, a machine shop, blacksmith shop, carpenter shop, domestic water supply and other facilities to provide the infrastructure for a town for dam workers to live. Thus, the town of Roosevelt came into existence and the first buildings were built in 1904. It continued to grow until 1908 when the town was moved to higher ground because the waters of the reservoir backing up behind the dam flooded over the town site. Roosevelt Dam itself was constructed between 1905 and 1911. The reservoir did not fill completely until 1915 when water flowed over the spillway for the first time.[12] The purpose of Roosevelt Dam was primarily to store water for irrigation in the Salt River Valley, but power production turned out to be a very important secondary benefit. Granite Reef Diversion Dam, constructed three (3) miles below the confluence of the Salt and Verde Rivers to replace the flood-damaged Arizona Diversion Dam, was completed in 1908. Recognizing the value of Roosevelt Dam, the Salt River Project built three additional dams below Roosevelt Dam in the 1920's to store water and increase power production. Mormon Flat Dam, which created Canyon Lake, was built between 1923 and 1925. Horse Mesa Dam, which created Apache Lake, was built between 1925 and 1927. Stewart Mountain Dam, which created Saguaro Lake, was built between 1928 and 1929.

[12] Roosevelt Dam, a History by Earl Zarbein, F14; The Magnificent Experiment by Karen L. Smith, F16.

1881, observed in his notes that the Salt was one to three chains wide and in some instances divided into channels, but with regard to navigability, set no meander corners in his area of the survey and did not undertake any meanders of the stream. In another area, close to where Roosevelt Dam was later constructed, White observed that the Salt was shallow in several locations where he surveyed and also surveyed Tonto Creek, indicating in both instances that no meanders were required since the stream was only approximately 100 links wide. He further noted the existence of a road paralleling Tonto Creek, which suggested that it was not useful for transportation.

Dr. Littlefield also described federal patents of land some 20 of which were issued during the latter part of the 1800's along the Upper Salt River, and none of these patents exempted the bed of the river or described it as navigable. The holders of these patents, many of which include portions of the bed and banks of the Salt River, were not suitable for farming or building because of the potential for flooding, but much of the time there was little or no water in the bed of the river. He stated that no contemporary observer though that the Salt River was navigable prior to and around 1912.[11] Dr. Littlefield discounted newspapers as a source of actual facts, since they tended to be boosters of the community that there were published in, largely because most of the communities were actively seeking new residents. Also, it was common practice for newspapers only to print extraordinary events such as floods and other unusual occurrences. He noted that even the newspapers state that transportation was served by railroad and wagon roads.

All parties agree that the weather and climate on the Upper Salt River watershed has not changed dramatically since the date of statehood, although there have been dry and wet cycles. The Upper Salt River was not listed in or covered by the Rivers and Harbors Act of 1899, which applies to navigable rivers and other navigable waters of the United States and prohibits, among other things, bridges and other obstacles being

[11] See footnote 9, p. 34, F29, Chapter II, pp. 45-75)

All of the early settlers, especially in the Tonto Basin, and explorers who passed through the area agreed that the mountainous terrain and deep canyons of the upper two reaches of the Upper Salt River made the river very hard to get to for any use and that it flowed swiftly, had rapids and obstacles in it such that it could not be used for navigation or as a highway of commerce. In flood stage, it was extremely dangerous to try to utilize the river for any form of transportation through those deep canyons. The river in the Tonto Basin and the third reach were described as braided, having two and perhaps more channels.

There is no evidence, even in the Tonto Basin and the third reach of the Upper Salt river, of any commercial transportation on the Salt River, all transportation in this area being carried out on horseback, mule, stage coach and wagon, and later by automobile or truck as the roads were built and improved.

D. Boating on the Upper Salt River

Downstream boating on the Upper Salt River is documented in the evidence submitted in eight accounts of attempts, some moderately successful, to boat or transport people down the Salt River between 1873 and 1910. The attempts occurred in different months of the year and none of them state the level of the water at the time the trip was taken, whether low, high or in flood. In 1873, Charles Hayden attempted to float logs down the Salt River to establish a lumber mill in Tempe, but he could not get the logs through the steep narrow canyons upstream and the project was declared a failure by Mr. Hayden. In 1885 a party allegedly did successfully boat the Salt River from four miles above Tonto Creek to Phoenix. The object of the trip was to ascertain if logs could be floated through the canyons with a view towards establishing a saw mill at the foot of the Sierra Ancha Mountains and floating the logs down to Phoenix. The rapids, with numerous projecting boulders, made the trip a hazardous one and on occasion they were wrecked, losing provisions, firearms, etc. Mr. Burch, one of the members of the party, declared that notwithstanding the hazards, he felt that successful

log floats down the river could be accomplished. However, the saw mill was never built and no subsequent attempts to float logs were made.

Scott Soladay, research historian of the Tempe Historical Museum reported that he had seen an article in the Mesa Free Press of 1890 or 1891 describing how, after Ft. McDowell was abandoned, A. J. Chandler had logs or sawn timber from the Fort floated down the Verde and then to the headgates of the consolidated canal, but the article itself could not be located. In 1910, Roy Thorp and James Crawford took a rowboat trip from Roosevelt Dam to Mesa. They boated the Salt River until their arrival at the Granite Reef Dam, after which they floated on the South Canal and the Mesa Canal. The rowboat they used was in a very dilapidated condition at the end of the trip. They stated that before the start was made, three bottoms had been placed in the craft and one of these had been worn through by the constant friction of the boulders and sand found in shallow waters. They also stated that many times the men were compelled to lift their craft from the water and carry it over obstacles or portage around rapids and waterfalls. The men were pleased with their adventure but had no intention of attempting to repeat it or to go into competition with the stage company.

In the construction of Roosevelt Dam, no boats were utilized to carry men, equipment or materials up river to the dam site. As the lake began to fill, boats were used to transport workers, materials and equipment from upstream housing to the dam site, as well as across the stream. There were other reports during the construction of the dam of use of gasoline launches on the incipient lake to carry people and mail across the same. The first decade of the 1900's was very dry and one report indicates that dry weather left boats grounded on the banks of Tonto Creek. Interspersed between these periods of drought were floods, which did damage to equipment. In the evidence, there were a number of reports of individuals who were killed during the construction due to attempting to float supplies or other matter down to the dam site or inspect the tunnels. After the construction of the Roosevelt Dam, vehicles could travel on top of it and a

barge was no longer needed to cross the lake. Concurrent with the increase in the height of the dam in 1995, a bridge was built near the dam to carry traffic from State Highway 88 to 188 over the dam and lake.

None of the boating attempts carried goods for commercial trade and there was no navigation up river. The sources of the reports on these boating attempts were mostly newspaper articles which tended to exaggerate the success of the boaters. (See Dr. Littlefield's comments, p. 37, *supra.* The reports do not state the conditions of the river when the attempt was made, whether low water, high water or flood. Except for the Tonto Basin and the area below Stewart Mountain Dam to Granite Reef Dam, the Upper Salt River was clearly not practical for commercial navigation due to the narrow canyons, rapids, waterfalls and other obstructions in the narrow canyons. In one 48-mile reach of the Upper Salt River Canyon, the elevation of the river drops over 1,100 feet for an average of approximately 23 feet per mile. One three-mile stretch of river drops an average of 31 feet per mile. The rapids, waterfalls and other obstructions on the two upper reaches of the Upper Salt River made travel by boat of any size impossible. Also, due to the mountainous terrain and steep canyons, access to the river in these areas was virtually impossible.

There are a number of reports of fish being caught by explorers of the Upper Salt River and residents of the ranches or homesteads near the river, especially in the Tonto Basin and below Stewart Mountain Dam. It seems that all of this fishing was from the banks and was for recreational or personal consumption. No fishing industry ever developed on the Upper Salt River.

Recreational rafting on the Upper Salt River above the Tonto Basin appears to have begun after World War II when rubber rafts became available to the public.

> The Theodore Roosevelt Council of the Boy Scouts of America and the Sierra Club began organizing Salt River trips in the late 1950's. The early adventurers used Army and Air Force surplus rafts running the river at water levels as low as 400 and as high as 3,000 cubic feet per second.

Fuller, F4 and F27; Section 6, p. 38. Current floating of the Salt River is described in a number of guide books and may be undertaken by individuals. There are some guides who sponsor trips down the Salt River for a fee, but these are strictly to view the scenery and wildlife and recreational in nature.

The State Land Department's expert, John Fuller, testified that the two upper reaches of the Upper Salt River – that is, above the Blue Mountain parking area just below Stewart Mountain Dam – being in deep canyons would be considered a pool and riffle type of river and that downstream of that point, the river panel is what he calls a compound channel, which sounds very much like having braided characteristics depending on the flow of the river. T.R. 148, line 12 – 149, line 18.

Testimony was heard regarding "commercial rafting from the Salt River Canyon Bridge (where Highway 60 crosses the Salt River) down to Roosevelt Dam (where Highway 288 crosses the River). In the past few years, an industry has grown up whereby certain companies, for a fee, will transport, as a recreational experience, people down the reach one of the Upper Salt River.[13] These rafting trips occur during the high water period in late winter and early spring. While testimony was given that the flow of the river for such rafting could be as low as 700 cubic feet per second, they preferred flow was between 800 to 4,000 cubic feet per second. Most of the trips the witness had been on, the flow was between 1,500 and 3,000 cubic feet per second. It was noted that while there were kayaks and possibly rafts that could have made this trip in 1912, the technological advances in the type of material, such as the rubber or neoprene rafts and even stronger material for kayaks, which were not available in 1912, made these trips more possible and enjoyable from a recreational standpoint after the 1950's. Also, individuals who had the equipment could go do these float trips individually without paying a guide and a company to transport them. These float trips are strictly for

[13] For example, Wilderness Aware offers a five-day white water rafting trip from the point where U.S. Highway 60 crosses the Salt River in Salt River Canyon for 53 miles downstream during times when the flow of the river allows, for $775.00 per person for adults.

passengers, freight, ore, and cedar posts); *Economic Light & Power Co. v. United States*, 256 U.S. 113, 117-18 (1921) (river was used extensively in the fur trade and for the transportation of large amounts of supplies between Chicago and St. Louis using boats that could carry several tons); *The Montello*, 87 U.S. 430, 441-41 (1874) (finding the Fox River navigable where it had been used considerably in the fur trade and as a route for interstate commerce).

Thus, for a river to be considered navigable or susceptible of navigability, there must be a showing of commercial activity for the river to be used as a "highway for commerce" or susceptible to such use. *United States v. Utah*, 283 U.S. 64, 81-82 (1931) (portions of river held navigable where there was extensive evidence of various boats that carried passengers and supplies, in exploring, prospecting, surveying and mining operations, and for recreational purposes, both before and after Utah's statehood). Likewise, the Ninth Circuit Federal Court of Appeals has found that commerce is a requisite to determining that a watercourse was susceptible to navigation as of statehood. *Alaska v. Ahtna, Inc.*, 891 F.2d 1401, 1405 (9th Cir. 1989). As the Ninth Circuit found, guided fishing and sightseeing tours for nearly twenty years was commercial activity where "[a] substantial industry of such transportation for profit emerged in the lower Gulkana, which industry today employs approximately 400 people." *Id.*

In *United States v. Oregon*, 295 U.S. 1, 21 (1935), the Court found that five lakes were non-navigable because the only "boating which took place in the area involved no commercial aspects and was of such a character as to be no indication of navigability. Boating evidence was primarily limited to seasonal trapping and duck hunting. Other cases in which the courts have found no evidence that a watercourse was a "highway for commerce" are *Harrison v. Fite*, 148 F. 781, 784 (8th Cir. 1906) ("mere depth of water, without profitable utility, will not render a watercourse navigable in the legal sense . . . nor will the fact that it is sufficient for pleasure boating or to enable hunters or fishermen to float their skiffs or canoes"); *Monroe v. State*, 175 P.2d 759, 761 (Utah 1946)

recreational purpose, to view the scenery and wildlife, for the excitement of running rapids and possibly some fishing, but not for commercial purposes, nor did the rafts carry any commercial goods for resale. The acknowledged definition of navigability as set forth by the Supreme Court in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 at 563, 19 L.Ed. 999 (1870), states:

> 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. (emphasis added)

Arizona has codified *The Daniel Ball* definition in A.R.S. § 37-1101(5), which defines "navigable" or "navigable watercourse" as:

> 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 customer mode of trade and travel on water.

"Highway for commerce" is defined as "a corridor or conduit within which the exchange of goods, commodities or property or the transportation of persons may be conducted." A.R.S. § 37-1101(3).

In *The Daniel Ball* case, the U.S. Supreme Court held that Grand River was navigable because it supported the passage of a steamer that carried 123 tons of merchandise and passengers both upstream and downstream. 77 U.S. at 564-65.

Following the decision in *The Daniel Ball*, the Supreme Court premised its navigability decisions based upon whether the watercourse was used as a "highway for commerce" or was susceptible for such use. For example, evidence of using boats on a watercourse in the fur trade, in the ranching industry, and for the transportation of supplies, passengers, and freight have all satisfied the requirement of commercial activity under the federal test for navigability. *See Utah v. United States*, 403 U.S. 9, 11-12 (1971) (boats had been used on the Great Salt Lake to haul livestock in ranching business and other evidence indicated that boats were used to transport salt,

(no evidence that the lake was used for transportation of goods or that "it is likely ever to develop as a valuable means of public commercial transportation"); *Proctor v. Sim*, 236 P. 114, 116 (Wash. 1925) (principal use of nonnavigable lake included recreational boating, fishing, swimming, and skating).

Since the only evidence submitted regarding boating on the Upper Salt River is one of recreational use, whether personal or commercial, in order to view the scenery and wildlife, enjoy the excitement of white water rapid running and perhaps do some recreational fishing, in late winter and spring does not satisfy the federal test for navigability or susceptibility of navigability.

E. Roosevelt Dam and Other Dams and Reservoirs Located on the Middle Reach of the Upper Salt River

During the course of the hearings on this matter, Salt River Project ("SRP")filed a motion asking the Commission to find that the Commission lacked statutory subject matter jurisdiction to determine the navigability of Roosevelt Lake. The Arizona State Land Department responded in opposition to Salt River Project's motion and the SRP filed its reply in support of its motion. A judicial body can always decide the question of whether or not it has jurisdiction. *Avila v. Chamberlain*, 119 Ariz. 369, 372, 580 P.2d 1223, 1226 (Ariz.App. 1978); *Bonner v. Minico, Inc.*, 159 Ariz. 246, 256, 766 P.2d 598, 608 (Ariz. 1988).

> A motion to dismiss for lack of subject matter jurisdiction . . . may attack either the allegations of the complaint as insufficient to confer upon the court subject matter jurisdiction, or the existence of subject matter jurisdiction in fact.

Thornhill Publ'g Co., Inc. v. General Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979). The U.S. Supreme Court has stated that it is the duty of the courts to see that their jurisdiction, which is defined and limited by statute, is not exceeded. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152, 29 S.Ct. 42, 43, 53 L.3d. 126 (1908). Accordingly, the Commission has the authority and jurisdiction to consider whether or

not it has statutory subject matter jurisdiction to determine the navigability of Roosevelt Lake in response to SRP's motion.

The construction of Roosevelt Dam and the subsequent filling of the lake behind the dam were authorized by the reclamation act of 1902. Construction on the dam began in 1904 and was completed in 1911 prior to statehood. Roosevelt Dam and Reservoir are the cornerstone of the Salt River Irrigation and Reclamation Project. After filling, Roosevelt Lake had a capacity of 1,336,000 acre feet of water. As a result of an increase in the height of the dam in 1995, its capacity is now 1,650,000 acre feet.[14]

In support of its motion, SRP points out the obvious that a Commission is a creature of the Legislature and has only the authority granted to it in the statutes passed by the Legislature. ANSAC's mandate as set forth in A.R.S. § 37-1123(A) is 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,. . .

SRP further points out the definition of a watercourse, which is set forth in A.R.S. § 37-1101(11):

> 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 man-made 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.

With regard to the definition of a "manmade water conveyance system, A.R.S. § 37-1101(4) states in part as follows:

> 4. "Man-made water conveyance system" means:
>
> (a) An irrigation or drainage canal, lateral canal, ditch or flume.
>
> (b) A municipal, industrial, domestic, irrigation or drainage water system, <u>including dams, reservoirs</u> and diversion facilities. (emphasis added)

[14] An acre foot of water is the volume of water necessary to cover one acre of land one foot deep or 326,851 gallons.

SRP also points out that "navigable" or "navigable watercourse" means a watercourse that was in existence on February 14, 1912 and at that time was used or susceptible to being used in its ordinary and natural condition as a highway for commerce.

> "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.

A.R.S. § 37-1101(5); see also *Defenders of Wildlife v. Hull*, 199 Ariz. at 426, 18 P.3d at 737 (App. 2001). All authorities agree that navigability for title purposes must be determined on the date of statehood.

The U.S. District Court Alaska, in a case involving the Gulkana River, stated "the requirement for title navigability be determined at the time of statehood means only that when making a navigability determination, the *Daniel Ball* test is to be applied to the physical dimensions and physical configuration existing at the time of statehood. *Alaska v. United States*, 662 F.Supp. 455, 463 (D. Alaska 1987); *affirmed* 891 F.2d 1401 (9th Cir. 1989), *cert. denied* 495 U.S. 919 (1990). The Ninth Circuit, in a subsequent Alaska case regarding the Kukpowruk River stated "the key moment for determination of title is the instant when statehood is created." *Alaska v. United States*, 213 F.3d 1092, 1097 (9th Cir. 2000), quoting *Utah v. United States*, 482 U.S. 193, 196 (1987).

The point of SRP's motion is that since Roosevelt Dam and Lake were constructed prior to statehood, the Lake and the land underneath it was a man-made water conveyance system and incorporated the former natural watercourses of the Salt River and Tonto Creek that were flooded by the waters of the lake. Thus, those watercourses were not in existence as of February 14, 1912.

> Because Roosevelt was in existence and had inundated the relevant parts of any stream reaches beneath it before February 1912, Roosevelt does not "encompass lands that were part of a natural watercourse on February 14, 1912. By that Time, all of the land beneath Roosevelt was part of a "man-made water conveyance system," and not part of a "natural watercourse."

ll. 4-8, page 4, SRP motion.

Since the Salt River and Tonto Creek below the high water mark did not exist on February 14, 1912, having been merged into Roosevelt Lake when it filled, it would appear that SRP's motion for lack of statutory subject matter jurisdiction is well taken and should be granted.

If the Commission did find it had jurisdiction, it could not make a determination as of February 14, 1912, but would have to go back and look at the ordinary and natural condition of the Salt River and Tonto Creek prior to construction of Roosevelt Dam (approximately 1900 to 1902). If it did this, based upon the matters contained in this report, it would find that these portions of these watercourses were not navigable at that time since the river including this part was erratic, unstable and undependable.

Another factor that should be considered is whether or not the land underlying Roosevelt Lake was even available for consideration under the public trust doctrine and transferable to the State under the equal footing doctrine as of the date of statehood, February 14, 1912. In his report, Dr. Douglas R. Littlefield[15] states that prior to the enactment of the Reclamation Act of 1902, there had been certain homesteads established in the Tonto Basin on land that was later covered by the waters of Roosevelt Lake. These homesteads were filed under the original Homestead Act of 1863, allowing for the homesteading of up to 160 acres, or the Desert Land Act of 1877, allowing for a homesteads of up to 640 acres, the water for said homesteads must come from a non-navigable stream. When the Reclamation Act of 1902 became effective, the federal government withdrew from the public domain all land anticipated to be covered by the flooding of the waters of Roosevelt Lake. It also entered into negotiations to purchase from homesteaders any land to be covered by the waters of the lake and in some cases even condemned such land so that all of the land under Roosevelt Lake is owned by the federal government. One might argue that prior to statehood, the federal government withdrew the land required for the building of Roosevelt Dam and lands under the

[15] See footnote 9, p. 34, F29, pp. 33, 34, 81.

waters of Roosevelt Lake and holding them for the benefit of the general public, with a public purpose similar to that espoused in the cases for the public trust doctrine. These public purposes are flood control, safety of the people and property, irrigation and hydroelectric power production. In other words, the federal government is holding these lands in order to construct and build this manmade water conveyance system to ameliorate the damage, loss of life and property caused by floods and provide storage so that irrigation farming lower down on the river could be undertaken and provide hydroelectric power for the public. It seems clear that without that dam and others constructed later, the original great farming industry of the Salt River Valley and the City of Phoenix itself, as well as the satellite communities would not exist in their present form today. The Commission does not have to reach a finding or a decision on this issue since it has granted SRP's motion and found that it has no jurisdiction over Roosevelt Lake.

Recognizing the value of Roosevelt Dam, the SRP constructed three additional dams on the Upper Salt River below Roosevelt Dam in the 1920's to store water for irrigation, ameliorate the flood conditions and increase hydroelectric power production. These three dams and the lakes created by them and their capacities are as follows: Horse Mesa Dam, which backs up Canyon Lake, having a capacity of 57,800 acre feet and was constructed between 1925 and 1927; Mormon Flat Dam, behind which is formed Apache Lake, having a capacity of 245,000 acre feet and was constructed between 1923 and 1925; and Stewart Mountain Dam, behind which is formed Saguaro Lake, having a capacity of 70,000 acre feet and was constructed between 1928 and 1929. These dams were constructed after statehood, so on the day of statehood, the Upper Salt River did flow through the areas over which the reservoirs and the dams were later constructed. These reservoirs or water conveyance systems do encompass land which was part of the natural bed of the Upper Salt River as of February 14, 1912. Accordingly, the Commission had to consider these portions of the Upper Salt River,

which was later dammed by these three dams and covered by the reservoirs backed up behind them in the ordinary and natural condition as they existed in 1912. The Commission did, in fact, consider the land under these three reservoirs as it existed in its ordinary and natural condition in 1912. Due to very mountainous country, steep canyons, rapids, exposed boulders and other obstacles and other evidence and considerations set forth in this report, that reach of the Salt River was determined to be nonnavigable.

In addition, consideration should be given to the matter of whether or not the United States reserved to itself the land necessary to construct these dams and reservoirs and although they hold it in a form of public trust, it is not available to the State under the equal footing doctrine as of the day of statehood. Section 28 of the Enabling Act of June 20, 1910, 36 U.S. Stat. 557, 568-579, provides as follows:

> There is hereby reserved to the United States and excepted from the operation of any and all grants made or confirmed by this act to said proposed State all land actually or prospectively valuable for the development of water power or power for hydro-electric use or transmission and which shall be ascertained and designated by the Secretary of the Interior within five years after the proclamation of the President declaring the admission of the State;

The Enabling Act also provided, after confirming the grant to the territory of Arizona of two sections in each township for schools made by the act establishing the territory of New Mexico in 1850 (9 U.S. Stat. 446), that the State of Arizona was granted sections 2, 16, 32 and 36 in each township to used for the support of schools. If any of these sections were covered by the waters of Roosevelt Lake or the other lakes, then the State could make an in lieu selection of other lands from the federal public domain. The United States also made other grants to the State of Arizona from land in the public domain for other public purposes, such as the support of universities, hospitals, public buildings, prisons, agriculture and mechanical colleges and military institutes. None of these grants was of land under the lakes backed up behind the various dams on the Upper Salt River.

While Section 20 of the Enabling Act may have application to Roosevelt Lake, although it was built before statehood, it is certainly directly involved with the three lower dams and lakes on the middle reach of the Upper Salt River. The Second paragraph of Section 20 of the Enabling Act, states in part:

> That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof **and** to all of the lands lying within said boundaries and held by any Indian or Indian tribes. (emphasis added) (See also paragraph 7th of Section 20)

With a disjunctive "and" used, it can certainly be argued that the people of the State disclaimed any right or title to lands not directly granted to them, which would include other lands owned by the United States, including those under the various lakes backed up behind irrigation and flood control and hydro-electric power dams. As in the case of Roosevelt Lake, the Commission does not have to reach a finding or decision on this issue since it considered the portions of the river lying under these three lakes in their ordinary and natural condition as of statehood and found they were not navigable or susceptible of navigability.

It is a well-established principle that the territorial land acquired by the United States under navigable streams and the banks up to the high water mark were held in a special trust by the United States under the Public Trust Doctrine and title passed to the states when admitted to the union under the Equal Footing Doctrine. *Hassell, supra.* These bed lands were held first by the United States and then by the states after statehood in a special trust for the benefit of the people of the state that they may enjoy navigation of the waters, carry on commerce over them and have liberty of fishing thereon free from the obstacles of private parties. Normally, under the Public Trust Doctrine, the United States is precluded from transferring title to the bed lands to third parties prior to statehood or withholding title from the states except in certain circumstances. *Illinois Central R.R. Co. v. Illinois,* 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018

(1892). The U. S. Supreme Court in *U.S. v. Holt State Bank, supra,* explains a qualification to this general rule.

> . . . subject to the qualification that where the United States, after acquiring the territory and before the creation of the state, has granted rights in such lands by way of performing international obligations, or effecting the use or improvement of the lands for the purposes of commerce among the states and with foreign nations, or **carrying out other public purposes appropriate to the objects for which the territory was held, such rights are not cut off by the subsequent creation of the state, but remain unimpaired, and the rights which otherwise would pass to the state in virtue of its admission into the Union are restricted or qualified accordingly.** (numerous cites omitted) (emphasis added)

270 U.S. at 54-55, 46 S.Ct. at 198-99. The intention of the United States to withhold land from a state under the Public Trust Doctrine must be definitely declared and otherwise made very plain. *Shively v. Bowlby,* 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331. Whether the intention of the United States to withhold the land under Roosevelt Dam and Lake, Horse Mesa Dam and Lake, Mormon Flat Dam and Lake and Stewart Mountain Dam and Lake is sufficiently expressed in the above-quoted sections of the Enabling Act and other Acts of the government to prevent the beds and banks of the rivers from passing to the state under the Equal Footing Doctrine is an issue that will have to be decided at some future time. Because of the Commission's findings as set forth herein, it does not decide this issue.

For the reasons and authority stated above, the Commission holds that it does not have jurisdiction to consider the navigability of Roosevelt Lake or of the streams formerly existing under Roosevelt Lake, including Tonto Creek land inundated by the lake because the dam and lake were built before statehood and the streams did not exist on February 14, 1912, having been merged into the lake.

Jurisdiction does exist in the Commission to consider the ordinary and natural condition of the portion Upper Salt River as it existed on February 14, 1912, which is now inundated under the three lakes backed up by Horse Mesa, Mormon Flat and Stewart Mountain Dams and the Commission did consider the same. For reasons set

forth in this report, the Commission finds that this reach of the Upper Salt River to be non-navigable.

If the Commission were to assume jurisdiction over the lands lying under Roosevelt Lake, a very good argument can be made that these lands were withdrawn from the public domain and unavailable for transfer to the State under the equal footing doctrine by actions of the United States before statehood and the provisions of the Enabling Act. This argument is similar to that pertaining to the three lower lakes on the Upper Salt River because of the withdrawal of lands and disclaimer thereof contained in the Enabling Act.

F. Geology, Geomorphology and Hydrology of the Upper Salt River

Prior to statehood, the Upper Salt River was a perennial stream and flowed year round, although the flow varied from very low (sometimes less than 200 cubic feet per second) to annual floods estimated between 13,000 and 20,000 cubic feet per second. On a larger scale, the flow of water in the Upper Salt River is characterized by periods of drought interspersed with periodic floods (sometimes extremely heavy, exceeding 100,000 cubic feet per second). Thus, the river has been described as extremely erratic, unstable and unpredictable in its disposition.

Arizona is comprised of three great geologic regions: the Colorado Plateau Province in the northern part of the state and the Basin and Range Province in the southern part of the state, with a transition zone or Central Mountain Province dividing them. The Upper Salt River drains the Central Mountain Province and the northern portion of the Basin and Range Province. The Upper Salt River lies entirely in Gila and Maricopa Counties. The Central Mountain Province is characterized by mountains of Precambrian igneous and metamorphic rocks, capped by remnants of Quartinary and late Tertiary volcanoes. The regional uplift of the entire state, including the central mountain region, is thought to have occurred during the Laramide Orogeny in the late Cretaceous, early Tertiary period (65,000,000 years ago). Reach one, except for the

Tonto Basin, and reach two flow through deep canyons with bedrock confining them to the channel making it substantially inaccessible for people to reach the river. The riverbed is steep and flows fast and contains rapids, waterfalls and other obstacles. The Tonto Basin and reach three below Stewart Mountain Dam spreads out over an alluvial plain and is braided in configuration. A report filed by the Tonto National Forest states that the 48 miles of river upstream from Roosevelt Lake is known as a first class white water river. "The gradient of the river is one of the reasons for the wild ride encountered by boaters during its rush through 48 miles of the Salt River Canyon, it drops 1,000 feet for an average of approximately 23 feet per mile. One three-mile stretch of river drops an average of 31 feet per mile." The report compares this with the Upper Verde River through the Matazal wilderness, which drops an average of "only 18 feet per mile and the Colorado River through the Grand Canyon, which drops an average of less than 8 feet per mile." The report also states that the river flow can go from less than a few hundred cubic feet per second to over 100,000 cubic feet per second in a few short hours, which makes white water rafting dangerous and attempting to use the river as a highway of commerce would be disastrous. The report describes the destruction of the bedrock that formed Quartzite Falls in 1993, which was the most dangerous rapid on the river that travelers had to portage around. The report also lists and shows photographs of 12 other rapids that are difficult to pass through and have damaged or sunk a number of boats attempting it. The report closes with the opinion that while white water rafting may be possible during certain months of the year, it was and is physically impossible for vessels customarily used for commerce on navigable waters to have traveled through the 48 miles of the Salt River Canyon.[16]

John Fuller, in his report, F27, Section 4, p. 15, describes the Upper Salt River as follows:

[16] F8, Evaluation of the Navigability at Time of Statehood of the Salt River from Roosevelt Dam Upstream to the Eastern Boundary of Tonto National Forest.

> Review of the geology of the Upper Salt River indicates that the channel geomorphology is substantially unchanged from its condition at or before statehood, except where the river has been inundated by reservoir impoundments. Most of the Upper Salt River is formed within deep bedrock canyons. Bedrock along the channel margins in these canyons precludes significant movement of the river channel or other channel changes. In addition, the bedrock geology of the Upper Salt river area made access to the river difficult during the period around statehood, prevented development of extensive irrigation systems, and prevented the development of large population centers near the river. Bedrock outcrops in the channel created waterfalls, rapids, and narrow canyons which may have been potential impediments to navigation for some types of boats such as keel boats, steamboats, and powered barges.

Fuller goes on to state that the bedrock geology of the Upper Salt River was conducive to construction of large dams and water supply reservoirs. The construction of the four reservoirs on the Upper Salt River are the only significant changes in the natural geomorphology of the study reach.

Precipitation occurs on the Upper Salt River water shed during two major seasons: in the mid to late summer, monsoon season, intense, localized orographic thunderstorms originating to the southeast in the Gulf of Mexico and in winter, as large scale cyclonic storms which originate over the Pacific Ocean move east through California. The winter storms tend to produce the largest in terms of peak and volume flows of the Salt River with over 90% of the large storms and floods having occurred in the winter months. Following the winter storms which bring snow to the higher elevations other than the late spring and early summer flow from snow melt, the summer months usually have very low average annual discharge. The average precipitation at Granite Reef Dam over the 30-year period between 1938 and 1968 was 8.9 inches. Precipitation on the upper water shed varies depending on the area and elevation of the mountains. For example, at St. John's , Arizona, with an elevation of 5,725 feet, the average annual precipitation is 11.4 inches per year and at Show Low where the elevation is 6,382 feet, the average annual precipitation recorded is 18.4 inches per year.

The climatic conditions and weather in the southwest have been consistent over the past few hundred years. From 1826, when the mountain men first came through, to

the present day, we have at least some records of rainfall and flow. By using dendrocrinology, or the tree ring method, archeologists have been able to confirm that the weather has remained fairly consistent in terms of rainfall since at least 780 A.D. and some authorities have projected the weather back even further. The pattern seems to be consistent that there were occasional floods (sometimes quite heavy) interspersed with periods of drought. Also, there might be a period of years in which the average rainfall was greater, in other words, wet cycles which were followed by dry cycles. Over the long period of time, however, these cycles would be fairly consistent and regularly follow each other. For example, it appears that the period between 1890 and 1920 was generally wetter than the period between 1920 through 1940.

Computing the flow of the Salt River is extremely difficult with the use of estimated average annual flow and estimated mean average annual flow. For example, the estimated mean average annual flow of the Upper Salt River at the confluence of the White and Black Rivers was approximately 433 cubic feet per second.[17] Tributaries and springs add to the flow as the river winds its way to Granite Reef Dam, 153 miles away, and various estimates have been made as to the average annual flow at the lower end of this reach at Granite Reef Dam. Mr. Fuller, in the SFC engineering report (F4 and 27, Section 1, p. 3 stated "Without considering any disturbances by humans, the mean annual flow ranges from about 700 to 1,500 cfs." Mr. Fuller later estimates the average annual flow at Granite Reef Dam as ranging from 1,400 cfs to 1,800 cfs. (F4 and 27,

[17] There are three (3) U.S. Geological Survey gauging stations along the Black River. The upper gauging station near Maverick has a mean annual flow of 141 cubic feet per second ("cfs"). The gauging station near Point of Pines has a mean annual flow of 221 cfs. The gauging station near Ft. Apache, Arizona, on the White River, close to its confluence with the Black River,has a mean annual flow of 212 cfs. Thus, it may be assumed that the mean annual flow of the Salt River is approximately the total of the White River and Black River flows which would be somewhere around 433. The gauging station below Ft. Apache, Arizona, close to the confluence of the Black and White Rivers has a mean annual flow of 438 cfs. Near Freeze Out Creek, eight (8) miles northwest of Point of Pines, the Phelps Dodge Corporation has constructed a pumping plant to transfer water from the Black River to Eagle Creek for use in its processing plants and the mines near Morenci, which reduces the average flow down the Black River and increases the flow in Eagle Creek. This decrease in flow on the Black River is not significant since its mean annual flow at the gauging station at Point of Pines below the pumping station and further flow at the confluence with the White River show an increase in the mean annual flow. (F4 and 27)

Section 5, Table 7, p. 10; Table 12, p. 17) Others have estimated the average annual flow at Granite Reef Dam as low as 1,265 cfs and another estimated at 1,455 cfs. (F4 and 27, Section 5, Table 7, p. 10)

Average annual flow is not too meaningful because it tries to average the low flows of 200 cubic feet per second in May and June of the usual, normal year with annual floods during the monsoon and winter cyclical storms, which annually run between 13,000 and 20,000 cfs. Also, it should be remembered that it is necessary to average in the very large floods that occur periodically but usually only every five years up to 100 years. While the two decades of the 1888 and 1910 were considered a drought period, there were 13 floods with flows exceeding 20,000 cfs. Following are listed major floods that occurred during this period, 3 of which rank in the 100 to 500 year flood level.

February 1891 – 285,000 cubic feet per second

March 1893 – 351,514 cubic feet per second

November 27, 1905 – 199,500 cubic feet per second

January 2, 1910 – 294,000 cubic feet per second

(F4 and 27, Section 5, Table 18, p. 26)

Interestingly enough, the month of February 1912 and the year 1912 were unusually dry. Statistics developed by the Arizona State Planning Board estimate a monthly combined average flow rate of 398 cfs, combining the Salt and Verde Rivers. Below the confluence of the Salt and Verde Rivers, a mean annual flow rate for the year was estimated at 1,176 cfs. (F4 and 27, Section 5, p. 12; see also, p. 36) No stream flow measurements were made for the day of Arizona statehood, February 14, 1912. Over the long period, it seems that the average annual flow of the Salt River at Granite Reef Dam would be between 1,455 and 1,690 cfs at the very best. (F4 and 27, Section 5, Table 12, p. 17)

Evidence was submitted by SRP of federal or state court decisions in which navigability of a river was actually determined using the *Daniel Ball* test. Four of the 21 water courses listed in the document were found to be navigable in whole or in part by a federal or state court. Of these four navigable rivers, the lowest average annual flow was 2,277 cfs for the great Miami River of Ohio, which was found navigable in part and non-navigable in part. The other three water courses found navigable had average annual flows of 7,316 cfs, 6,930 cfs and 4,066 cfs, all of which are much higher than the estimated average annual flow computed for the Upper Salt River at Granite Reef Dam. Clearly, the water flow in this reach of the Upper Salt River does not support a finding of navigability, but in fact tends to support a finding of non-navigability.

The Commission was impressed by the testimony, report and exhibits furnished by Dr. Stanley Schumm, a former geomorphologist for the U.S. Geological Survey, and for 30 years a professor at Colorado State University, and the author of numerous scientific papers and books on the geomorphology of rivers. He testified that reach three of the Upper Salt River (between Stewart Mountain Dam and Granite Reef Dam) was very similar to the Lower Salt River and is more spread out over the flood plain than reaches one and two. In this reach, it has a braided pattern with multiple channels and sand and gravel bars, which shift with floods and high flows. This area is not confined by bedrock canyons, but by alluvial terraces adjacent to the river and is modified by major discharges. The river in this reach is dynamic and constantly changing and, thus, not suitable for navigation. The Tonto Basin in reach one would also be very similar to this. Upstream, where the river flows through deep canyons, the river is confined by bedrock. Mr. Schumm testified that if the reservoirs were not in existence behind Stewart Mountain, Mormon Flat and Horse Mesa Dams, the river would be very similar to that of reach one in that it is confined by bedrock and would probably have numerous rapids, waterfalls and other obstacles, including bedrock

islands, which like reach one, would make them nonnavigable. With regard to reach one of the Upper Salt River, Dr. Schumm testified:

> And for the 60 miles above Roosevelt Dam spillway, which is river mile zero, there's a rapid on average every 3.3 miles. What's even more interesting is the indications of the gradient of the river up there. For example, at 14.7 miles, the river drops 17 feet per mile. At 20.8 miles, the river drops 16 feet per mile, and then finally at 30.1 feet [miles], the river drops 31 feet per mile. We're dealing with a relatively steep portion of the channel with numerous rapids. And I like the names of the rapids: Corkscrew Shoot at 28.2; Cliff Hanger Rapid at 25.7; the Rat Trap, 46; Little Boat Eater, 48.3; Overboard Rapid at 57.2.

He goes on to state:

> [I]f the river is steeper than 4 feet per mile, you can't – river borne commerce cannot compete with railroads or other means of travel. So it sounds as if it's steeper than 4 feet per mile. You're not going to get any sizeable boat up and down the river; and here we're talking about a maximum of 31 feet per mile, suggesting that, pretty clearly, at least this 60 miles of the river would not be suitable for any sort of navigation.

T.R., pp. 87-88. With regard to reach three, below Stewart Mountain Dam, he states:

> Well, if the braided pattern has multiple channels and sand bars and gravel bars, during any flood the position of the gravel bar could shift and be eroded away. The pattern of the bed changes its characteristics, not in the sense of not being braided but the position of the channels and the position of the bars and the character of the bars could change.

T.R., p. 97. In his conclusion, which summarizes his written report, Dr. Schumm states:

> The large floods prior to statehood would have created a wide-braided channel probably occupying the entire valley floor, as occurred along the Gila, Verde (Schumm, 2004), and lower Salt Rivers (Schumm, 2003). The canyon reaches of the upper Salt River, including the now submerged reaches (Roosevelt Dam to Stewart Mountain Dam) are very steep and rapids are frequent. These conditions make navigation impossible.
>
> Braided rivers are wide, shallow, and steep, a condition not conducive to navigation. The marked changes of valley width cause dramatic alterations of water depth and velocity, which would make navigation hazardous. The numerous rapids (Table 1) clearly prevent navigation, and the bedrock that controls the Verde and Salt Rivers at their confluence prevents navigation upstream on both rivers (Figure 8).
>
> Obviously, the numerous rapids and bedrock impacts on the river prevent navigation, but even more important are the very steep gradients ranging from 17 to 31 ft/mile. These gradients are significant because Captain John A. Mellon, with over 40 years experience on the Colorado river (Lingenfelter, 1978, p. 51), stated in a letter to the Bureau of Corporations (1907) that, "I have come to the conclusion that any river that has over 4 feet fall to the mile cannot compete with a railroad for freight or

passengers" (cite omitted). If at 4 feet per mile, commercial navigation is inhibited, certainly at 17 to 31 feet per mile, the gradients measured on the Upper Salt River, navigation would be impossible.[18]

Dr. Littlefield, in his detailed report, agreed with Dr. Schumm and further testified

> It's safe to say that there was no contemporaneous observer that I found that thought that the Salt River above Granite Reed dam or Tonto Creek through the inundation lines of Roosevelt were navigable either prior to or at the time of statehood. Nearly all the observers found the boat streams to be highly erratic, having huge floods, and other times no water at all. And in the – of course, in the lower river, there are tremendous channel changes as well.

T.R., p. 109. Dr. Littlefield also discussed the large floods that occur with some frequency on the Upper Salt River stating that these floods are most destructive and violent in character and the rate at which the water rises and increases in amount is astonishingly rapid. Its onset will be without warning and certainly make the entire river nonnavigable. Dr. Littlefield also cites to the geological survey annual reports and a quote from John Wesley Powell who wrote the 1891 Geological Survey report.[19]

The testimony of Dr. Schumm and Dr. Littlefield and their reports, and that of other witnesses who testified or whose reports were referred to the Commission, that the geomorphology and hydrology of the Upper Salt River make it clearly nonnavigable was unrefuted in the record. Actually, no evidence was submitted to the Commission

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[18] F29, p. 12. Geomorphic Character of the Upper Salt River by Stanley A. Schumm, Ph.D., P.G, January 2005.

[19] "The yearly reports drafted by the Geological Survey contain detailed information on many streams in the West, including the Upper Salt River. For example, the *Eleventh Annual Report of the U.S. Geogological Survey* (1892), which focused specifically on irrigation, generally described streams draining the Gila Basin (which include the Upper Salt River and Tonto Creek). Stating that all rivers in the basis were highly erratic, John Wesley Power [the explorer of the Colorado River in the Grand Canyon in 1869], who authored this *Annual Report*, wrote:

> In this basin are found rivers most difficult and dangerous to examine and control, differing in character and habit from those of the North as widely as in geographic position. In place of the regularly recurring annual floods of spring and early summer, so strongly marked on the discharge diagrams of other basins, these rivers show conditions almost the reverse, being that season at their very lowest stages – even dry – and rising in sudden floods at the beginning of and during the winter. These floods are of the most destructive and violent character; the rate at which the water rises and increases in amount is astonishingly rapid, although the volume is not always very great. . . . From this it will be recognized that the onset of such a flood is terrific. Coming without warning, it catches up logs and boulders [sic] in the bed, undermines the banks, and, tearing out trees and cutting sand-bars, is loaded with this mass of sand, gravel, and driftwood – most formidable weapons for destruction."

by any expert who opined that the river was navigable at or about the time of statehood, or for that matter, was susceptible of navigability in its ordinary and natural condition.

The use of reach one of the Upper Salt River since 1950 by white water rafters for recreation purposes such as viewing the scenery and wildlife, recreational fishing, and experiencing the thrill and danger of running rapids does not equate to a "highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel over water."

VIII. SUMMARY AND CONCLUSION

The Commission conducted a "particularized assessment" of potential public trust claims on the part of the State of Arizona on the Upper Salt River as required in *Center of Law v. Hassell, supra.*, and in doing so considered all of the evidence available as to the issue of navigability, including archeology of the Upper Salt River area and prehistoric and pre-Columbian history, history and development of the Upper Salt river area from the time Europeans first came into the area, the views and opinions of people who lived at or about the time Arizona became a state, the geology, geomorphology and hydrology of the Upper Salt River, the actual attempts and potential for boating or use of the river as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel over water.

The archeological evidence indicated that Paleo-Indians visited the area as early as 9,500 b.c. and that later there was some farming by irrigation in the Tonto Basin as a result of Hohokam migration from the Lower Salt River Valley to this area. There was no evidence that any of these prehistoric Indians made use of the Upper Salt River for the purpose of transportation. All transportation in this area at that time was by foot and not by any form of watercraft.

Although the Spanish explored the Upper Salt River area as early as 1700, they did not establish any permanent settlements or missions. The first Europeans trappers,

mainly for beaver, came into the Upper Salt River area between the 1820's and 1840's, but all traveled by horse, mule and foot. There are no reports of their using any kind of boats or watercraft on the Upper Salt River, although they did use boats on the Colorado River. The United States acquired the area in which the Upper Salt River lies from Mexico as a result of the Treaty of Guadalupe Hidalgo, which ended the Mexican-American war in 1848. Due to the inhospitable mountain geography and deep canyons, there was very little permanent settlement in this area even after the civil war and when the army was again able to undertake pacification of the Apache Indians in the area. Even with the end of the Indian wars in 1886, the nature of the country made the establishment of any large settlements impossible. Rich mineral deposits did allow mines to be established in the Upper Salt River area, especially in Globe and Superior. None of these early settlers were of the opinion that the Upper Salt River was navigable as a highway for commerce and the mode of transportation by people during the period between 1860 and 1912 was primarily by foot, horseback or mule and wagon.

Some homesteads and other acquisitions by private individuals of land on the Upper Salt River or adjacent thereto occurred as a result of the Homestead Acts. In no case did a homestead or patent granted by the federal government indicate that a part was being withheld due to navigability of the river or that the bed of the river was excluded from any homestead or patent. Likewise, surveyors of land along the Upper Salt River from 1853 to 1911, following the federal survey manuals, indicated by their actions that the river was not navigable. The Upper Salt River was not listed in the Rivers and Harbors Act of 1899.

The evidence showed that there were attempts prior to statehood at boating and floating logs down the Salt River, which were generally not successful. A survey of the historical account of boating on the Salt River supports the proposition that the river was not suitable for navigation and that there was never any sustained, successful use of a watercraft on the river or use by the river for floating logs or otherwise as a

highway for commerce. Since the 1950's, using modern neoprene and rubber boats, individuals and organizations have been conducting float trips from the Salt River Canyon down to Roosevelt Lake. These trips are strictly recreational in nature in order to view the scenery and wildlife, enjoy the excitement and danger of white water rapid running and perhaps do some recreational fishing. These trips occur in later winter and spring and are not use of the river as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water as of February 14, 1912.

The construction of Roosevelt Dam and establishment of Roosevelt Lake prior to statehood and the subsequent construction of three dams lower on the Upper Salt River changed the form of the use of the river in the lower reaches of the river. The dams were built for public purposes, such as flood control, irrigation and the production of hydroelectric power. In the case of Roosevelt Dam and Lake, the federal government withdrew from the public domain all of the property it still owned lying under the dam and the inundation levels of the lake. Also, under the Enabling Act, it withdrew from the public domain all of the land affected by the three lower dams and the lakes they back up. Thus, the federal government owns all of the land under these dams and lakes. Notwithstanding this, the Commission considered the Upper Salt River streambed as it existed on February 14, 1912, in its ordinary and natural course under Canyon Lake, Apache Lake and Saguaro Lake, and found that the watercourse was not navigable. With regard to Roosevelt Lake, since it was in existence prior to statehood and constituted a water conveyance system which merged the streams under it into the lake as of statehood, thus the streams did not exist on the date of statehood, the Commission found it did not have jurisdiction to determine the navigability of Roosevelt Lake.

All of the witnesses and the documentary evidence with regard to the geology, geomorphology and hydrology of the Upper Salt River stated that the Upper Salt River

while a perennial stream and flowed year round prior to statehood, it was a very erratic, unstable and unpredictable stream because the flow varies from very low, sometimes less than 200 cfs, to annual floods estimated between 13,000 and 20,000 cfs with periodic floods exceeding 100,000 cfs. There is evidence, somewhat questionable, that the average annual flow of the Upper Salt River at Granite Reef Dam was between 1,400 cfs and 1,800 cfs. Others estimated the average annual flow at less. Even taking the higher figure of 1,800 cfs, it is below the flow of any river found navigable by any court, which was reported to the Commission. In reach one above Roosevelt Lake and reach two before the construction of Horse Mesa, Mormon Flat and Stewart Mountain Dams, the steep, narrow bedrock canyons, lack of accessibility to the river, waterfalls, rapids, exposed boulders and other obstacles, and the steep gradient of the river, navigation as a highway for commerce was not possible. In the areas such as Tonto Basin and reach three below Granite Reef Dam, the river spread out over a larger flood plain and was considered a braided stream of two or more flow channels interspersed by shifting sand bars and sand islands, which would make it impossible to be considered as navigable or susceptible of navigation.

Today, because of the upstream dams, the river channel is dry a portion of the year but in recent decades there have been vary large floods that range from 100,000 to 200,000 cfs due to extreme precipitation on the watershed, which floods have required release of water from the dams and flooding downstream.

In *The Daniel Ball, supra,* the Court stated that:

> 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 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 568. *See also, U.S. v. Holt Bank, supra.,* and *Muckleshoot Indian Tribe v. FERC,* 993 F.2d 1428 (9th Cir. 1993). The evidence submitted to the Commission did not show that the Upper Salt River is navigable in fact under the federal test as set forth in *The*

Daniel Ball and other U.S. Supreme Court decisions. Therefore, the Upper Salt River may not be considered as navigable in law.

The standard of proof for findings by the Commission is a preponderance of the evidence. A.R.S. § 37-1128(A), *Defenders of Wildlife v. Hull, supra* and *North Dakota v. United States, supra.* The burden of proof rests on the party asserting navigability. *Arizona Center for Law v. Hassell, supra, and Land Department v. O'Toole, supra.* Clearly, the preponderance of evidence supports a finding that the Upper Salt River was not navigable on February 14, 1912, and further, was not susceptible of navigability in its ordinary and natural condition.

IX. FINDINGS AND DETERMINATION

Having considered the motion of SRP that the Commission find it does not have subject matter jurisdiction over Roosevelt Lake, the Commission believes that the same should be granted and that under the laws providing for the Commission's establishment, the Commission finds it does not have jurisdiction to decide any issue of navigability with regard to Roosevelt Lake and the stream beds which formerly existed under the waters of the lake before inundation.

Based upon all of the historical and scientific data and information, documents and other evidence produced and considered by the Commission, the Commission finds that the Upper Salt River between the confluence of the White and Black Rivers and Granite Reef Dam is erratic, unstable and unpredictable, characterized by periodic floods, sometimes extreme, in its ordinary and natural condition. Reach one of the Upper Salt River and reach two as it existed at statehood lie in deep bedrock canyons and had rapids, waterfalls and other obstacles that prevented it from being considered navigable or susceptible of navigability as a highway for commerce. That portion of the Tonto Basin not inundated under Roosevelt Lake and reach three was a braided stream of two or more channels interspersed by sandbars and sand islands, which shifted with floods and high flow of water, and as such, had a configuration that would be

impossible to be considered navigable or susceptible of navigability as of statehood. Accordingly, the Commission finds that the Upper Salt River from its confluence with the White and Black Rivers to Granite Reef Dam was not used or susceptible of use as a highway for commerce over which trade and travel was or may be conducted in the customary modes of trade and travel on water as of February 14, 1912.

DATED this 13 day of December 2007.

Earl Eisenhower, Chair

Dolly Echeverria, Vice Chair

Jay Brashear, Member
Deceased September 15, 2007

Cecil Miller, Member

James Henness, Member

Staff Members:

George Mehnert
Executive Director

Curtis A. Jennings
Legal Counsel to the Commission

1945-0

EXHIBIT A

PAYSON ROUNDUP
P.O. Box 2520 - Payson, AZ 85547
708 N. Beeline Highway
(928) 474-5251 - Fax (928) 474-1893

STATE OF ARIZONA
COUNTY OF GILA

AFFIDAVIT OF PUBLICATION

I, **Marge Hanscom**, acknowledge that the attached hereto was published in a newspaper of general circulation at Payson, Arizona, County of Gila on the following dates:

08/31/2004
09/07/2004
09/14/2004

Signed

On this **5TH DAY OF NOVEMBER, 2004.**

Notary Public

JULIE WANTLAND
Notary Public - Arizona
GILA COUNTY
My Comm. Exp. 3-29-2007

9327: 8/31, 9/07, 9/14/04
STATEMENT OF INTENT

9327: 8/31, 9/07, 9/14/04
STATEMENT OF INTENT

9327: 8/31, 9/07, 9/14/04
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 Gila River, the Upper Salt River, and the Verde River in Gila 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 non-navigability of the Gila River, the Upper Salt River, and the Verde River in Gila County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by October 26, 2004. 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 Gila 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 non-navigability of all small and minor watercourses in Gila County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by October 26, 2004. All evidence submitted to ANSAC will be the

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 Gila River, the Upper Salt River, and the Verde River in Gila 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 Gila River, the Upper Salt River, and the Verde River in Gila County. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by October 26, 2004. 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 Gila 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 Gila County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by October 26, 2004. 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 includes: Alder Creek 1 - Gila, Alder Creek 2 - Gila, Alpine Creek, Amos Wash, Ash Creek 1 - Gila, Ash Creek 2 - Gila, Ash Creek 3 - Gila, Ash Spring Wash, Banning Wash, Banty Creek - Gila, Bear Creek 1 - Gila, Bear Creek 2 - Gila, Bear Wash, Big Cherry Creek, Black Mountain Wash - Gila, Black River, Blackjack Wash, Blevins Wash, Bloody Tanks Wash - Gila, Bonita Creek - Gila, Boone Moore Wash, Bray Creek, Brody Creek, Bronco Creek - Gila, Buckhorn Creek - Gila, Buena Vista Creek, Bumblebee Creek, Butcher Creek, Butte Creek - Gila, Calf Creek, Callahan Creek, Cammerman Wash, Campaign Creek, Campbell Creek, Canyon Creek - Gila, Canyon Creek 1, Carrizo Creek, Cassadore Creek, Cave Creek - Gila, Cedar Creek - Gila, Celler Creek, Center Creek, Champion Creek, Chase Creek - Gila, Cherry Creek 1 - Gila, Cherry Creek 2 - Gila, China Spring Creek, Christopher Creek, Chukar Wash, Cibecue Creek, Cienega Creek - Gila, City Creek, Clover Creek - Gila, Clover Wash, Connor Wash, Coon Creek - Gila, Cooper Forks Creek, Corral Creek, Corral Creek 2, Cottonwood Creek 1 - Gila, Cottonwood Creek 2 - Gila, Cottonwood Wash - Gila, Crouch Creek, Dagger Wash, Deep Creek 1 - Gila, Deer Creek 1 - Gila, Deer Creek 2 - Gila, Deer Spring Creek, Del Shay Creek, Dennis Creek, Devore Wash, Dick Williams Creek, Dinner Creek, Dripping Spring, Dry Creek - Gila, Dry Creek 1 - Gila, Dry Dude Creek, Dry Pocket Wash, Dude Creek, Eads Wash, East Bray Creek, East Cedar Creek, East Fork Canyon, East Fork Horton, East Verde River, Ellison Creek, Ellison Creek - Gila, Finton Creek, Fossil Creek, Fuller Creek, G Wash, Gentry Creek, Georges Basin Creek, Gerald Wash, Gibson Creek - Gila, Gilson Wash, Gold Creek, Gordon Canyon, Green Valley Creek, Greenback Creek, Griffin Wash, Gun Creek, H-z Wash, Hackberry Creek - Gila, Haigler Creek, Hardscrabble Creek, Hardt Creek, Haufer Wash, Hicks Wash, Hill Creek, Honey Creek, Horrell Creek, Horse Camp Creek, Horse Tank Creek, Horse Tank Wash, Horseshoe Bend Wash, Horton Creek - Gila, Houck Creek, Houston Creek 1 - Gila, Houston Creek 2 - Gila, Hunter Creek, Indian Creek, Lambing Creek, Lawrence Creek, Lewis Creek, Little Campaign, Little Chavez Creek, Little Trough Creek, Little Turkey Creek, Long Mule Creek, Lyons Fork, Mail Creek, Marsh Creek, McFadden Creek, McMillen Wash, Meddler Wash, Medicine Creek, Mescal Creek - Gila, Methodist Creek, Miami Wash, Middle Cedar Creek, Milky Wash, Mill Creek, Mineral Creek - Gila, Moore Creek, Moore Wash, Mud Spring Wash - Gila, Mule Creek, Murphy Wash, Murray Wash, Nail Creek, Nash Creek, Natanes Creek, Natural Corral Creek, Negro Wash, New Creek, North Alder Creek, North Fork Coope, North Fork Parke, North Sycamore Creek, Nugget Wash - Gila, Oak Creek 1 - Gila, Oak Creek 2 - Gila, Oak Creek 3 - Gila, P B Creek, Packard Wash, Park Creek 1, Park Creek 2, Parker Creek, Perley Creek, Pigeon Creek - Gila, Pinal Creek, Pine Creek, Pine Creek - Gila, Pineasco Creek, Pinto Creek, Pioneer Creek, Pocket Creek, Poison Springs Wash, Priebe Creek, Pringle Wash, Pueblo Canyon, Pyeatte Draw, Quail Springs Wash, Ramboz Wash, Ranch Creek, Red Canyon, Redmond Wash, Reno Creek, Reynolds Creek, Rock Creek 1 - Gila, Rock Creek 2 - Gila, Rock Creek 3 - Gila, Rock House Creek, Rocky Creek, Rose Creek, Russell Gulch, Rye Creek, Sag Creek, Salome Creek, Salt Creek Draw, San Carlos River, Sand Wash - Gila, Schoolhouse Wash, Sevenmile

L:

CIAL SEAL
R ALVAREZ
IBLIC-ARIZONA
COUNTY
ires July 15, 2007

Affidavit of Publication

State of Arizona
County of Gila

Ellen Kretsch, being first duly sworn deposes and says: That she is the **publisher** of the Arizona Silver Belt, San Carlos Apache Moccasin, and Gila County Advantage newspapers, located at 298 North Pine Street, Globe, AZ 85501, mail: P.O. Box 31, Globe, AZ 85502, Tel: 928-425-7121, Fax: 928-425-7001, E-mail: beltnews@yahoo.com or Website: www.silverbelt.com. The publisher is also the caretaker/record's clerk of the newspaper microfilm archives now in operation or defunct and currently owned by Liberty Group Publishing Co., Inc. Said microfilm archives are located at the above stated physical address in the State of Arizona, County of Gila, City of Globe. A brief description of said legal advertisement ☑, advertisement ☐, or article ☐ follows:

Statement of Intent - AZ Navigable Stream Adjudication Commission planning to hold water-course navigability hearings re: Gila River, Upper Salt River & Verde River

A printed copy of said legal, advertising, or article is attached hereto and was published in a regular edition of said newspaper on the following date(s):

Arizona Silver Belt
Sept. 1, 2004, Sept. 8, 2004,
Sept. 15, 2004

Ellen Kretsch, Publisher

State of Arizona
County of Gila

The foregoing instrument was acknowledged before me this Sept. 15, 2004 (date)

by Ellen Kretsch.

Jennifer Alvarez, Notary Public

My Commission Expires: July 15, 2007

AFFIDAVIT OF PUBLICATION

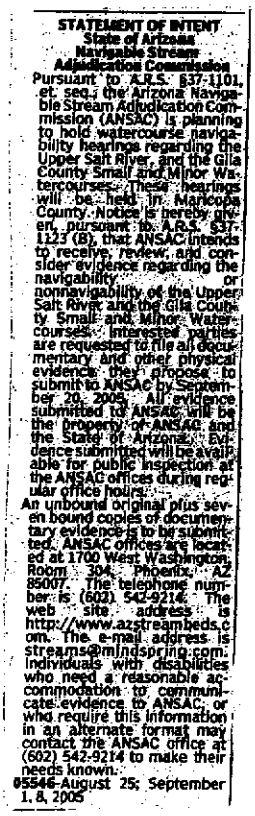
THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

Diana Chavez, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

August 25; September 1, 8, 2005



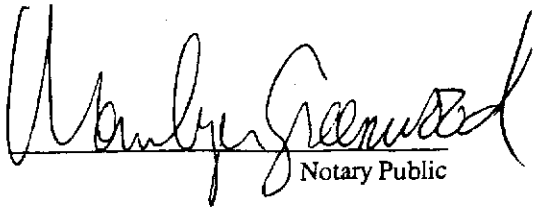
STATEMENT OF INTENT
State of Arizona
Navigable Stream
Adjudication Commission

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 Upper Salt River, and the Gila County Small and Minor Watercourses. These hearings will be held in Maricopa County. 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 Upper Salt River and the Gila County Small and Minor Watercourses. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by September 20, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is http://www.azstreambeds.com. The e-mail address is streams@mindspring.com. Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.

85546-August 25; September 1, 8, 2005

Sworn to before me this
8TH day of
September A.D. 2005



Notary Public

EXHIBIT B

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 Gila County. The hearings will be held in Gila County on November 15, 2004 beginning at 1:00 p.m. in an order established by the chair in the Gila County Supervisors' Conference Room located at 1400 East Ash Street, Globe, Arizona. The following are presently the only hearings scheduled.

The Gila River, the Upper Salt River, the Verde River, and all of the small and minor watercourses in Gila County, including but not limited to:

Alder Creek 1 - Gila, Alder Creek 2 - Gila, Alpine Creek, Amos Wash, Ash Creek 1 - Gila, Ash Creek 2 - Gila, Ash Creek 3 - Gila, Ash Spring Wash, Banning Wash, Barry Creek - Gila, Bear Creek 1 - Gila, Bear Creek 2- Gila, Bear Wash, Big Cherry Creek, Black Mountain Wash - Gila, Black River, Blacktail Wash, Blevens Wash, Bloody Tanks Wash - Gila, Bonita Creek - Gila, Boone Moore Wash, Bray Creek, Brody Creek, Bronco Creek - Gila, Buckhorn Creek - Gila, Buena Vista Creek, Bumblebee Creek, Butcher Creek, Butte Creek - Gila, Calf Creek, Callahan Creek, Cammerman Wash, Campaign Creek, Campbell Creek, Canyon Creek - Gila, Canyon Creek 1, Carrizo Creek, Cassadore Creek, Cave Creek - Gila, Cedar Creek - Gila, Cellar Creek, Center Creek, Champion Creek, Chase Creek - Gila, Cherry Creek 1 - Gila, Cherry Creek 2 - Gila, China Spring Creek, Christopher Creek, Chukar Wash, Cibecue Creek, Cienega Creek - Gila, City Creek, Clover Creek - Gila, Clover Wash, Connor Wash, Coon Creek - Gila, Cooper Forks Creek, Corral Creek 1, Corral Creek 2, Cottonwood Creek 1 - Gila, Cottonwood Creek 2 - Gila, Cottonwood Wash - Gila, Crouch Creek, Dagger Wash, Deep Creek 1 - Gila, Deer Creek 1 - Gila, Deer Creek 2 - Gila, Deer Spring Creek, Del Shay Creek, Dennis Creek, Devore Wash, Dick Williams Creek, Dinner Creek, Dripping Spring, Dry Creek - Gila, Dry Creek 1 - Gila, Dry Dude Creek, Dry Pocket Wash, Dude Creek, Eads Wash, East Bray Creek, East Cedar Creek, East Fork Canyon, East Fork Horton, East Verde River, Ellison Creek, Ellison Creek - Gila, Finton Creek, Fossil Creek, Fuller Creek, G Wash, Gentry Creek, Georges Basin Creek, Gerald Wash, Gibson Creek - Gila, Gilson Wash, Gold Creek, Gordon Canyon, Green Valley Creek, Greenback Creek, Griffin Wash, Gun Creek, H-z Wash, Hackberry Creek - Gila, Haigler Creek, Hardscrabble Creek, Hardt Creek, Haufler Wash, Hicks Wash, Hill Creek, Honey Creek, Horrell Creek, Horse Camp Creek, Horse Tank Creek, Horse Tank Wash, Horseshoe Bend Wash, Horton Creek - Gila, House Creek, Houston Creek 1 - Gila, Houston Creek 2 - Gila, Hunter Creek, Indian Creek, Lambing Creek, Lawrence Creek, Lewis Creek, Little Campaign, Little Cherry Creek, Little Trough Creek, Little Turkey Creek, Lost Mule Creek, Lyons Fork, Mail Creek, Marsh Creek, McFadden Creek, McMillen Wash, Meddler Wash, Medicine Creek, Mescal Creek - Gila, Methodist Creek, Miami Wash, Middle Cedar Creek, Milky Wash, Mill Creek, Mineral Creek - Gila, Moore Creek, Moore Wash, Mud Spring Wash - Gila, Mule Creek, Murphy Wash, Murray Wash, Nail Creek, Nash Creek, Natanes Creek, Natural Corral Creek, Negro Wash, New Creek, North Alder Creek, North Fork Coope, North Fork Parke, North Sycamore Creek, Nugget Wash - Gila, Oak Creek 1 - Gila, Oak Creek 2 - Gila, Oak Creek 3 - Gila, P B Creek, Packard Wash, Park Creek 1, Park Creek 2, Parker Creek, Perley Creek, Pigeon Creek - Gila, Pinal Creek, Pine Creek, Pine Creek - Gila, Pineasco Creek, Pinto Creek, Pioneer Creek, Pocket Creek, Poison Springs Wash, Priebe Creek, Pringle Wash, Pueblo Canyon, Pyeatte Draw, Quail Springs Wash, Ramboz Wash, Ranch Creek, Red Canyon, Redmond Wash, Reno Creek, Reynolds Creek, Rock Creek 1 - Gila, Rock Creek 2 - Gila, Rock Creek 3 - Gila, Rock

AFFIDAVIT OF PUBLICATION

THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

TOM BIANCO, being first duly sworn, upon oath deposes and says: That he is the advertising manager 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, a newspaper of general circulation in the State of Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper, named below, on the dates as indicated below:

The Arizona Republic

10/08/04

Sworn to before me this
8TH day of
October A.D. 2004

OFFICIAL SEAL
GLORIA SALDIVAR
NOTARY PUBLIC-ARIZONA
PINAL COUNTY
My Comm. Expires Dec. 2, 2007

Notary Public

PAYSON ROUNDUP
P.O. Box 2520 - Payson, AZ 85547
708 N. Beeline Highway
(928) 474-5251 ~ Fax (928) 474-1893

STATE OF ARIZONA
COUNTY OF GILA

AFFIDAVIT OF PUBLICATION

I, **Marge Hanscom**, acknowledge that the attached hereto was published in a newspaper of general circulation at Payson, Arizona, County of Gila on the following dates:

10/08/2004

Marge Hanscom
Signed

On this **11TH DAY OF OCTOBER, 2004.**

Julie Wantland
Notary Public

JULIE WANTLAND
Notary Public - A
GILA COU
My Comm. Exp

9382: 10/08/04

NOTICE OF PUBLIC HEARING

State of Arizona
Navigable Stream Adjudication Commission

Pursuant to A.R.S. Section 37-1128 (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 Gila County. The hearings will be held in Gila County on November 15, 2004 beginning at 1:00 p.m. in an order established by the chair in the Gila County Supervisors' Conference Room located at 1400 East Ash Street, Globe, Arizona. The following are presently the only hearings scheduled:

The Gila River, the Upper Salt River, the Verde River, and all of the small and minor watercourses in Gila County including but not limited to:

Alder Creek 1 - Gila, Alder Creek 2 - Gila, Alpine Creek, Amos Wash, Ash Creek 1 - Gila, Ash Creek 2 - Gila, Ash Creek 3 - Gila, Ash Spring Wash, Banning Wash, Banty Creek - Gila, Bear Creek 1 - Gila, Bear Creek 2 - Gila, Bear Wash, Big Cherry Creek, Black Mountain Wash - Gila, Black River, Blacklack Wash, Blevens Wash, Bloody Tanks Wash - Gila, Bonita Creek - Gila, Boone Moore Wash, Bray Creek, Brody Creek, Bronco Creek - Gila, Buckhorn Creek - Gila, Buena Vista Creek, Bumblebee Creek, Butcher Creek, Buttle Creek - Gila, Calf Creek, Callahan Creek, Cammerman Wash, Campaign Creek, Campbell Creek, Canyon Creek - Gila, Canyon Creek 1, Cantzo Creek, Cassadore Creek, Cave Creek - Gila, Cedar Creek - Gila, Cellar Creek, Center Creek, Champion Creek, Chase Creek - Gila, Cherry Creek 1 - Gila, Cherry Creek 2 -

Affidavit of Publication

State of Arizona
County of Gila

Ellen Kretsch, being first duly sworn deposes and says: That she is the **publisher** of the Arizona Silver Belt, San Carlos Apache Moccasin, and the Gila County Advantage newspapers, located at 298 North Pine Street, Globe, AZ 85501, or mail: P.O. Box 31, Globe, AZ 85502 (Tel: 928-425-7121, Fax: 928-425-7001, E-mail: beltnews@yahoo.com, Website: www.silverbelt.com). The publisher is also the caretaker of the newspaper microfilm archives of newspaper publications now in operation or defunct and currently owned by Liberty Group Publishing Co., Inc. Said microfilm archives are located at the above stated physical address in the State of Arizona, County of Gila, City of Globe. A brief description of said legal advertisement, advertisement, or article is as follows:

State of Arizona Notice of Public Hearing on Nov. 15, 2004 - Navigable Stream Adjudication Commission

A printed copy of said legal, advertising, or article is attached hereto and was published in a regular edition of said newspaper (and not a supplement thereof). The date(s) of publication being as follows, to wit:

Arizona Silver Belt

Oct. 13, 2004

Ellen Kretsch, Publisher

State of Arizona
County of Gila

The foregoing instrument was acknowledged before me this Oct. 13, 2004 (date)

by Ellen Kretsch

Jennifer Alvarez, Notary

My Commission Expires: July 15, 2007

NOTARY SEAL:

OFFICIAL SEAL
JENNIFER ALVAREZ
NOTARY PUBLIC-ARIZONA
GILA COUNTY
My Comm. Expires July 15, 2007

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 Gila County. The hearings will be held in Gila County on November 15, 2004 beginning at 1:00 p.m. in an order established by the chair in the Gila County Supervisors' Conference Room located at 1400 East Ash Street, Globe, Arizona. The following are presently the only hearings scheduled.

The Gila River, the Upper Salt River, the Verde River, and all of the small and minor watercourses in Gila County, including but not limited to:

Alder Creek 1 - Gila, Alder Creek 2 - Gila, Alpine Creek, Amos Wash, Ash Creek 1 - Gila, Ash Creek 2 - Gila, Ash Creek 3 - Gila, Ash Spring Wash, Banning Wash, Banty Creek - Gila, Bear Creek 1 - Gila, Bear Creek 2 - Gila, Bear Wash, Big Cherry Creek, Black Mountain Wash - Gila, Black River, Blackjack Wash, Blevens Wash, Bloody Tanks Wash - Gila, Bonita Creek - Gila, Boone Moore Wash, Bray Creek, Brody Creek, Brooks Creek - Gila, Buckhorn Creek - Gila, Buena Vista Creek, Bumblebee Creek, Butcher Creek, Butte Creek - Gila, Calf Creek, Callahan Creek, Cammerman Wash, Campaign Creek, Campbell Creek, Canyon Creek - Gila, Canyon Creek 1, Carrizo Creek, Cassadore Creek, Cave Creek - Gila, Cedar Creek - Gila, Cellar Creek, Center Creek, Champion Creek, Chase Creek - Gila, Cherry Creek 1 - Gila, Cherry Creek 2 - Gila, China Spring Creek, Christopher Creek, Chukar Wash, Cibecue Creek, Cienega Creek - Gila, City Creek, Clover Creek - Gila, Clover Wash, Connor Wash, Coon Creek - Gila, Cooper Forks Creek, Corral Creek 1, Corral Creek 2, Cottonwood Creek 1 - Gila, Cottonwood Creek 2 - Gila, Cottonwood Wash - Gila, Crouch Creek, Dagger Wash, Deep Creek 1 - Gila, Deer Creek 1 - Gila, Deer Creek 2 - Gila, Deer Spring Creek, Del Shay Creek, Dennis Creek, Devore Wash, Dick Williams Creek, Dinner Creek, Dripping Spring, Dry Creek - Gila, Dry Creek 1 - Gila, Dry Dude Creek, Dry Pocket Wash, Dude Creek, Eads Wash, East Bray Creek, East Cedar Creek, East Fork Canyon, East Fork Horton, East Verde River, Ellison Creek, Ellison Creek - Gila, Finton Creek, Fossil Creek, Fuller Creek, G Wash, Gentry Creek, Georges Basin Creek, Gerald Wash, Gibson Creek - Gila, Gilson Wash, Gold Creek, Gordon Canyon, Green Valley Creek, Greenback Creek, Griffin Wash, Gun Creek, H-z Wash, Hackberry Creek - Gila, Haigler Creek, Hardscrabble Creek, Hardt Creek, Haufer Wash, Hicks Wash, Hill Creek, Honey Creek, Horrell Creek, Horse Camp Creek, Horse Tank Creek, Horse Tank Wash, Horseshoe Bend Wash, Horton Creek - Gila, House Creek, Houston Creek 1 - Gila, Houston Creek 2 - Gila, Hunter Creek, Indian Creek, Lambing Creek, Lawrence Creek, Lewis Creek, Little Campaign, Little Cherry Creek, Little Trough Creek, Little Turkey Creek, Lost Mule Creek, Lyons Fork, Mail Creek, Marsh Creek, McFadden Creek, McMillen Wash, Meddler Wash, Medicine Creek, Mescal Creek - Gila, Methodist Creek, Miami Wash, Middle Cedar Creek, Milky Wash, Mill Creek, Mineral Creek - Gila, Moore Creek, Moore Wash, Mud Spring Wash - Gila, Mule Creek, Murphy Wash, Muttry Wash, Nail Creek, Nash Creek, Natanes Creek, Natural Corral Creek, Negro Wash, New Creek, North Alder Creek, North Fork Coope, North Fork Parke, North Sycamore Creek, Nugget Wash - Gila, Oak Creek 1 - Gila, Oak Creek 2 - Gila, Oak Creek 3 - Gila, P B Creek, Pinkerton Wash, Park Creek 1, Park Creek 2, Parker Creek, Tunapai Creek, Turkey Creek 1 - Gila, Turkey Creek 2 - Gila, Turkey Creek 3 - Gila, Walnut Creek - Gila, Warm Creek, Webber Creek, West Cedar Creek, West Fork Oak Creek, West Prong Gentr, West Webber Creek, Wet Bottom Creek, White River, Wildcat Creek - Gila, Willow Creek - Gila, Wilson Creek, Workman Creek, and Zulu Wash.

Interested parties may submit evidence to the commission at [illegible] or may contact the commission office at [illegible] 9214 to make their needs known.

George Mehnert, Executive Director, October 5, 2004.

One Pub: 10-13-2004 Belt 4693

AFFIDAVIT OF PUBLICATION

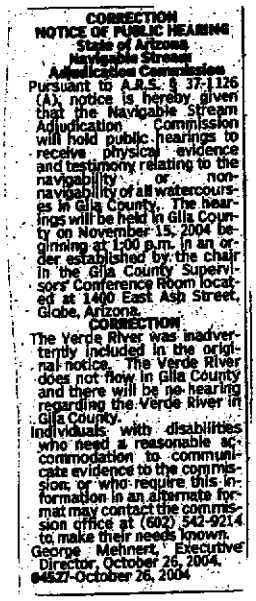
THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

Tabitha Antoniadis, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

October 26, 2004



CORRECTION
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 Gila County. The hearings will be held in Gila County on November 15, 2004 beginning at 1:00 p.m. in an order established by the chair in the Gila County Supervisors' Conference Room located at 1400 East Ash Street, Globe, Arizona.

CORRECTION

The Verde River was inadvertently included in the original notice. The Verde River does not flow in Gila County and there will be no hearing regarding the Verde River in Gila County.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

George Mehnert, Executive Director, October 26, 2004.
84527-October 26, 2004

Sworn to before me this
26TH day of
October A.D. 2004

OFFICIAL SEAL
MARILYN GREENWOOD
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires May 23, 2007

Notary Public

Affidavit of Publication

State of Arizona
County of Gila

Ellen Kretsch, or her authorized representative, _____, being first duly sworn deposes and says: That she is the **publisher** of the Arizona Silver Belt, San Carlos Apache Moccasin, and the Gila County Advantage newspapers, located at 298 North Pine Street, Globe, Arizona 85501, or mail: P.O. Box 31, Globe, Arizona 85502.

The above stated newspapers are published weekly in Globe, in the State of Arizona, County of Gila and that the following described ✓ legal advertising; ____ display or classified advertising; or an article ____ was duly published:

Correction Notice of Public Hearing State of Arizona Navigable Stream Adjudication Commission. Hearing on Nov. 15, 2004. Correction re: Verde River

A printed copy of said legal or advertising is attached hereto and was published in a regular weekly edition of said newspaper (and not a supplement thereof) for 1 weeks in the ✓ Arizona Silver Belt newspaper, and/or the ____ San Carlos Apache Moccasin newspaper, and/or the ____ Gila County Advantage. The dates of publication being as follows, to wit:

Oct. 27, 2004

Ellen Kretsch

Ellen Kretsch, Publisher

State of Arizona
County of Gila

The foregoing instrument was acknowledged before me this

Oct. 28, 2004 (date)

by Ellen Kretsch

OFFICIAL SEAL
JENNIFER ALVAREZ
NOTARY PUBLIC-ARIZONA
GILA COUNTY
My Comm. Expires July 15, 2007

Jennifer Alvarez, Notary

My Commission Expires: July 15, 2007

CORRECTION
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 Gila County. The hearings will be held in Gila County on November 15, 2004 beginning at 1:00 p.m. in an order established by the chair in the Gila County Supervisors' Conference Room, located at 1400 East Ash Street, Globe, Arizona.

CORRECTION

The Verde River was inadvertently included in the original notice. The Verde River does not flow in Gila County and there will be no hearing regarding the Verde River in Gila County.

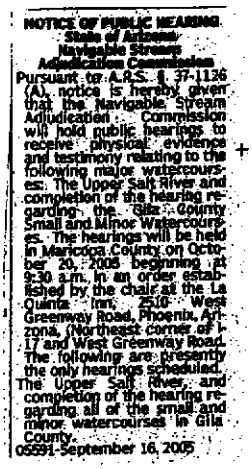
Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 364-9214 to make their needs known.

George Mehnert, Executive Director, October 28, 2004.
One Pub: 10-27-2004 Belt 47 lin.

AFFIDAVIT OF PUBLICATION

THE ARIZONA REPUBLIC

STATE OF ARIZONA
COUNTY OF MARICOPA } SS.



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 following major watercourses: The Upper Salt River and completion of the hearing regarding the Gila County Small and Minor Watercourses. The hearings will be held in Maricopa County on October 20, 2005 beginning at 9:30 a.m. in an order established by the chair at the La Quinta Inn, 2510 West Greenway Road, Phoenix, Arizona, (Northeast corner of I-17 and West Greenway Road. The following are presently the only hearings scheduled. The Upper Salt River, and completion of the hearing regarding all of the small and minor watercourses in Gila County.

05591-September 16, 2005

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

September 16, 2005

Sworn to before me this
16TH day of
September A.D. 2005

OFFICIAL SEAL
MARILYN GREENWOOD
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires May 23, 2007

Notary Public

EXHIBIT C

Post Hearing Memorandums

Hearing No. 04-008-NAV

Arizona Navigable Stream Adjudication Commission

Upper Salt River
Gila and Maricopa Counties

Entry Number	Date	Entry	Entry By
1	12/09/05	Opening, State Land Department.	George Mehnert
2	12/09/05	Opening, Salt River Project.	George Mehnert
3	12/12/05	Opening, San Carlos Apache Tribe.	George Mehnert
4	12/12/05	Opening, Arizona Center for Law in the Public Interest.	George Mehnert
5	01/03/06	Response, Arizona Center for Law in the Public Interest, includes Notice of Errata received o1/11/06.	George Mehnert
6	01/10/06	Response, State Land Department.	George Mehnert
7	01/10/06	Response, Salt River Project.	
8	01/11/06	Response, San Carlos Apache Tribe.	

Memorandums Regarding Jurisdiction & Roosevelt Lake

Hearing No. 04-008-NAV

Arizona Navigable Stream Adjudication Commission

Upper Salt River
Gila and Maricopa Counties

Entry Number	Date	Entry	Entry By
1	9/15/05	SRP's motion for lack of jurisdiction re: Roosevelt Lake	George Mehnert
2	10/20/05	SLD's response to SRP's Roosevelt Lake jurisdiction motion.	George Mehnert
3	10/25/05	SRP's reply to SLD's response to SRP's Roosevelt Lake jurisdiction motion.	George Mehnert

EXHIBIT D

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

MEETING MINUTES
Globe, Arizona November 15, 2004

COMMISSION MEMBERS PRESENT
Jay Brashear, Dolly Echeverria, Earl Eisenhower, Jim Henness, and Cecil Miller.

COMMISSION MEMBERS ABSENT
None.

STAFF PRESENT
George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. **CALL TO ORDER.**
   Chair Eisenhower called the meeting to order at approximately 1:05p.m.
2. **ROLL CALL.**
   See above.
3. **APPROVAL OF MINUTES** (discussion and action).
   A. September 16, 2004, Maricopa County.
   Motion by: Cecil Miller Second by: Dolly Echeverria
   Motion: To approve the minutes of September 16, 2004. Vote: All aye.
4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.**
   Cheryl Doyle appeared on behalf of the State Land Department.
5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE UPPER SALT RIVER 04-008-NAV.**
   Cheryl Doyle appeared on behalf of the State Land Department. Mark McGinnis spoke procedures.
6. **HEARING REGARDING THE SMALL AND MINOR WATERCOURSES IN GILA COUNTY 04-010-NAV.**
   Cheryl Doyle appeared on behalf of the State Land Department. Jay Spehar, a resident of Gila County, and an employee of Phelps Dodge Miami.
   Chairman Eisenhower closed the taking of testimony and other evidence except for Tonto Creek which will remain open until someone is available to answer questions at a future hearing relating to the Salt River.
7. **STATUS OF CASES** (update and discussion).
8. **RULES** (discussion and action).
   The Commission discussed the rules regarding vote on navigability and adoption of the final report and no action was taken.
9. **BUDGET & TIMELINE-TIMETABLE AND COMMISSION SUNSET DATE** (discussion and action).
   Discussion of the Land Department's need for funding to complete the Commission's work including funding for hiring experts to testify at hearings regarding reports submitted by the experts. The Director said that given the current budget and no appeals, the Commission can probably complete 22 hearings in FY2005, but the Land Department may not have the funding to provide their part. Cheryl Doyle indicated that the funds for the Commission work is requested separately and is not part of the Land Department lump sum funding.
10. **ATTORNEY CONTRACT** (discussion and action).
    A. To extend the attorney contract.
    Motion by: Jim Henness Second by: Dolly Echeverria
    Motion: To extend the attorney contract by one year. Vote: All aye.
11. **CALL FOR PUBLIC COMMENT** (comment sheets).
    (Pursuant to Attorney General Opinion No. I99-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Sally Worthington, attorney representing Maricopa County: Ms. Worthington asked about the status of the Commission's Lower Salt River Report (which is not yet completed). Mr. Jennings and Chairman Earl Eisenhower explained that the evidence was voluminous, greater than 6,500 pages, and that the Commission Attorney, Curtis Jennings, was working on the report as diligently as he can, given his other obligations.

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

Chairman Eisenhower indicated there may be a business meeting in December 2004.

Discussion of calendars and of hearings and hearing locations (counties) occurred among the Commissioners, the Director, and attendees/guests. Assistant Attorney General Laurie Hachtel, representing the State Land Department, stated, relating to budget shortages, they do not know whether the Land Department will be able to provide report updates or expert witnesses at all hearings without additional funding, but that they will continue to do the best they can. The decision was made by Chairman Earl Eisenhower that the next hearing will occur in Yuma County, during January 2005, and it will include the only item remaining to be adjudicated in Yuma County and that is the Gila River. Chairman Eisenhower also indicated that the next hearing following the Yuma County hearing regarding the Gila River, will likely be in February 2005, and will be all of the watercourses in Yavapai County; (the Yavapai County small and minor watercourses, the Agua Fria River, the Hassyampa River, Burro Creek, the Santa Maria River and the Verde River). The Commission Chairman said that following the Yavapai County hearings, the next hearings will likely be in Phoenix, Maricopa County, and will include the Upper Salt River, the Verde River, and the Gila River. Much of the discussion related to establishing a timetable that is within the Land Department's (financial) ability to deliver updated reports, and expert witnesses to appear at hearings. Chairman Eisenhower asked Land Department representatives to inform the Commission Director of dates and times that are problems both for the experts' calendars (other commitments) and for budget purposes. Ms. Hachtel indicated that for the Commission to hold 22 hearings during FY05 will be a problem for the Land Department insofar as providing updated reports and the experts who write the reports at all hearings is concerned.

Considerable discussion occurred by Commissioners and parties regarding the unavailability of an expert witness to answer questions by the Commissioners and by parties, (regarding reports by experts).

13. **ADJOURNMENT.**

Motion by: Cecil Miller Second by: Jay Brashear

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 2:47 p.m.

Respectfully submitted,

George Mehnert, Director
November 16, 2004

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

JANET NAPOLITANO
Governor

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 it 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. I99-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action

taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

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

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

JANET NAPOLITANO
Governor

GEORGE MEHNERT
Executive Director

MEETING MINUTES
Phoenix, Arizona, May 24, 2006

COMMISSION MEMBERS PRESENT
Jay Brashear, Dolly Echeverria, Earl Eisenhower, Jim Henness, Cecil Miller.

COMMISSION MEMBERS ABSENT
None.

STAFF PRESENT
Curtis Jennings, George Mehnert.

1. **CALL TO ORDER.**
   Chairman Eisenhower called the meeting to order at approximately 10:04 A.M.

2. **Roll Call.**
   See above.

3. **Approval of Minutes (discussion and action). Minutes of April 11, 2006.**
   Motion by: Jim Henness Second by: Dolly Echeverria
   Motion: To accept minutes as submitted. Vote: All aye.

4. **Determination of the navigability of the small and minor watercourses in Gila County, 04-010-NAV (discussion and action).**
   Motion by: Cecil Miller Second by: Dolly Echeverria
   Motion: That the Gila River was not navigable. Vote: All aye.

5. **Determination of the navigability of the Gila River 03-007-NAV (discussion and action).**
   Motion by: Jim Henness Second by: Jay Brashear
   Motion: That the Gila River was not navigable. Vote: All aye.

6. **Determination of the navigability of the Upper Salt River 04-008-NAV (discussion and action).**
   Motion by: Jay Brashear Second by: Earl Eisenhower
   Motion: That the Upper Salt River was navigable Vote: One aye. Four nay.
   Motion by: Jay Brashear Second by: Jim Henness

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

7. **Determination of the navigability of the Verde River 04-009-NAV (discussion and action).**
Motion by: Jay Brashear Second by: Earl Eisenhower
Motion: That the Verde was navigable Vote: Second and Motion Withdrawn.
Motion by: Dolly Echeverria Second by: Cecil Miller
Motion: That the Verde River was not navigable. Vote: All aye.

8. **Motion by the Attorney General in its Response Memorandum relating to the Verde River to strike from the record First American Title Insurance Company of Arizona's Joinder Memorandum to Salt River Project's Opening Memorandum and to Phelps Dodge's Opening Memorandum, on the basis of untimely filing (discussion and action).**
Motion denied by Chair.

9. **Renewal of Attorney Contract to be effective July 1, 2006 through June 30, 2008, (discussion and action).**
Motion by: Jim Henness Second by: Dolly Echeverria
Motion: That the contract be renewed through June 30, 2008. Vote: All aye.

10. **Budget/Funding condition and forecast.**
The Chair and the Director explained the condition of the budget.

11. **Budget Supplemental Request for FY2006 regarding notice of intent to seek judicial review.**
The Chair and the Director commented that a supplemental request for $50,000.00 has been filed but has not yet been acted on.

12. **Call for Public Comment (comment sheets).**
(Pursuant to Attorney General Opinion No. I99-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)

Questions and conversation by an unidentified guest regarding prior Gila River Lawsuit took place.

13. **Future agenda items and establishment of future meetings.**
None specifically established.

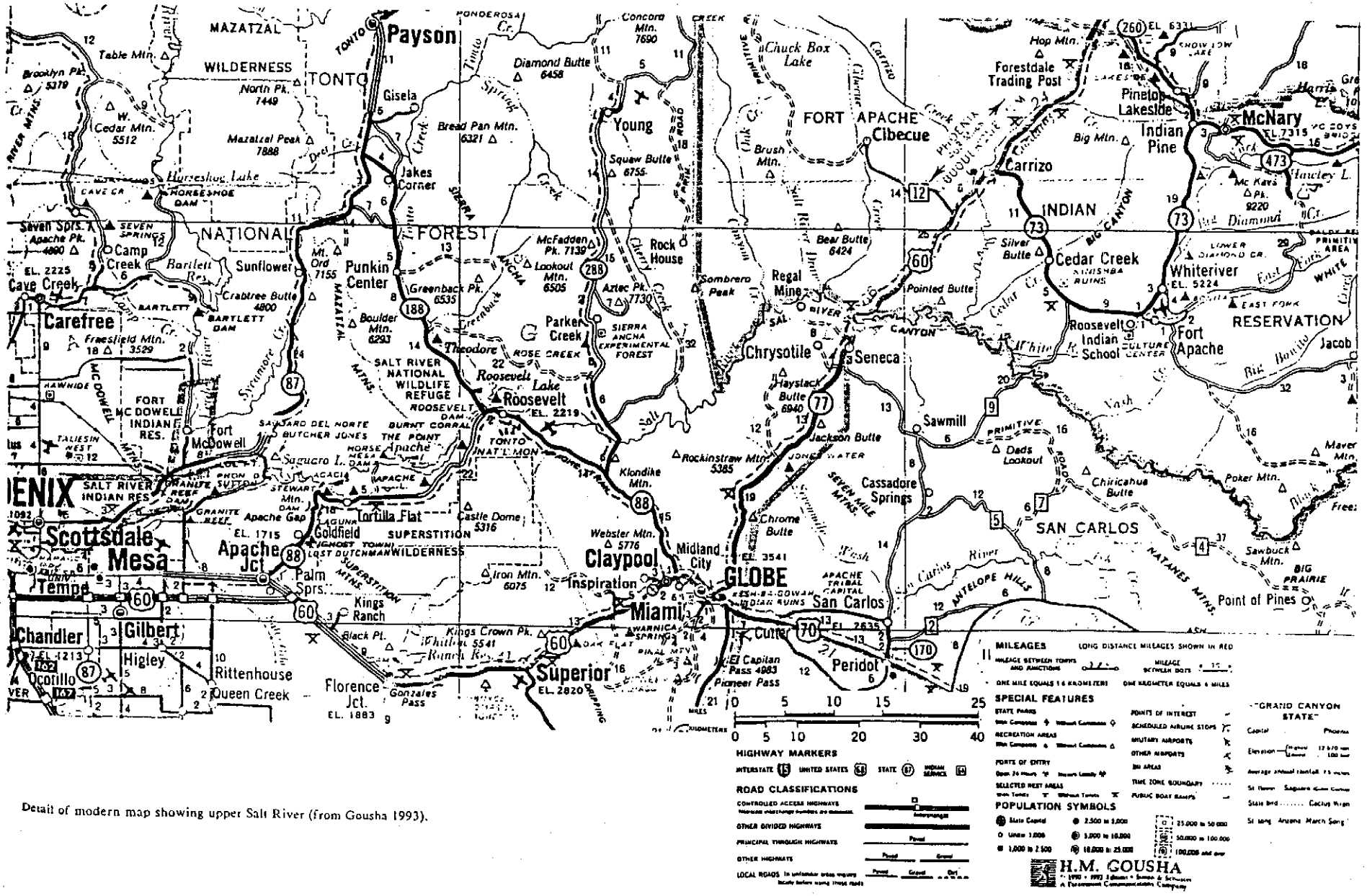
14. **ADJOURNMENT.**
Motion by: Jay Brashear Second by: Cecil Miller
Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 10:50 A.M.

Respectfully submitted,

George Mehnert, Director
May 24, 2006

EXHIBIT E



Detail of modern map showing upper Salt River (from Gousha 1993).

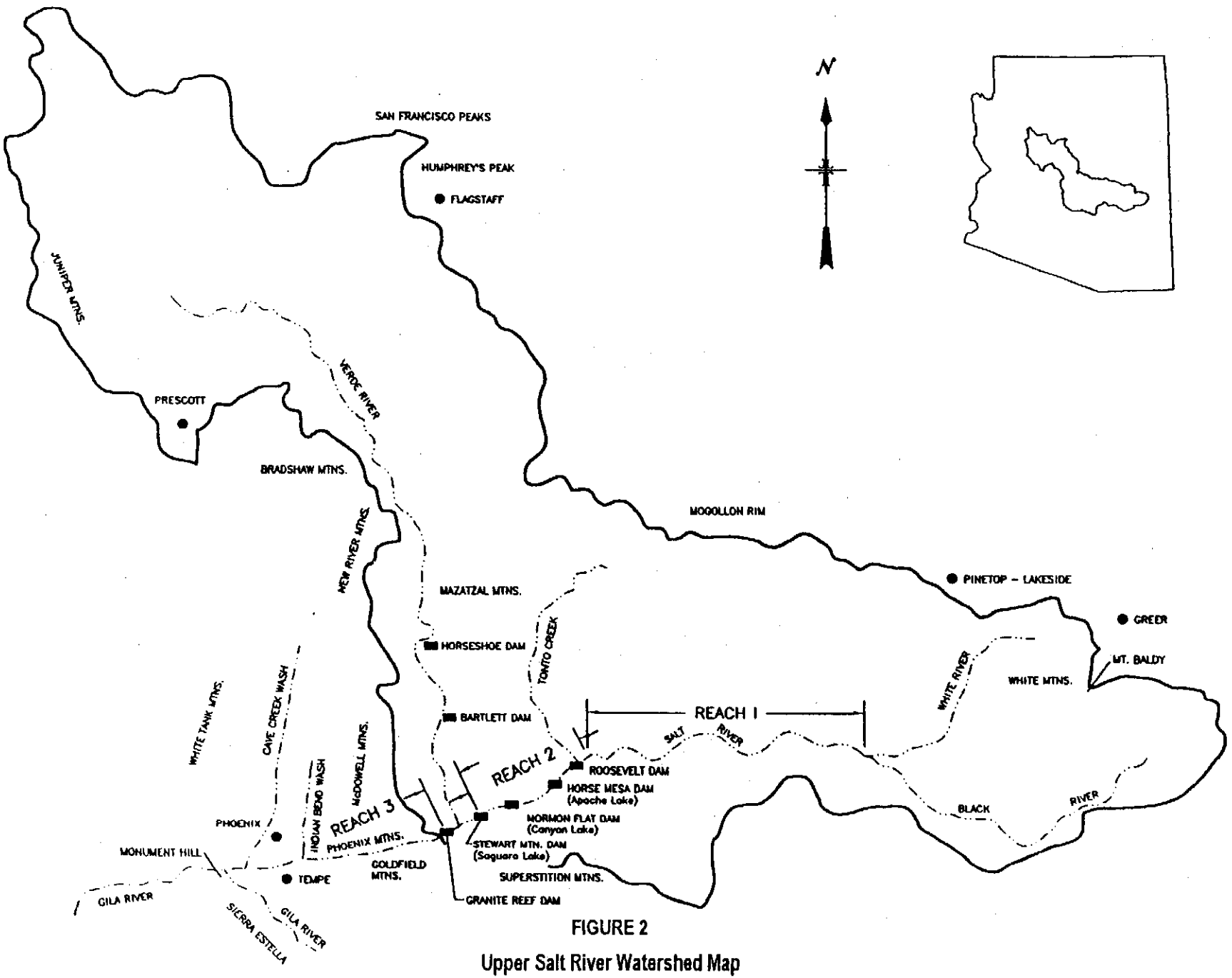


FIGURE 2

Upper Salt River Watershed Map

EXHIBIT F

Evidence Log

Hearing No. 04-008-NAV

Arizona Navigable Stream Adjudication Commission

Upper Salt River

Gila County November 14, 2004—Maricopa County October 20, 2005

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	6/10/96	Evidence on Hand	Central AZ Paddlers Club 1992 Boating Survey	George Mehnert
2	8/30/96	Evidence on Hand	ACLPI Material Relevant to Salt & Gila.	George Mehnert
3	2/18/97	Evidence on Hand	ACLPI Testimony relevant to all watercourses.	George Mehnert
4	5/30/97	Evidence on Hand	Final Report SFC Engineering.	George Mehnert
5	9/19/97	Evidence on Hand	Ltr From James T. Braselton.	George Mehnert
6	12/30/97	Evidence on Hand	Ltr From Dorothy Riddle.	
7	1/5/98	Evidence on Hand	Filing from Maricopa Cy DOT.	George Mehnert
8	2/5/98	Evidence on Hand	U.S. Forest Service.	George Mehnert
9	2/12/98	Evidence on Hand	Ltr Fr Eastern AZ Counties Org, 1 page.	George Mehnert
10	2/18/98	Evidence on Hand	Packet from Marty Moore, Eastern AZ Counties.	George Mehnert
11	9/98	Evidence on Hand	Criteria for Assessing Small & Minor Water-courses.	George Mehnert
12	9/99	Evidence on Hand	3 County Small & Minor Watercourse Pilot Study.	George Mehnert
13	4/03 & 9/29/05	Evidence Used for Lower Salt & included in Upper Salt	Salt River Centennial by Tammy LeRoy.	George Mehnert

Evidence Log Continuation Page

Hearing No. 04-008

Arizona Navigable Stream Adjudication Commission

Upper Salt River

Gila County November 14, 2004—Maricopa County October 20, 2005

Item Number	Received Date	Source to ANSAC	Description	Entry By
14	4/03 & 9/29/05	Mark McGinnis	Roosevelt Dam, a History by Earl Zarbin.	George Mehnert
15	4/03 & 9/29/05	Mark McGinnis	Arizona Cavalcade of History by Marshall Trimble.	George Mehnert
16	4/03 & 9/29/05	Mark McGinnis	The Magnificent Experiment by Karen L. Smith.	George Mehnert
17	4/03 & 9/29/05	Evidence Used for Lower Salt & included in Upper Salt	Information Regarding Navigability of Selected U.S. Watercourses.	George Mehnert
18	4/03 and 9/29/05	Evidence Used for Lower Salt Ex No. 23 & included in Upper Salt	The Salt & Gila Rivers in Central Arizona, William L. Graf, and including documents by Wendy Bigler and Paul R. Ruff.	George Mehnert
19	5/4/04	Richard Rupp	Letter.	George Mehnert
20	5/24/04	Noel Fitzgerald	Letter.	George Mehnert
21	6/15/04	Douglas Rhodes	Letter.	George Mehnert
22	6/15/94	Chuck Kranz	Letter.	George Mehnert
23	7/11/04	Nancy Orr	Letter.	George Mehnert
24	7/20/04	Coby Muckelroy	Letter.	George Mehnert

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Hearing No. 04-008

Arizona Navigable Stream Adjudication Commission

Upper Salt River

Gila County November 14, 2004—Maricopa County October 20, 2005

Item Number	Received Date	Source to ANSAC	Description	Entry By
25	7/23/04	Jeanne Keller	Letter.	George Mehnert
26	7/26/04	Lori Russell	Letter.	George Mehnert
27	10/26/04	Jon Fuller	Draft Final Report.	George Mehnert
28	1/05	Stanley Schumm	Geomorphic Character of the Upper Salt River.	George Mehnert
29	10/17/05	Mark McGinnis	Douglas Littlefield Report.	George Mehnert
30	10/17/05	Mark McGinnis	Deeds and Maps.	George Mehnert
31	10/17/05	Mark McGinnis	Kent Decree, from Item No. 6 of Lower Salt River Hearing.	George Mehnert
32	10/17/05	Mark McGinnis	Kibbee Decree, from Item No. 6 of Lower Salt River Hearing.	George Mehnert
33	10/18/05	Terrence Colver	Letter.	George Mehnert
34	10/20/05	Douglas Littlefield	Map, Reclamation Withdrawals.	George Mehnert
35	10/20/05	Douglas Littlefield	List of Historical Charts used during hearing.	George Mehnert