

BEFORE THE  
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE  
NAVIGABILITY OF SMALL AND  
MINOR WATERCOURSES IN YUMA  
COUNTY, ARIZONA, EXCLUDING  
THE COLORADO RIVER AND GILA  
RIVER

**REPORT, FINDINGS AND DETERMINATION  
REGARDING THE NAVIGABILITY OF SMALL AND  
MINOR WATERCOURSES IN YUMA COUNTY, ARIZONA**

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 any small and minor watercourse in Yuma County, Arizona, excluding the Colorado River and the Gila River, was navigable or nonnavigable for title purposes as of February 14, 1912. Proper and legal public notice was given in accordance with law and a hearing was held at which all parties were afforded the opportunity to present evidence, as well as their views, on this issue. The Commission having considered all of the historical and scientific data and information, documents and other evidence, including the oral and written presentations made by persons appearing at the public hearing and being fully advised in the premises, hereby submits its report, findings and determination.

There are 1,475 documented small and minor watercourses in Yuma County. Of this number 1,403 are unnamed. All of these watercourses, both named and unnamed, are the subject of and included in this report. Excluded from this report is the Colorado River which was long ago determined to be navigable and serves as the boundary between Yuma County, Arizona, and the State of California. Also excluded is the Gila River which is deemed to be a major watercourse and is the subject of a separate report. Attached hereto as Exhibit "A" is a list of all of the small and minor watercourses in Yuma County, Arizona, both named and unnamed, covered by this report.

#### **I. Procedure**

On July 8, 2002, the Commission gave proper prior notice of its intent to study the issue of whether small and minor watercourses in Yuma County, Arizona, were navigable or nonnavigable for title purposes as of February 14, 1912, in accordance with A.R.S. § 37-1123B. A copy of the Notice of Intent to Study and Receive, Review and Consider Evidence on the issue of navigability of small and minor watercourses in Yuma County is attached hereto as Exhibit "B."

After collecting and documenting all reasonably available evidence received pursuant to the Notice of Intent to Study and to Receive, Review and Consider Evidence, the Commission scheduled a public hearing to receive additional evidence and testimony regarding the navigability or nonnavigability of small and minor watercourses located in Yuma County, Arizona. Public notice of this hearing was given

by legal advertising on August 22, 2002, 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 (<http://aspin.asu.edu/ansac>). This hearing was held on September 23, 2002, in the City of Yuma, the county seat of Yuma County, since the law requires that such hearing be held in the county in which the watercourses being studied are located. Attached hereto as Exhibit "C" is a copy of the notice of the public hearing.

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

Following the public hearing held on September 23, 2002, all parties were advised that they could file post-hearing memoranda pursuant to Rule R12-17-108.01. Post-hearing memoranda was filed by The Center for Law in the Public Interest on behalf of the Defenders of Wildlife, the Salt River Project, and the Attorney General of Arizona on behalf of the State Land Department.

On December 9, 2002, at a public hearing in Kingman, Arizona, after considering all of the evidence and testimony submitted, and the post-hearing memoranda filed with the Commission, and the comments and oral argument presented by the parties,

and being fully advised in the premises, the Commission, with a unanimous vote, found and determined in accordance with A.R.S. § 37-1128 that all small and minor watercourses in Yuma County, Arizona, were nonnavigable as of February 14, 1912.

## **II. Yuma County, Arizona**

Yuma County, Arizona, is located in the southwestern portion of the state and is approximately 5,523 square miles in land area. It borders the State of California to the west and the counties of La Paz to the north and Pima and Maricopa to the east and the State of Sonora, Mexico to the south. Yuma County lies within the following latitude and longitude ranges: latitude from 32° 02' 00" north to 33° 28' 00" north and longitude from 113° 20' 00" west to 114° 49' 00" west.

Yuma County is xeric in character located almost entirely within the Sonoran Desert. It has some desert mountains, mostly rocky with little foliage. The average annual precipitation for Yuma County is 2.3 inches. The highest point in the county is Castle Dome Peak in the Castle Dome Mountains at 3793 feet above sea level. The lowest point is approximately 80 feet above sea level at the center of the Colorado River where it flows into Mexico.

The population of Yuma County is 165,000. The major population center is the city of Yuma, Arizona, which is also the county seat. Small towns or settlements located in Yuma County are Summerton, San Luis, Dome, Wellton, Roll, Tacna, Dateland and Aztec. The major commercial industry of Yuma County is farming, including cotton, lettuce, and other vegetables which are irrigated primarily with waters from the

Colorado River. Interstate 8 is the main corridor of transportation east and west, and Highway 95 is the principal corridor going north and south. The main line of the Union Pacific/Southern Pacific Railroad, generally running parallel to Interstate 8, also traverses the county in an east-west direction. The Cocopah Indian Reservation is located south of the City of Yuma. Major areas of interest in Yuma County are the Kofa National Wildlife Refuge, Yuma Marine Air Training Station, U. S. Army Yuma Proving Ground, the Barry M. Goldwater Air Force Range, the Cabeza Puerta National Wildlife Refuge, Yuma Crossing State Historical Park, and the Yuma Territorial Prison.

### **III. Background and Historical Perspectives**

#### **A. Public Trust Doctrine and Equal Footing Doctrine**

The reason for the legislative mandated study of navigability of watercourses within the state is to determine who holds title to the beds and banks of such rivers and watercourses. Under the Public Trust Doctrine, as developed by common law over many years, the tidal lands and beds of navigable rivers and watercourses, as well as the banks up to the high water mark, are held by the sovereign in a special title for the benefit of all the people. In quoting the U. S. Supreme Court, the Arizona Court of Appeals described the Public Trust Doctrine in its decision in *The Center for Law v. Hassell*, 172 Arizona 356, 837 P.2d 158 (App. 1991), *review denied* (October 6, 1992).

An ancient doctrine of common law restricts the sovereign's ability to dispose of resources held in public trust. This doctrine, integral to watercourse sovereignty, was explained by the Supreme Court in *Illinois Cent. R.R. v. Illinois*, 146 U.S.

387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). A state's title to lands under navigable waters

is a title different in character from that which the State holds in lands intended for sale. . . . It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.

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

*Id.*, 172 Ariz. at 364, 837 P.2d at 166.

This doctrine is quite ancient and was first formally codified in the Code of the Roman Emperor Justinian between 529 and 534 A.D.<sup>1</sup> 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 non-navigable waterways where transportation for commerce was not an issue were owned by the adjacent landowners.

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

This principle was well established by English common law long before the American Revolution and was a part of the law of the American colonies at the time of the Revolution. Following the American Revolution, the rights, duties and responsibilities of the crown passed to the thirteen new independent states, thus making them the owners of the beds of commercially navigable streams, lakes and other waterways within their boundaries by virtue of their newly established sovereignty. The ownership of trust lands by the thirteen original states was never ceded to the federal government. However, in exchange for the national government's agreeing to pay the debts of the thirteen original states incurred in financing the Revolutionary War, the states ceded to the national government their undeveloped western lands. In the Northwest Ordinance of 1787, adopted just prior to the ratification of the U.S. Constitution and subsequently re-enacted by Congress on August 7, 1789, it was provided that new states could be carved out of this western territory and allowed to join the Union and that they "shall be admitted . . . on an equal footing with the original states, in all respects whatsoever." (Ordinance of 1787: The Northwest Territorial Government, § 14, Art. V, 1 stat. 50. See also U. S. Constitution, Art. IV, Section 3). This has been interpreted by the courts to mean that on admission to the Union, the sovereign power of ownership of the beds of navigable streams passes from the federal government to the new state. *Pollard's Lessee v. Hagan, et al.*, 44 U.S. (3 How.) 212 (1845), and *Utah Division of State Lands v. United States*, 482 U.S. 193 (1987).

In discussing the Equal Footing Doctrine as it applies to the State's claim to title of beds and banks of navigable streams, the Court of Appeals stated in *Hassell*:

The state's claims originated in a common-law doctrine, dating back at least as far as Magna Charta, vesting title in the sovereign to lands affected by the ebb and flow of tides. See *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 412-13, 10 L.Ed. 997 (1842). The sovereign did not hold these lands for private usage, but as a "high prerogative trust . . . , a public trust for the benefit of the whole community." *Id.* at 413. In the American Revolution, "when the people . . . took into their own hands the powers of sovereignty, the prerogatives and regalities which before belong either to the crown or the Parliament, became immediately and rightfully vested in the state." *Id.* at 416.

Although watercourse sovereignty ran with the tidewaters in England, an island country, in America the doctrine was extended to navigable inland watercourses as well. See *Barney v. Keokuk*, 94 U.S. 324, 24 L.Ed. 224 (1877); *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 434, 13 S.Ct. 110, 111, 36 L.Ed. 1018 (1892). Moreover, by the "equal footing" doctrine, announced in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845), the Supreme Court attributed watercourse sovereignty to future, as well as then-existent, states. The Court reasoned that the United States government held lands under territorial navigable waters in trust for future states, which would accede to sovereignty on an "equal footing" with established states upon admission to the Union. *Id.* at 222-23, 229; accord *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981); *Land Department v. O'Toole*, 154 Ariz. 43, 44, 739 P.2d 1360, 1361 (App. 1987).

The Supreme Court has grounded the states' watercourse sovereignty in the Constitution, observing that "[t]he shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively." *Pollard's Lessee*, 44 U.S. (3 How.) at 230; see also *Oregon ex rel. State Land Board v.*



*Corvallis Sand & Gravel Co.*, 429 U.S. 363, 374, 97 S.Ct. 582, 589, 50 L.Ed.2d 550 (1977) (states' "title to lands underlying navigable waters within [their] boundaries is conferred . . . by the [United States] constitution itself").

*Id.*, 172 Ariz. 359-60, 837 P.2d at 161-162.

In the case of Arizona, the "equal footing" doctrine means that if any stream or watercourse within the State of Arizona was navigable on February 14, 1912, the date Arizona was admitted to the Union, the title to its bed is held by the State of Arizona in a special title under the public trust doctrine. If the stream was not navigable on that date, ownership of the streambed remained in such ownership as it was prior to statehood--the United States if federal land, or some private party if it had previously been patented or disposed of by the federal government--and could later be sold or disposed of in the manner of other land since it had not been in a special or trust title under the public trust doctrine. Thus, in order to determine title to the beds of rivers, streams, and other watercourses within the State of Arizona, it must be determined whether or not they were navigable or non-navigable as of the date of statehood.

#### **B. Legal Precedent to Current State Statutes**

Until 1985, most Arizona residents assumed that all rivers and watercourses in Arizona, except for the Colorado River, were non-navigable and accordingly there was no problem with the title to the beds and banks of any rivers, streams or other watercourses. However, in 1985 Arizona officials upset this long-standing assumption and took action to claim title to the bed of the Verde River. *Land Department v. O'Toole*,

154 Ariz. 43, 739 P.2d 1360 (App. 1987). Subsequently, various State officials alleged that the State might hold title to certain lands in or near other watercourses as well. *Id.*, 154 Ariz. at 44, 739 P.2d at 1361. In order to resolve the title questions to the beds of Arizona rivers and streams, the Legislature enacted a law in 1987 substantially relinquishing the state's interest in any such lands.<sup>2</sup> With regard to the Gila, Verde and Salt Rivers, this statute provided that any record title holder of lands in or near the beds of those rivers could obtain a quitclaim deed from the State Land Commissioner for all of the interest the state might have in such lands by the payment of a quitclaim fee of \$25.00 per acre. The Arizona Center for Law in the Public Interest filed suit against Milo J. Hassell in his capacity as State Land Commissioner, claiming that the statute was unconstitutional under the public trust doctrine and gift clause of the Arizona Constitution as no determination had been made of what interest the state had in such lands and what was the reasonable value thereof so that it could be determined that the 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

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<sup>2</sup> Prior to the enactment of the 1987 statute, the Legislature made an attempt to pass such a law, but the same was vetoed by the Governor. The 1987 enactment was signed by the Governor and became law. 1987 Arizona Session Laws, Chapter 127.

Arizona. In response to this decision, the Legislature established the Arizona Navigable Stream Adjudication Commission and enacted the statutes pertaining to its operation. 1992 Arizona Session Laws, Chapter 297 (1992 Act). The charge given to the Commission by the 1992 Act was to conduct full evidentiary public hearings across the state and to adjudicate the State's claims to ownership of lands in the beds of watercourses. *See generally* former A.R.S. §§ 37-1122 to -1128.

The 1992 Act provided that the Commission would make findings of navigability or non-navigability for each watercourse. *See* former A.R.S. § 37-1128(A). Those findings were based upon the "federal test" of navigability in A.R.S. § 37-1101(6). The Commission would examine the "public trust values" associated with a particular watercourse only if and when it determined that the watercourse was navigable. *See* former A.R.S. §§ 37-1123(A)(3), 37-1128(A).

The Commission began to take evidence on certain watercourses during the fall of 1993 and spring of 1994. In light of perceived difficulties with the 1992 Act, the Legislature revisited this issue during the 1994 session and amended the underlying legislation. *See* 1994 Arizona Session Laws, ch. 278 ("1994 Act"). Among other things, the 1994 Act provided that the Commission would make a recommendation to the Legislature, which would then hold additional hearings and make a final determination of navigability by passing a statute with respect to each watercourse. The 1994 Act also established certain presumptions of non-navigability and exclusions of some types of evidence.

Based upon the 1994 Act, the Commission went forth with its job of compiling evidence and making a determination of whether each watercourse in the state was navigable as of February 14, 1912. The Arizona State Land Department issued technical reports on each watercourse, and numerous private parties and public agencies submitted additional evidence in favor of or opposed to navigability for particular watercourses. *See Defenders of Wildlife v. Hull*, 199 Ariz. 411, 416, 18 P.3d 722, 727 (App. 2001). The Commission reviewed the evidence and issued reports on each watercourse, which were transmitted to the Legislature. The Legislature then enacted legislation relating to the navigability of each specific watercourse. The Court of Appeals struck down that legislation in its *Hull* decision, finding that the Legislature had not applied the proper standards of navigability. *Id.* 199 Ariz. at 427-28, 18 P.2d at 738-39.

In 2001, the Legislature again amended the underlying statute in another attempt to comply with the court's pronouncements in *Hassell* and *Hull*. *See* 2001 Arizona Session Laws, ch. 166, § 1. The 2001 legislation now governs the Commission in making its findings with respect to the small and minor watercourses in Yuma County.

## **VI. Issues Presented**

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

A. The commission shall receive, review and consider all relevant historical and other evidence presented to the commission by the state land department and by other persons regarding the navigability or nonnavigability of watercourses in this state as of February 14, 1912, together with associated public trust values, except for evidence with respect to the Colorado river, and, after public hearings conducted pursuant to section 37-1126:

1. Based only on evidence of navigability or nonnavigability, determine what watercourses were not navigable as of February 14, 1912.

2. Based only on evidence of navigability or nonnavigability, determine whether watercourses were navigable as of February 14, 1912.

3. In a separate, subsequent proceeding pursuant to section 37-1128, subsection B, consider evidence of public trust values and then identify and make a public report of any public trust values that are now associated with the navigable watercourses.

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

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

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

Thus, in compliance with the statutes, the Commission is required to collect evidence, hold hearings, and determine which watercourses in existence on February 14, 1912, were navigable or nonnavigable. This report pertains to all of the small and minor watercourses in Yuma County, Arizona and excludes the Colorado River and the Gila River. 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 small and minor watercourse in Yuma 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 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 id.*

## V. Burden of Proof

The Commission in making its findings and determinations utilized the standard of the preponderance of the evidence as the burden of proof as to whether or not a stream was navigable or nonnavigable. A.R.S. § 37-1128A provides as follows:

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

This statute is consistent with the decision of the Arizona courts that have considered the matter. *Hull*, 199 Ariz. at 420, 18 P.3d at 731 (“... a ‘preponderance’ of the evidence appears to be the standard used by the courts. *See, e.g., North Dakota v. United States*, 972 F.2d 235-38 (8<sup>th</sup> Cir. 1992)"); *Hassell*, 172 Ariz. at 363, n. 10, 837 P.2d at 165, n. 10 (The question of whether a watercourse is navigable is one of fact. The burden of proof rests on the party asserting navigability . . ."); *O’Toole*, 154 Ariz. at 46, n. 2, 739 P.2d at 1363, n. 2.

The most commonly used legal dictionary contains the following definition of “preponderance of the evidence”:



Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proven is more probable than not. *Braud v. Kinchen*, La. App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

Black's Law Dictionary 1064 (5<sup>th</sup> 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 image 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. Schipani*, 289 F.Supp. 43, 56 (E.D.N.Y. 1968), *aff'd*, 414 F.2d 1262 (2d Cir. 1969).

## VI. Standard for Determining Navigability

The statutes defines a navigable watercourse as follows:

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

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

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. In its decision, the Supreme Court stated:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

77 U.S. at 563.

In a later opinion in *U.S. v. Holt Bank*, 270 U.S. 46 (1926), the Supreme Court stated:

[Waters] which are navigable in fact must be regarded as navigable in law; that they are navigable in fact when they are used, or are susceptible of being used, in their natural and ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water; and further that navigability does not depend on the particular mode in which such use is or may be had--whether by steamboats, sailing vessels or flatboats--nor on an absence of occasional difficulties in navigation, but on the fact, if it be a fact, that the [water] in its natural and ordinary condition affords a channel for useful commerce.

270 U.S. at 55-56.

The Commission also considered the following definitions contained in A.R.S. § 37-1101 to assist it in determining whether small and minor watercourses in Yuma County are 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.

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. Constitutional and Legal Issues Raised by Defenders of Wildlife

One of the parties to the proceedings was the Defenders of Wildlife who style themselves as the citizen parties and is represented by the Arizona Center for Law in the Public Interest. The primary thrust of the Defenders of Wildlife's position is that the statutes providing for the Commission violate the U. S. Constitution, the Arizona Constitution and the public trust doctrine.

SB 1275 [the current statutes enacted in 2001] is unconstitutional for three main reasons. First, SB 1275 ignores the presumption in favor of sovereign ownership of bedlands; second, SB 1275 establishes an improper standard of review; and third, SB 1275 violates the Supremacy Clause of the U. S. Constitution, the gift clause of the Arizona Constitution, and the public trust doctrine.

Defenders of Wildlife, Post Hearing Memoranda, p. 4.

The Commission is an administrative/quasi judicial agency which is bound to follow the statutes that created it and govern its proceedings. It does not have jurisdiction or authority to question the constitutionality of such statutes. *Corp. Comm'n v. Tucson Gas, Elec. Light & Power Co.*, 67 Ariz. 12, 14, 189 P.2d 907, 908 (1948); *Manning v. City of Tucson*, 2 Ariz. App. 310, 312, 408 P.2d 414, 416 (1965). The Commission may not ignore its powers and duties as defined by statute. See *Kendall v. Malcolm*, 98 Ariz. 329, 334, 404 P.2d 414, 417 (1965); *Phoenix v. Phoenix Civil Serv. Bd.*, 169 Ariz. 256, 259, 818 P.2d 241, 244 (App. 1991).

Even if the Commission could address its statutes' constitutionality, it must find them constitutional because all legislative enactments enjoy the presumption of

constitutionality. *Hull*, 199 Ariz. at 426, 18 P.3d at 737; *In re San Carlos Apache Tribe V.*, 193 Ariz. at 204, ¶ 11, 972 P.2d at 188; *In re One 1965 Ford Mustang*, 105 Ariz. 293, 463 P.2d 827 (1970).<sup>3</sup>

The Defenders of Wildlife argue that the law holds that there is a strong presumption against defeat of the State's title to streambeds since title passed automatically to the State upon statehood and that this affects the burden of proof.

However, as the *Hull* court stated:

... [B]efore 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).

*Hull* also stated that "a 'preponderance' of the evidence appears to be the standard used by the courts." *Hull*, 199 Ariz. at 420, 18 P.3d at 731.<sup>4</sup> Thus, the correct

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<sup>3</sup> As an interesting aside in view of the discussion of burden of proof, it should be noted that before invalidating a statute, an appellate court must be satisfied beyond a reasonable doubt that the statute is unconstitutional. *Flood Control Dist. of Maricopa County v. Gaines*, 202 Ariz. 248, 43 P.3d 196 (App. 2002); *New Times, Inc. v. Arizona Board of Regents*, 110 Ariz. 367, 519 P.2d 169 (1974); *Osborne v. Massachusetts Bonding & Ins. Co.*, 229 F. Supp. 674 (D. Ariz. 1964).

<sup>4</sup> See also *Mundy v. United States*, 22 Cl.Ct. 33 (1990); *Mintzer v. North Am. Dredging Co.*, 242 F. 553, 559, *aff'd* 245 F.2d 297 (9<sup>th</sup> Cir. 1916); *Andersen v. Village of Little Chute*, 549 N.W.2d 737 (Wis. App. 1996); *E.D. Mitchell Living Trust v. Murray*, 818 S.W.2d 326 (Mo.App. 1991).

standard of proof is a preponderance of the evidence and the burden rests on the party asserting navigability. *Hassell*, 172 Ariz. at 363, n. 10, 837 P.2d at 165, n. 10; *Secretary of State v. Wiesenberg*, 633 So.2d 983, 992 (Miss. 1994) *rehearing denied* (March 31, 1994); *see also* Section V above.

The Defenders of Wildlife also argues that the statutes define “public trust values too narrowly. While other states may expand their definition through statute or case law, Arizona states that “[p]ublic trust purposes’ or ‘public trust values’ means commerce, navigation and fishing.” A.R.S. § 37-1101(9). As pointed out above, the Commission must follow the statutes which define its powers and duties. In any event, the extent of “public trust purposes” is not an issue in these proceedings. The only issue is navigability of Yuma County’s small and minor watercourses. “Public trust values” will be considered in a separate subsequent proceeding, if required. A.R.S. §§ 37-1123A3 and 37-1128B.

In considering all of the evidence submitted (Exhibit “D”), the Commission did consider the Defenders of Wildlife’s arguments regarding the evidence and do not find them persuasive. A great deal of evidence as shown by the listing in Exhibit “D” was collected and reviewed. The studies and reports prepared and submitted by the State Land Department and its contractors were done in consultation and coordination with the Department of Water Resources, the Game and Fish Department, State Parks Board and other interested persons and public and private entities. A.R.S. § 37-1123D. Private citizens, clubs, organizations, corporations, partnerships, unincorporated associations,

municipal corporations and public entities were invited to submit evidence and information (A.R.S. § 37-1123C) and many did. The collection, review and consideration of this evidence by the Commission complies with the “particularized assessment analysis” requirement for determining navigability set forth in the *Hassell* decision, 172 Ariz. at 371, 837 P.2d at 173.

## **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 small and minor watercourses located in Yuma County, Arizona. Evidence consisting of studies, written documents, newspapers and other historical accounts, pictures and testimony were submitted. A comprehensive study entitled "Final Report - Small & Minor Watercourses Analysis for Yuma County, Arizona" prepared by JE Fuller/Hydrology & Geomorphology, Inc. under supervision of the Arizona State Land Department, dated September 4, 2002, was reviewed and considered by the Commission. Various earlier draft reports of this study were also reviewed and considered by the Commission. Also reviewed and considered by the Commission were documents, photographs and records submitted by the Arizona Center for Law in the Public Interest, the Central Arizona Paddlers Club (Dorothy Riddle), Chicago Title Insurance Company, Dr. Douglas Littlefield, Salt River Project and the Gila River Navigability Studies submitted by the Arizona Land Department in connection with the hearings on the Gila

River as well as many others. The list of evidence, records and documents reviewed and considered, together with a summarization is attached as Exhibit "D". The public hearing on small and minor watercourses located in Yuma County, Arizona, was held in Yuma, Arizona, on September 23, 2002, and the minutes of the meeting are attached hereto as Exhibit "E" as are that portion of the minutes of the public hearing held on December 9, 2002, which pertains to small and minor watercourses in Yuma County.

**A. Small & Minor Watercourses Analysis for Yuma County, Arizona**

**1. Analysis Methods.**

Due to the large number of small and minor watercourses located in Yuma County, Arizona (1,475 watercourses of which 1,403 are unnamed), it is impractical and unnecessary to consider each watercourse with the same detail that the Commission will consider major watercourses. The study of small and minor watercourses developed by Stantec Consulting Inc. and its associates J. E. Fuller Hydrology & Geomorphology, Inc., and the University of Arizona Water Resources Research Center provided for an evaluation using a three-level process which contained criteria that would be necessarily present for a stream to be considered navigable. A master database listing all small and minor watercourses was developed from the Arizona Land Resource Information System (ALRIS) with input from the U.S. Geological Survey, the U.S. Environmental Protection Agency and other agencies and sources. The final version of the master database called "Streams" includes a hydrological unit code (HUC), segment number, mileage, watercourse type and watercourse name, if



available. Thus there is a hydrological unit code for each of the segments of the 1,475 small and minor watercourses in Yuma County, Arizona. In addition, the database locates each segment by section, township, and range. Some of the satellite databases discussed below also locate certain significant reference points by latitude and longitude.

Using the master database, the contractor also set up six satellite databases, each relating to a specific stream characteristic or criterion, that would normally be found in a watercourse considered to be navigable or susceptible of navigability. These stream criteria are as follows:

1. Perennial stream flow;
2. Dam located on stream;
3. Fish found in stream;
4. Historical record of boating;
5. Record of modern boating; and
6. Special status (other water related characteristics, including in-stream flow application and/or permit, unique waters, wild and scenic, riparian, and preserve).

All watercourses were evaluated at level one which is a binary (yes or no) sorting process as to whether or not these characteristics are present. For a stream or watercourse not to be rejected at level one, it must be shown that at least one of these characteristics is present. If none of these characteristics are present, the stream or

watercourse is determined to require no further study and is rejected at level one as having no characteristics of navigability.

All streams and watercourses surviving the level one sorting (*i.e.*, determined to have one or more of the above characteristics) are evaluated at level two. The level two analysis is more qualitative than level one and its assessment requires a more in-depth analysis to verify and interpret the reasons which caused a particular stream to advance from level one. Each of the above characteristics on which there was an affirmative answer at level one is analyzed individually at level two to determine whether the stream is potentially susceptible to navigation or not susceptible to navigation; for example, a watercourse that at first appears to be perennial in flow but upon further analysis is determined to have only a small flow from a spring for a short distance and therefore cannot be considered perennial for any substantial portion of the watercourse.

In addition, the level two analysis utilizes a refinement with value engineering techniques analyzing watercourses with more than one affirmative response at level one and assigned values to each of the six categories mentioned above. Clearly, perennial flow, historical boating, and modern boating are more important to the issue of navigability than the categories of dam impacted, special status, or fish. Thus, for the purpose of the value engineering study, the following rough values were assigned to each of the six categories: historical boating-10, modern boating-8, perennial stream-7, dam impacted-4, fish-4, and special status-2. This system is a recognized tool used in value engineering studies, and seven qualified engineers from the state Land

Department and consulting staff of the contractor participated in determining the values used for each category. This system establishes that a value in excess of 13 is required for a stream to survive the level two evaluation and pass to level three for consideration. Thus, a stream having both perennial flow and historical boating (sum value of 17), or a combination of the values set for other criteria equaling more than 13, would require that the stream pass to evaluation at level three. If a stream does not have a sum value greater than 13, it is determined to require no further study and is rejected at level two as having no characteristics of navigability.

If a stream survives the evaluation at level two, it goes on to level three which uses quantitative hydrologic and hydraulic analysis procedures including any stream gauge data available, as well as engineering estimates of depth, width and velocity of any water flow in the subject watercourse and comparing the same to minimum standards required for different types of vessels. Also considered is the configuration of the channel and whether it contains rapids, boulders or other obstacles. If a stream or watercourse is not rejected or eliminated at level three, it is removed from this process and subjected to a separate detailed study similar to that performed on a major watercourse, and a separate report will be issued on that stream or watercourse.

## **2. Application of Analysis Methods to Small and Minor Watercourses in Yuma County.**

The application of the level one analysis to the 1,475 small and minor watercourses located in Yuma County resulted in 1,458 watercourses or 98.8% being

determined as not having any of the six characteristics listed above, and these 1,458 were therefore rejected or eliminated and did not proceed to a further evaluation at level two. Attached as Exhibit "F" is a list of the watercourses in Yuma County which were determined to have no characteristics of navigability or characteristics indicating susceptibility of navigability at level one.

Only 17 watercourses, approximately 1.2%, received an affirmative response to the above characteristics or criteria and were evaluated at level two. Attached as Exhibit "G" is a list of the 17 watercourses that received a positive response to one of the characteristics listed above. It should be noted that each of these 17 watercourses had a positive response only to the characteristic of stream type (*i.e.*, perennial stream flow) in that a segment of each of these streams was considered perennial. At the level two analysis where this characteristic was considered in greater depth and other sources for stream type were considered, it was determined that such a small portion or segment of each of these streams could be considered as having an annual flow, it was not truly considered as perennial and was therefore rejected at level two. Accordingly, no small or minor watercourses in Yuma County survived level two of the analysis so none were considered or evaluated at the level three analysis.

Evidence consisting of reports, photographs, maps and statements submitted by other parties and considered by the Commission agreed with and confirmed the findings contained in the Fuller report.

**B. Prehistoric and Historic Considerations Affecting Small and Minor Watercourses in Yuma County, Arizona**

In addition to the Small and Minor Watercourses Analysis and other evidence described above, the Commission also considered evidence of the prehistoric conditions and the historic development of Yuma County as disclosed primarily in the studies submitted in connection with the hearings on navigability of the Gila River. While there is evidence of Paleo-Indian people in Yuma County as long as 12,000 years ago, there was no archaeological evidence that the Paleo-Indian or archaic people traveled on the small and minor watercourses or used the same to float logs downstream or for commerce. These Paleo-Indian and archaic peoples developed into what archaeologists call the Patayan Tradition in Yuma County which existed between A.D. 300 to A.D. 1400. The Patayan and its northern cousin the Cerbat archaeological culture developed into the Yuma, Yavapai and Maricopa Indians who were present in the area when the first Europeans came to southern Arizona, represented primarily by Spanish missionaries accompanied by soldiers.

In support of the Coronado Expedition of 1540-1542 which traveled through eastern Arizona, Captain Hernando Alarcon sailed ships through the Gulf of California or Sea of Cortez to the mouth of the Colorado River and, using small craft, traveled upstream to the Colorado River's junction with the Gila River, the site of the present day city of Yuma. Coronado also sent Captain Melchior Diaz and 25 soldiers in a northwesterly direction to meet Alarcon. At the Yuma Indian villages, Diaz was told of

Alarcon's visit but that he had returned to Mexico. Diaz explored the area around the lower Colorado and then left to rejoin Coronado. In 1604-1606, Juan de Oñate, after establishing the first Spanish colony in New Mexico, explored much of Arizona looking for gold and traveled down the Colorado to the present day site of Yuma.

In the late 1600's and early 1700's Father Esubio Francisco Kino traveled and preached all over southern Arizona. In 1700-1702 he traveled down the Gila River and spent a considerable amount of time at the Yuma villages. In 1771 Fray Francisco Tomas Garces traveled west to Yuma looking for a land route to California. Over the next five years he and Captain Juan Bautista de Anza made a number of expeditions to and through the area, culminating in de Anza's crossing the Colorado at Yuma and going on to establish the city of San Francisco in 1776. A mission and settlement was established at Yuma, but in 1781 a rebellion of the Yuma Indians resulted in the deaths of Father Juan Diaz and Matias Moreno and the closing of the land route to California for the next forty years.<sup>5</sup>

With the acquisition of Arizona from Mexico by the United States by the Treaty of Guadalupe Hidalgo ending the war between the United States and Mexico in 1848 and the purchase by the United States of the area south of the Gila River in 1853 by the Gadsden Purchase, settlement of Yuma County by citizens of the United States began.

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<sup>5</sup> Trimble, Marshall, Arizona, a Cavalcade of History, Chapters 4 & 5, Tucson: Treasure Chest Publications (1989).

During the war with Mexico the Army of the West led by General Stephen Watts Kearny, followed by the Mormon Battalion led by Captain Philip St. George Cook, traveled down the Gila River and crossed the Colorado at Yuma in connection with their invasion of California. In the 1850's a number of military surveys were undertaken to find railroad routes from the eastern United States to California. One or more of these surveys resulted in the building of the Southern Pacific Railroad through Arizona.

Yuma itself was considered a good crossing of the Colorado River for people on their way to California to work the gold fields. On October 2, 1849, a military post called Camp Calhoun was established on the California side of the Yuma crossing of the Colorado River to control the crossing and keep an eye on the Indians living in the area. A year and a half later this post was renamed Camp Yuma. In 1852 the first steamboat loaded with supplies made its way up the Colorado to Fort Yuma as the post was then named. Steamboats continued to navigate up the Colorado River until 1909. Fort Yuma was the only fort not abandoned by the U. S. Army at the beginning of the Civil War and became the staging ground for the reconquest of Arizona from the Confederates in 1862. In 1864 the Yuma Quartermaster Depot was established on the Arizona side of the river and was the primary military supply depot for the Army in the Arizona Territory until the coming of the railroads.<sup>6</sup>

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<sup>6</sup> Nearing, Richard and Hoff, David, Arizona Military Installations: 1752-1922, pp. 5, 6, 11, Tempe: Gem Publishing Co. (1995).

In 1857 farming began in the lower Gila Valley around Yuma and near Wellton, Arizona, and after World War II the Wellton-Mohawk Irrigation District was formed which allowed up to 75,000 acres along the lower Gila River to be farmed using water from the Colorado River. It and the irrigation of the Yuma Valley and Yuma Mesa has resulted in the large agricultural economy now existing in Yuma County, Arizona.

The first stage line was established in 1857 to carry passengers from San Antonio, Texas, to San Diego, California, which crossed the Colorado River at Yuma. In 1877, the Southern Pacific Railroad entered Arizona from California through Yuma and in March of 1880, this railroad reached Tucson and thereafter extended across eastern Arizona into New Mexico. There are no records of any persons traveling on any of the small and minor watercourses of Yuma County, Arizona, although some trails may have followed these streams as corridors of transportation. Prior to and at the time of statehood, travel in Yuma County, Arizona, was by foot, horseback, mule or ox-drawn wagon and stagecoach and, after the 1880's, by train. At the time of statehood and immediately thereafter, trucks and automobiles were also used as the road system was expanded and improved. None of the streams in Yuma County, Arizona, excluding the Colorado River, has been listed in the Rivers and Harbors Act of 1899 (33 U.S. Code § 401-467e).

Testimony presented at the hearing for all small and minor watercourses in Yuma County established that the present climate and weather conditions in Yuma



County are the same or very similar to that which existed in 1912 when Arizona became a state.

### **VIII. Findings and Determination**

The Commission conducted a particularized assessment of equal footing claims the State of Arizona might have to the beds and banks of the 1,475 small and minor watercourses in Yuma County, Arizona, and based on all of the historical and scientific data and information, documents, and other evidence produced, finds that none of the said small and minor watercourses were used or were susceptible to being used, in their ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water as of February 14, 1912.

The Commission also finds that none of the small and minor watercourses in Yuma County, Arizona, are or were truly perennial and that as of February 14, 1912, and currently they flow/flowed only in direct response to precipitation and are or were dry at all other times.

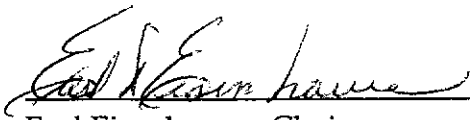
The Commission also finds that there is no evidence of any historical or modern boating having occurred on any of the small and minor watercourses in Yuma County, Arizona.

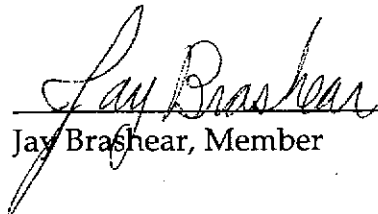
The Commission also finds that there is no evidence of any fishing having occurred on the small and minor watercourses in Yuma County, Arizona.

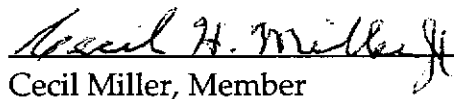
The Commission further finds that all notices of these hearings and proceedings were properly and timely given.

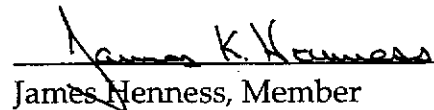
In view of the foregoing, the Commission, pursuant to A.R.S. § 37-1128A, finds and determines that the small and minor watercourses in Yuma County, Arizona, were not navigable as of February 14, 1912.

DATED this 20 day of February, 2003.

  
\_\_\_\_\_  
Earl Eisenhower, Chairperson

  
\_\_\_\_\_  
Jay Brashear, Member

  
\_\_\_\_\_  
Cecil Miller, Member

  
\_\_\_\_\_  
James Henness, Member

  
\_\_\_\_\_  
Dolly Echeverria, Member

12/2/11

# EXHIBIT A

**SMALL AND MINOR WATERCOURSES ANALYSIS  
FOR YUMA COUNTY  
FINAL REPORT**

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**List of Named & Unnamed Small and Minor  
Watercourses in Yuma County**

Baragan Wash	Papago Wash
Bennett Wash	Red Raven Wash
Big Eye Wash	San Cristobal Wash
Castle Dome Wash	Tenmile Wash
Cementosa Wash	The Lagoon
Clanton Wash	Tule Wash - Yuma
Columbus Wash	Twin Tanks Wash
Coyote Wash - Yuma	Tyson Wash
Deadman Wash	Vinegarroon Wash
Dome Protective	West Wash
Farmers Canal	Yaqui Wash
Fortuna Wash	a - Seg 2 Yuma
French Creek	a - Seg 2 Yuma/Pima
Gravel Wash	a - Seg 3 Yuma
Growler Wash	a - Seg 6 Pima/Maricopa/Yuma
Hoodoo Wash	a - Seg 7 Yuma
Indian Wash	b - Seg 181 Yuma
Kofa Dam Wash	b - Seg 4 Yuma
La Jolla Wash	c - Seg 22 Yuma
Long Mountain Wash	c - Seg 6 Yuma
Los Angeles Wash	d - Seg 17 Yuma
McAllister Wash	d - Seg 23 Yuma
McPherson Wash	e - Seg 18 Yuma
Mohawk Wash	e - Seg 19 Yuma
Morgan Wash	f - Seg 20 Yuma
Muggins Wash	g - Seg 21 La Paz/Yuma
Nottbusch Wash	h - Seg 23 Yuma
Nugget Wash	i - Seg 24 Yuma
Owl Wash - Yuma	1418 Unnamed Washes

**EXHIBIT "A"**

(092)

# EXHIBIT B

# Publisher's Affidavit of Publication

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STATE OF ARIZONA }  
COUNTY OF YUMA }

**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 a watercourse navigability hearing regarding all of the small and minor watercourses in Yuma 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 Yuma County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by August 23, 2002. 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 office during regular office hours.

The list of small and minor watercourses includes:

Baragan Wash, Big Eye Wash, Castle Dome Wash, Cementosa Wash, Clanton Wash/Deadman Wash, Copper Basin Wash, Coyote Wash, Fortuna Wash, French Creek, Gravel Wash, Growler Wash, Hoodoo Wash, Indian Wash, Kofa Dam Wash/Yaqui Wash, Los Angeles Wash, McPherson Wash, Mohawk Wash, Nortbusch Wash, Owl Wash, Red Raven Wash, San Cristobal Wash, Tyaon Wash, Vinegarroon Wash, White Wash, Yaqui Wash, and any other named or unnamed small and minor watercourses in Yuma County.

ANSAC will not receive evidence and testimony relating to the navigability or nonnavigability of the major watercourses in Yuma County at this time. The major watercourses in Yuma County include the Colorado River and Gila River.

An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 404, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstate-ambada.com>. The e-mail address is [stream@ambada.com](mailto:stream@ambada.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. Daily July 8, 15, 22, 2002 #L24875

Julie Moreno or Lee Knapp, having been first duly sworn, deposes and says: that The Sun is a newspaper of general circulation published daily in the City of Yuma, County of Yuma, State of Arizona; that (s)he is the publisher or business manager of said paper; that the

**STATEMENT OF INTENT**

a printed copy of which, as it appeared in said paper, is hereto attached and made a part of this affidavit, was published in The Sun

For THREE issues; that the date of the first publication of said STATEMENT OF INTENT

was JULY 8, 2002 and the date of the last publication being JULY 22, 2002 and that the dates when said

**STATEMENT OF INTENT**

was printed and published in said paper were

JULY 8, 15, 22, 2002

Lee Knapp

Subscribed and sworn to before me, by the said Julie Moreno or Lee Knapp

**EXHIBIT "B"**

1st day of August, 2002

Virgen P. Perez Notary Public

My commission expires May 10, 2005



# EXHIBIT C

# Publisher's Affidavit of Publication

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STATE OF ARIZONA }  
COUNTY OF YUMA }

## 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 a public hearing to receive physical evidence and testimony relating to the navigability or nonnavigability of all small and minor watercourses in Yuma County. The hearing will be held in Yuma County on September 23, 2002. The hearing will begin at 1:30 p.m. at the Yuma County Board of Supervisors Auditorium at 186 South Main Street, Yuma, Arizona, 85364. This is presently the only hearing scheduled for the small and minor watercourses in Yuma County.

The list of minor watercourses includes:  
Baragan Wash, Big Eye Wash, Castle Dome Wash, Cementosa Wash, Clanton Wash/Deadman Wash, Copper Basin Wash, Coyote Wash, Fortune Wash, French Creek, Gravel Wash, Growler Wash, Hoodoo Wash, Indian Wash, Kofa Dam Wash/Yaqui Wash, Los Angeles Wash, McPherson Wash, Mohawk Wash, Nottbusch Wash, Owl Wash, Red Raven Wash, San Cristobal Wash, Tyson Wash, Vinegarroon Wash, White Wash, Yaqui Wash, and any other named or unnamed minor watercourses in Yuma County.

The Commission will not receive evidence and testimony relating to the navigability or nonnavigability of the major watercourses in Yuma County at this time. The list of major watercourses in Yuma County includes the Colorado River and Gila River.

Interested parties may submit evidence to the commission office prior to the hearing. During the public hearing, the commission will receive additional evidence including testimony. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence.

Evidence submitted in advance of the hearing will be available for public inspection during regular commission office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 404, Phoenix, Arizona 85007. Please call first to review evidence at (602) 542-9214.

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. #L26125 Daily August 22, 2002

Julie Moreno or Lee Knapp, having been first duly sworn, deposes and says: that The Sun is a newspaper of general circulation published daily in the City of Yuma, County of Yuma, State of Arizona; that (s)he is the publisher or business manager of said paper; that the

## NOTICE OF PUBLIC HEARING

a printed copy of which, as it appeared in said paper, is hereto attached and made a part of this affidavit, was published in The Sun

For ONE issues; that the date of the first publication of said NOTICE OF PUBLIC HEARING

was AUGUST 22, 2002 and the date of the last publication being AUGUST 22, 2002 and that the dates when said

## NOTICE OF PUBLIC HEARING

was printed and published in said paper were AUGUST 22, 2002

Lee Knapp

Subscribed and sworn to before me, by the said Julie Moreno or Lee Knapp

3rd day of September, 2002

Virgen P. Ponce Notary Public

My commission expires May 10, 2005

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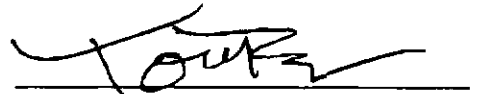
# THE ARIZONA REPUBLIC

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS.

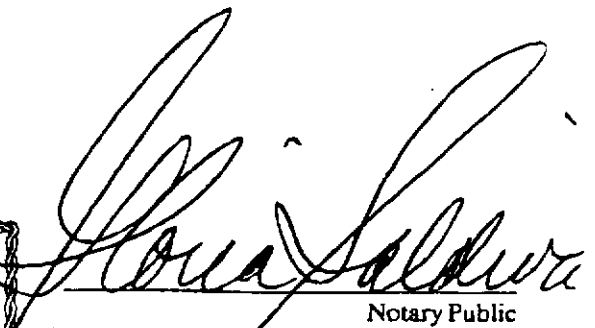
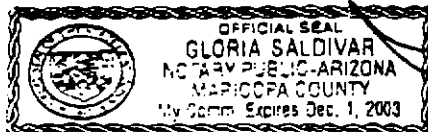
TOM BIANCO, being first duly sworn, upon oath deposes and says: That he is the legal advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, 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

08/20/2002



Sworn to before me this  
21<sup>th</sup> day of  
August A.D. 2002

  
Notary Public

## EXHIBIT "C"

**NOTICE OF PUBLIC HEARING**  
State of Arizona  
Navigable Stream Adjudication  
Commission  
Pursuant to A.R.S. § 27-1726  
(A), notice is hereby given that  
the Navigable Stream Adjudi-  
cation Commission will hold a  
public hearing to receive physical  
evidence and testimony regard-  
ing to the navigability or non-  
navigability of the listed and  
minor watercourses in Yuma  
County. The hearing will be  
held in Yuma County on Sep-  
tember 21, 2002. The hearing  
will begin at 10:00 a.m. at the  
Yuma County Board of Super-  
visors Auditorium at 100 South  
Main Street, Yuma, Arizona,  
85401. This is presently the only  
hearing scheduled for the listed  
and minor watercourses in  
Yuma County.  
The list of minor watercourses  
includes:  
Boggs Wash, Big Eye Wash,  
Cade Ditch, Wash, Larned  
Irrigation Wash, Clifton  
Irrigation Wash, Cooper  
Irrigation Wash, Coyote Wash,  
Cortina Wash, French Wash,  
Grand Wash, Growler Wash,  
Hopping Wash, Koller Wash,  
Kohlschatter Wash, Koller Wash,  
Los Angeles Wash, McPherson  
Wash, Nohel Wash, North  
Sage Wash, Old Wash, Red  
Wagon Wash, San Felipe  
Wash, Tyeon Wash, Victoria  
Wash, White Wash, Young  
Wash, and any other named or  
unnamed minor watercourses  
in Yuma County.  
The Commission will not receive  
evidence and testimony regard-  
ing to the navigability or non-  
navigability of the major  
watercourses in Yuma County  
at this time. The list of major  
watercourses in Yuma County  
includes the Colorado River  
and Gila River.  
Interested parties may submit  
evidence to the commission  
office prior to the hearing.  
During the public hearing, the  
commission will receive addi-  
tional evidence including testi-  
mony. The commission will  
conduct its hearing informally  
without adherence to judicial  
rules of procedure or evidence.  
Evidence submitted in advance  
of the hearing will be available  
for public inspection during  
regular commission office  
hours of 9:00 a.m. to 5:00 p.m.,  
Monday thru Friday, except on  
holidays. The commission of-  
fice is located at 100 South  
Main Street, Room 401,  
Yuma, Arizona 85401. Please  
call (928) 242-9214  
to review evidence at  
(928) 242-9214.  
Individuals with disabilities who  
need a reasonable accommoda-  
tion to communicate evi-  
dence to the commission, or  
who require this information in  
an alternate format may con-  
tact the commission office at  
(928) 242-9214 to make their  
needs known.  
08/15/ August 20, 2002

# EXHIBIT D

# Evidence Log

Hearing No. 02-001-NAV

Page No.

1

## Arizona Navigable Stream Adjudication Commission

Yuma County Small and Minor Watercourses  
09/23/02

Item Number	Received Date	Source to ANSAC	Description	Entry By
1Vol I 1Vol II 1Vol III 1Vol IV	See Description column for received dates of items contained in multiple volumes.	Evidence on Hand at ANSAC. Contains Various items of evidence received from a number of different sources. 4 Volumes	Volume I: 1) Ownership Evidence Re: Public Trust received 8/29/96, Julie Lemmon, Maricopa County Flood Control District. 2) Gila River Exhibits submitted by Arizona Center for Law in the Public Interest received 8/30/96. 3) Gila & Salt River Exhibits submitted by Arizona Center for Law in the Public Interest, received 8/30/96. 4) Ltr & Memorandum from attorney John Schaper for Buckeye Irrigation Company and Buckeye Water Conservation District, received 8/30/96. Volume II: 5) Gila River Navigability Study Draft Final Report, October, 1994 Revised September, 1996, Arizona SLD, received 9/3/96. Volume III: 6) Letter & attachments, Maricopa County Public Trust Values, Gila River, by Sally Worthington, received 9/3/96. 7) Letter and other documents from Timothy Flood, Friends of Arizona Rivers, received 9/3/96. 8) Letter and Hydrologic Summary, Gila River, from attorney James Johnson, received 12/10/96. 9) 1992 Boating Survey from Central Arizona Paddlers' Club, received 6/10/96. 10) David Baron letter dated February 18, 1997, received 2/18/97. 11) Three photos from Jim Slingluff, received 5/20/97. 12) "Forever Free . . ." article from Dorothy Riddle, received 6/10/97. 13) "Who Owns the Waterways?" article from Dorothy Riddle, received 6/10/97. 14) Arizona Stream Navigability Study for the Upper Gila River and San Francisco River, Final Report by SFC Engineering Co, received 8/15/97. Volume IV: 15) Field notes of R. W. Norris, received 9/9/97. 16) Docs from Greenlee Cy Supervisor Fred Zumwalt, Re: Gila & San Francisco Rivers, received 3/11/98. 17) Gila River Flood Control report, received 3/11/98. 18) Arizona's Changing Rivers, Barbara Tellman etal, received 3/12/98.	George Mehnert

EXHIBIT "D"

# Evidence Log Continuation Page

Hearing No. 02-001-NAV

Page No.

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## Arizona Navigable Stream Adjudication Commission

Yuma County Small and Minor Watercourses

09/23/02

Item Number	Received Date	Source	Description	Entry By
1 Vol IV Cont'd	N/A	Continued from previous page.	19) Report by Dr. Douglas Littlefield re: Gila River—Large maps not in book but available, from attorney Mark McGinnis, received on 4/29/98. 20) Statement of Clyde Gould on behalf of Welton-Mohawk IDD re: Lower Gila River, from Clyde Gould, received 5/14/98. 21) Letter re: Historic Evidence from James Braselton, received 9/19/97. 22) Gila River Backwater Analysis from Pat Deschamps, dated 2/11/99.	
2	9/7/98	Evidence on hand at ANSAC	Small and Minor Watercourse Criteria	George Mehnert
3	9/7/99	Evidence on hand at ANSAC	3 County Pilot Study	George Mehnert
4	12/31/99	Evidence on hand at ANSAC	Final Report Small & Minor Watercourses Analysis for Yuma County, Arizona dated December 31, 1999.	George Mehnert
5	9/4/02	Cheryl Doyle, SLD	Yuma County small & minor watercourse report	George Mehnert
6	9/23/02	Jon Fuller	Powerpoint slides-ANSAC public hearings, Yuma County small & minor watercourses. Provided at hearing	George Mehnert
7	9/23/02	Vera Komylak	Map entitled "Arizona Water". Provided at hearing	George Mehnert

EXHIBIT "D"

# EXHIBIT E



STATE OF ARIZONA  
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 404, Phoenix, Arizona 85007

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

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

GEORGE MEHNER  
Executive Director

## Meeting Minutes Yuma, Yuma County September 23, 2002

### COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria, Earl Eisenhower, James Henness, and Cecil Miller.

### COMMISSION MEMBERS ABSENT

None.

### STAFF PRESENT

Curtis Jennings, George Mehnert and Tom Vogt.

#### 1. CALL TO ORDER

Chair Eisenhower called the meeting to order at approximately 1:30 p.m.

#### 2. ROLL CALL

See above.

#### 3. HEARING ON WATERCOURSES

- A. Baragan Wash, Big Eye Wash, Castle Dome Wash, Cementosa Wash, Clanton Wash/Deadman Wash, Copper Basin Wash, Coyote Wash, Fortuna Wash, French Creek, Gravel Wash, Growler Wash, Hoodoo Wash, Indian Wash, Kofa Dam Wash/Yaqui Wash, Los Angeles Wash, McPherson Wash, Mohawk Wash, Nottbusch Wash, Owl Wash, Red Raven Wash, San Cristobal Wash, Tyson Wash, Vinegarroon Wash, White Wash, Yaqui Wash, and any other named or unnamed minor watercourses in Yuma County.

Chair Eisenhower welcomed everybody to the hearing on the navigability or non navigability of small and minor watercourses within Yuma County. He said because of the new law the Commission operates under, any person giving testimony at the hearing is subject to questioning by other people in attendance. He added if any person wishes to submit written testimony only, that is also subject to questioning.

Chair Eisenhower said there are several pieces of evidence on hand already with the Commission and he read the list of those as follows:

1. Gila River Evidence.
2. Small and Minor Watercourses Criteria Study completed in 1998.
3. Three County Pilot Study completed in 1999.
4. Small and Minor Watercourses Study for Yuma County completed in 1999.

5. Small and Minor Watercourses Study for Yuma County updated in 2002, specifically for this hearing.

Chair Eisenhower asked the authors of the revised Small and Minor Watercourses Study for Yuma County to present the findings to the Commission and to the members of the public. Mr. Brashear asked that staff indicate what measures were taken to publicize this hearing above and beyond that of statutory mandate. Mr. Mehnert said the main thing done was a newsletter sent to county supervisors and any others who requested it. He asked people present in the audience to inform the staff if they would like to be on the newsletter mailing list in the future. He added the newsletter is also posted on the Commission's web site. Chair Eisenhower said this is something the Commission is doing to better inform the public, and still remain within our budget.

Jonathan Fuller, representing J.E. Fuller Geomorphology & Hydrology, said there is a slide presentation available but that it will take awhile to setup the projector and computer. He added he also has several hard copies of the presentation available. Chair Eisenhower and the other Commissioners agreed the hard copies would be acceptable, and opted not to wait for the projector to be setup. Printed copies were also handed out to all persons present in the audience. Mr. Mehnert said the Commission has a computer, a projector, and a screen ready at this hearing, and available as a back-up for all hearings.

Mr. Fuller began the presentation with an overview of the statewide process used for the small and minor watercourses. He said there are nearly 88,000 stream segments within the state of Arizona. He said these segments are logically combined to produce approximately 39,000 watercourses. He said Stantec Consulting produced a methodology or criteria for determining navigability of the small and minor watercourses in Arizona. Mr. Fuller said approximately 37,000 of the more than 39,000 watercourses are unnamed. He said the small and minor process utilizes a three-level approach. He added at each tier there are increased levels of scrutiny and detail regarding individual watercourses.

Mr. Fuller said level one evaluation is basically a binary sort. He said the object is to eliminate the watercourses most likely to not be susceptible to navigability. He added the process uses existing databases from other state, local and federal agencies and combines these into a master database. He said the characteristics considered to determine small and minor watercourse navigability are stream type (perennial or not), existence of dams, accounts of historical boating, accounts of modern boating, the presence of fish; and whether the stream has been designated with a special status such as a unique waters designation, a wild and scenic rivers designation, or are related to some types of preserve. He said the objective in level one is to look at each of these six categories and to have a binary (yes/no) response for each segment. He said if a watercourse receives a negative response in all six categories for all segments, it is considered as not having any characteristics of navigability, and the watercourse does not move to level two.

Mr. Fuller said the level two evaluation is a more refined process. He said this level includes both quantitative and qualitative approaches and considers the individual responses to each of the six categories. He said there is a weighting system based on the six criteria with the ones affecting the probability of navigability being weighted higher than those which would not necessarily indicate much probability of navigability. He added that any stream which has an account of historical or modern boating is automatically forwarded to level three for further evaluation.

Mr. Fuller said the level three evaluations include more detailed engineering analysis regarding flow rates and typical flow conditions, and results in a cross-section of width, depth and velocity to determine what different boating conditions will occur under different flow rates. He said level

three evaluations also identify any obstacles and the slope of the stream relating to hydrology and hydraulics. He said those watercourses that have sufficient flow and depth characteristics to support various kinds of boating are studied in greater detail; similar to the studies done regarding each major watercourse.

Mr. Fuller said there are 1475 watercourses identified in Yuma County. He said the average annual precipitation is the lowest of any county in Arizona at approximately 2.3 inches per year. He added that with the annual evaporation rate of approximately 70 inches per year results would expect most of the streams in Yuma County to be dry most of the time. Mr. Fuller said after applying the level one sort, only 17 watercourses were forwarded from level one to level two analyses. He said all 17 of these had only one positive response at level one which was perennial for all 17. He said because the only indication forwarding these 17 to level two was perennial, and given the climate and topography of the area, none were forwarded to level three.

Mr. Brashear asked Mr. Fuller to explain how the weighting factors were determined and if it was a commonly used engineering process. Mr. Fuller said they used a value engineering approach to rank and identify one factor as related to another. He said, for example, historic boating received a weighting factor of 9 whereas the least significant category of special status received a value of 2. He added, these values were based on how each factor would relate to possible characteristics of navigability. Chair Eisenhower asked how different was the weight for a perennial stream as opposed to a perennial spring. Mr. Fuller said any watercourse designated as perennial was treated the same regardless of the length of the stream. He added that if a watercourse reaches level three evaluations, those differences will be sorted out.

Mr. Brashear asked Mr. Fuller if he would describe the ordinary condition of the streams studied as dry. Mr. Fuller said for the 1475 watercourses identified that fell out at level one all the data indicates that those streams are normally dry except during floods. He added those designated as perennial have flow year-round, but the duration and the depth of that flow would vary depending on the stream.

Regarding the historical studies performed with these streams, Mr. Jennings asked about conditions at statehood. Mr. Fuller said there was no specific historical study performed for these watercourses because that task is not generally done during levels one, two or three, but is performed when a detailed study is required. He added that the scientific thought is that conditions are typically drier now than they were at statehood. Mr. Jennings asked Mr. Fuller if he believes that the conditions at the time of statehood would have made a difference in the rating or ranking in these small and minor watercourses. Mr. Fuller said he does not. Mr. Jennings asked if the usual condition, the weather and climate for Yuma County would have been the same in 1912 as it is now. Mr. Fuller said it would be very similar. He added there would not have been any significant differences with respect to navigability.

Vera Komylak, representing the Defenders of Wildlife and the Center for Biological Diversity, asked if she would be able to observe the evidence and have an opportunity to make comments with the post hearing memoranda. Chair Eisenhower said there will be a time period after the hearing is adjourned to obtain copies of the materials and make comments at that time.

Mr. Mehnert said with regards to the evidence on hand and received today, we will make copies for anyone who requests them within a few days.

Mr. Brashear asked Chair Eisenhower to explain to the public what will happen now the hearing for Yuma small and minor watercourses has taken place. Chair Eisenhower said there will be a



post comment period for all parties to present their opinions on the evidence. He said after that, there will be a determination made by the Commission regarding navigability. Ms. Kornylak asked if it is acceptable to present additional evidence with the post hearing memoranda than what has been presented at this hearing. Chair Eisenhower said if you wish to at that time it is acceptable. Mark McGinnis, representing Salt River Project, said his understanding was the post hearing memoranda would be legal arguments relating to the evidence all ready on file and if new evidence will be accepted, he would like an opportunity to review and comment on it. Mr. Jennings said what the rules provide is that evidence will be presented at this hearing and there will be a thirty day period after this for memoranda to be filed. He added there will then be a twenty day response period. Mr. Jennings said he didn't think the rules contemplated that there will be new evidence presented to the Commission after this hearing. Chair Eisenhower asked if the procedure Mr. Jennings just described was what Ms. Kornylak had in mind. Ms. Kornylak said that is the procedure she understood, however, asked for clarification when Chair Eisenhower said additional evidence could be submitted after this hearing. Chair Eisenhower said his choice of words was bad, but the procedure just described by Mr. Jennings is what he had in mind, as well. Ms. Kornylak said she then had a piece of evidence to submit today. She said it is a map put together by the efforts of various agencies including the Department of Environmental Quality, Department of Water Resources, Salt River Project, and the University of Arizona among others. She said it lists the San Cristobal Wash and the Tenmile Wash as perennial watercourses. Mr. Jennings asked Ms. Kornylak if the map she submitted shows these are perennial streams. Ms. Kornylak said that was correct. Mr. Jennings asked if there were any other criteria or characteristics that pertain to those streams regarding navigability that should be considered by the Commission, such as history of boating, dams, or fishing on those streams. Ms. Kornylak said she does not, however, she said the Bureau of Land Management and other agencies who participated in the making of the map have all the data and it is her understanding it is the duty of the State Land Department to coordinate with those other agencies to collect that data and information. She added she is here representing citizen activists. Mr. Jennings thanked Ms. Kornylak and asked Mr. Fuller to identify the watercourse segments on his submission as they are not named watercourses. Chair Eisenhower pointed out to Mr. Jennings that they were indeed named watercourses in the study. Mr. Jennings asked Mr. Fuller to respond with information about the two watercourses. Mr. Fuller said both watercourses are listed in the database for Yuma County. He said the databases which were considered were developed by state agencies, contacts with those agencies and federal agencies have all had the opportunity to comment on the data. He added those two watercourses were not listed as perennial in the databases they had. Mr. Fuller said there was no intent that their study be exhaustive in collecting every piece of information that could possibly be generated. He said it is the purpose of this hearing for other people to bring in other information and evidence.

Ms. Kornylak asked Mr. V. Ottozawa-Chatupron (Mr. Ott), representing the State Land Department, what the State Land Department did in preparation for today's hearing. Mr. Ott said they have reviewed all previous reports they have been done, they met with consultants last week to go over the update to the reports. He said they did prepare the PowerPoint presentation for defining what they have done. Ms. Kornylak asked if the State Land Department performed any original research regarding the historical or current navigability of the watercourses. Mr. Ott said they did a statewide search on historical boating along with the technical committees with various agencies identified under the statutory requirements. He said they did submit a report to the Commission in 1999 and they updated the data the best they could and he said he is comfortable they followed every criteria required under the statutes. Ms. Kornylak asked if the State Land Department consulted with other agencies before today's hearing. Mr. Ott said they did mainly through the technical committee they use to review the reports. Mr. Ott said their record of the committee is available for anyone who wishes it. Ms. Kornylak asked what agencies the State Land Department consulted with for the study. Mr. Ott said mainly the Arizona Department of

Environmental Quality, Arizona Department of Water Resources, Game and Fish, State Parks, and that previously they had a representative from the U.S. Fish and Wildlife from Yuma review the report, but he has since retired and they have not yet replaced him.

Mr. Jennings said the Commission should move that all exhibits that have been presented be considered as admitted into evidence and received by the Commission for consideration. Chair Eisenhower said all of the evidence submitted to date will be part of the evidence record for this hearing on the small and minor watercourses of Yuma County. He said that includes exhibits put into evidence today which makes the Yuma County small and minor watercourse hearing evidence items numbered from one to seven.

**4. CALL FOR PUBLIC COMMENT**

Chair Eisenhower asked for public comment. There was none.

**5. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE MEETINGS**

Chair Eisenhower said the Commission will be holding a business meeting within the next three or four weeks in Phoenix. He added the Commission is planning on holding hearings for Mohave and La Paz small and minor watercourses sometime in December. Mr. Brashear asked if the reason the Commission is holding hearings on the small and minor watercourses first is simply a matter of money available and said if someone were to ask the Commission to proceed with the Lower Salt River now we would not have the funding available for the study and the Commission to do its work. Chair Eisenhower said that is correct and added the State Land Department is in the same budget crunch the Commission is in and we will work with the funding available and proceed as expeditiously as possible. Mr. Ott said the State Land Department will attend and submit their evidence the best they can whenever the Commission sets up the hearing for any major or minor watercourse. He said the evidence will be based on the available resources at the time required by the Commission. Mr. Brashear asked if the Commission were to set a hearing in February for the Lower Salt River, would the State Land Department deliver a study to the Commission for that hearing. Mr. Ott said they would deliver evidence the best that they could. Mr. Brashear asked if by proceeding as currently set, with the small and minor watercourses first, and the major watercourses later, would the Commission receive more and better information than by scheduling major watercourses now or does it make a difference. Mr. Ott said from the State Land Department's standpoint if the Commission sets the hearing, they, the Land Department, will be there. Chair Eisenhower said that what Mr. Brashear was saying that if the Commission delays getting into the major watercourses, does that give the State Land Department more time to get to the major watercourses. Mr. Ott said of course, and added, it doesn't matter what watercourse the Commission holds a hearing on it is his job to get the information to the Commission the best he can. Mr. Brashear said he doesn't want to disrupt the schedule already set by the Commission, but based on what was just said the Commission should give some consideration to adjudicate the streams that have the most interest first. He said he was concerned if the Commission was to proceed as scheduled someone may request the Commission change its priority to hold a hearing on some major watercourse first. He added it might be of discussion in the Phoenix meeting next month whether the Commission should consider holding hearings on the major watercourses soon. Chair Eisenhower agreed this should be discussed during that meeting. Mr. Mehnert said the timeline is a draft and has not been officially adopted. He reminded the Commission there is a necessary and statutorily required lead time for filing public notices relating to each hearing.

Chair Eisenhower said he would like to set up a date for the business meeting next month. After some discussion it was decided to hold the business meeting on Wednesday, October 23, 2002.

Chair Eisenhower said he would like to hold hearings in the first or second week in December for Mohave and La Paz small and minor watercourses hearings. After some discussion it was decided to hold the

hearings on Monday, December 9, 2002 and Tuesday, December 10, 2002 with Mohave first and Parker second.

6. **ADJOURNMENT**

Motion by: Cecil Miller                      Second by: James Henness                      Vote: All aye  
Motion:                      To adjourn the meeting at approximately 2:30 p.m.

Respectfully submitted,

  
George Mehnert, Director

Date: September 24, 2002



STATE OF ARIZONA  
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT  
Executive Director

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# Meeting Minutes

## Kingman, Mohave County

### December 9, 2002

#### COMMISSION MEMBERS PRESENT

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

#### COMMISSION MEMBERS ABSENT

Dolly Echeverria.

#### STAFF PRESENT

Curtis Jennings, George Mehnert and Tom Vogt.

#### 1. CALL TO ORDER

Chair Eisenhower called the meeting to order at approximately 1:30 p.m.

#### 2. ROLL CALL

See above.

#### 4. HEARING ON WATERCOURSES

- A. Chair Eisenhower asked Mr. Mehnert if evidence submitted at the Yuma hearing was included, specifically the map introduced by Vera Kornylak. Mr. Mehnert said he was not aware it was to be included with all hearings. Chair Eisenhower directed staff to look into that matter because he thought Ms. Kornylak asked that the map be included for all hearings. Mr. Jennings said that specific documents which pertain to general principles and not to a specific watercourse can be included and should be included in all hearings if the party who offers the evidence wishes it to be.

Mr. Jennings said he noted that Mr. Fuller's report contained a statement that the group of consultants, the authors of the report, state that the three level process begins with the presumption and hypothesis that each stream is navigable, and asked if that means they approached the process from a completely open mind that each one of these is navigable until there is evidence to show to the contrary. Mr. Fuller said that is a correct statement.

Mr. Brashear said he is concerned if someone submits an aerial photograph or some piece of paper indicating they want it introduced at all subsequent hearings, that they automatically become a party to all those hearings without resubmitting the evidence at each hearing. Chair Eisenhower said that, similar to the letter by David Baron in 1997, if someone submits evidence indicating it to be included as at all hearings, that the Commission would honor that request. Mr. Jennings said that should be qualified with his advice that if, as with the case of Mr. Baron's letter, dealt with the constitutionality and legality of the entire process, that would be proper. He said the chairman also can rule whether evidence is admissible or not.

Motion by: James Henness                      Second by: Jay Brashear                      Vote: All aye  
Motion: To close the hearing and taking of evidence for the small and minor  
watercourses in Mohave County.

5. **YUMA COUNTY SMALL AND MINOR WATERCOURSES HEARING DETERMINATION  
REGARDING NAVIGABILITY OR NON-NAVIGABILITY**

A. Mr. Ott asked that the ASLD consultant Mr. Fuller explain in some detail about the map previously mentioned by Chair Eisenhower. Chair Eisenhower said this was the map introduced in Yuma by Ms. Kornylak that indicates two of the small and minor watercourses in Yuma County were perennial. Mr. Ott said Mr. Fuller has researched the matter. Mr. Fuller said the map is titled "Arizona Water" and is an educational tool put together by a number of different agencies and published by the University of Arizona Water Resources Research Center in cooperation with Salt River Project, University of Arizona Cooperative Extension, Department of Water Resources, Bureau of Reclamation, Central Arizona Project, and Arizona Department of Environmental Quality. He said the streams referred to in the last hearing relating to the map, were San Cristobal Wash and Tenmile Wash, and that the map shows them to be perennial. He said that according to the map legend, those streams are indicated by a solid blue line which is indicated as "river" and nowhere on this map or the text associated with this map does it indicate that "river" means perennial, just that each is a "river" and that "river" is not further defined. Mr. Fuller said the definition of river in the dictionary does not specify it as being perennial and that a watercourse that is called a river can be dry. He said since the Yuma hearing, the SLD staff has researched San Cristobal Wash and Tenmile Wash, including talking to other agency personnel who worked in the area and that they determined the two washes are in fact ephemeral and are normally dry.

Mr. Fuller said as far as the map applying to Mohave County goes, the blue lines do not indicate perennial nor define as navigable, those watercourses having solid blue lines on the map. He said that all of the watercourses shown in blue for Mohave County, with the exception of the Colorado River, are ephemeral and not perennial. He said the map does not indicate the location of perennial streams and even if it did there is no assumption or implication that any are navigable. Mr. Jennings said that in any event the map is evidence and should be considered.

Mr. Henness said the Commission should vote on the Yuma matter and that legal counsel should draft a report or document reflecting their vote, and that the Commission should vote on the final document, as well. Mr. Brashear said in the past the Commission would vote, have counsel draft a document that he sent to all the Commissioners to review and request any changes, then the Commission would, in a public meeting, vote on and sign the final document. He said he would continue to function in this manner.

Mr. Jennings said the way he envisions this process is that the Commission will now have oral argument from those who submitted post-hearing memoranda, get their viewpoints, and question them regarding their oral arguments. He said then, just as a court would, the commission will take the matter under advisement. He added at some point, after an executive session to obtain legal advice, if there is one, the commission will vote on the small and minor watercourses and then, not unlike an appellate court, will draft an opinion that will be circulated and when it is put in final form after the commission has met, made any changes, and adopted it. Mr. Jennings said he believes the Commission needs to vote on the issue of navigability as a means of instructing legal counsel regarding drafting of the commission's written report. Mark McGinnis, representing Salt River Project, said it would be helpful if there would be a proposed final report that is available to the public for comment. Mr. Jennings said the previous reports were simply recommendations to the legislature where members of the public could appear before the legislature and request and

changes or make any protests. He said now when as Commission finishes reports, they are final except for right of appeal.

Judith Darknall, with the Attorney General's Office representing the State Land Department, said the Defenders [of Wildlife] raised three points and said she would be addressing two of them. She said she won't address the legal arguments concerning the presumption of sovereign ownership of streambeds and the appropriate burden of proof. She added she won't address those issues because she believes ANSAC can't address the issues because ANSAC must follow the statutes and does not have the legal authority to question or challenge the constitutionality of the statutes under which they operate. Ms. Darknall asked the Commissioners to go back and re-read the 1998 criteria report which she says shows an enormous amount of historical, technical and legal research that went into developing a method for sorting and sifting the small and minor watercourses of the state. [This criteria study will be evidence in all future commission navigability hearings.] She said the report shows a careful, thorough and thoughtful evaluation of the best method to determine navigability. She added there are thousands of watercourses in the state, and it doesn't take a genius to realize that most of those are not going to be navigable because most of them are dry most of the year. She said a method was needed, not only for efficiency, but to comply with the Hassell case, which is a 1991 court decision that requires a particularized assessment of watercourses. Ms. Darknall said she believes the members of the Commission are aware of the care and thoroughness by which Mr. Fuller works; that also builds on work that was done before. Chair Eisenhower asked Ms. Darknall if the courts at anytime had any concerns about that methodology. Mr. Darknall said that issue has not been before a court, that she is aware of. Chair Eisenhower said he believes it may have been raised, does not believe the courts ever entertained that there was a problem with the methodology. Ms. Darknall said the matter has been raised by the Arizona Center for Law in the Public Interest in their post hearing memorandum. She said the Center believes the methodology is seriously flawed, but she said they do not agree with that statement and that the methodology is a very good. She said the legal research relied on to determine the right criteria to look at are federal cases. She said the Yuma report which was prepared using that methodology chosen so carefully complies with Hassell and with the applicable statutes.

Ms. Darknall said another point the Defenders claim is that the ASLD Commissioner has violated his duty to act as the trust advocate by failing to argue that the small and minor watercourses are navigable. She said it is tied to the legal argument and is erroneously based on the presumption of sovereign ownership of all watercourses throughout the state as of statehood. She said the state only has title to what was navigable at statehood and that it is the Commission's job to find out what the state owns. Ms. Darknall said that is why the ASLD Commissioner has not violated his fiduciary duty and cannot in fact argue for navigability unless there are facts on which to base that argument. She said using the methodology, Mr. Fuller produced a presentation at the Yuma County hearing that produced no facts whatsoever that the small and minor watercourses in Yuma County were navigable at any time. She said there were no facts supporting navigability, that the method is thorough, and that Ms. Kornylak was present at the Yuma hearing. She said at the hearing, Ms. Kornylak produced a map, and that she had admitted she had no evidence of navigability of the two watercourses she was questioning. She said the two watercourses were Tenmile Wash and San Cristobal Wash. Mr. Darknall said in the Defender's memorandum, Ms. Kornylak states that the solid blue lines on the map indicate what is navigable, but Ms. Darknall said there is absolutely no basis for that statement. She said Mr. Fuller already went over the map, so she wouldn't repeat his statements. She concluded that the Fuller report on small and minor watercourses in Yuma County represents the best available information regarding the navigability or non-navigability of Yuma County's small and minor watercourses. Ms. Darknall said there was no information or facts upon which the Land Commissioner could argue for their navigability,

which is why he did not do so. She said both the Commission and the ASLD have complied in all respects with their statutory duties and with the particularized assessment that Hassell requires, therefore, no basis exists for vacating the Yuma County hearing.

Mr. Brashear asked Ms. Darknall if what has gone on so far constitutes a particularized assessment. Ms. Darknall said it does and added that ANSAC authority includes only part of the particularized assessment that Hassell calls for. She said a particularized assessment is needed before disposing of lands and, of course, that will be done by the SLD at the appropriate time. She added that she believes the opening memorandum submitted by Ms. Kornylak has that confused. Mr. Brashear asked Mr. Darknall that there was no evidence of navigability, not even a scintilla. Ms. Darknall said there was no evidence and also doesn't believe that a scintilla is the required standard. She added that it was simply stated it was the standard used, but it is not the standard used.

Mr. McGinnis said Ms. Darknall covered most of what he wanted to say but that he would like to discuss three things. He said one thing that came up in the briefing is the question of who is a party. He said it is important that this Commission continue to allow as broad a participation as possible. He said in all the lawsuits dealt with over the last several years, he has said the reason ANSAC should be the decision makers is because ANSAC allows all the people to participate. He added the Commission has done a good job doing that and hopes that will continue. Mr. McGinnis said when they send out their post hearing briefs, they need to know who to send them to. He said the Commission appears to be on the right track in coming up with some process by which all parties are aware of the others. Mr. McGinnis said the constitutionality arguments in the Defenders of Wildlife briefs are not things ANSAC should be dealing with and that he basically agrees with the state [the Attorney General's Office] on this issue. He said they have been raised in court, in the Anable case which is at the Court of Appeals. He said the Commission should simply do what the legislature has set forth in the statutes and the Commission has enough to do without determining whether the act creating the Commission is constitutional or not. Mr. McGinnis said the last thing he wanted to talk about was the task at hand – making a determination on every watercourse in the state. He said there were some things in the [Arizona Center] brief criticizing the ASLD about spending less than an hour on each of the watercourses in Yuma County. He said there are almost 40,000 watercourses in Arizona, and if someone at the ASLD spends just one hour on each of those watercourses, if one person works 8 hours a day, that is 5000 days worth of work. He said we would be doing this for about 20 years. He added when the Commission started dealing with the small and minor watercourses, in the late 90's, most people were concerned with the major watercourses. He said when he first thought about how the Commission is going to deal with all those watercourses, he was amazed and surprised that Mr. Fuller has come up with a reasonable system to accomplish this. He said if you look at his reports and methodology, it makes a lot of sense. He said if anyone else can come up with a better way to do it, they should be here telling the Commission how. He said Mr. Fuller's work involves several state and federal agencies cooperating, giving information, pulling all the information together and believes that his work is commendable. Mr. McGinnis said they have not cited a lot of case law in their post hearing briefs because as to the small and minor watercourses in Yuma County, it is not really a close question, and that is SRP's position. He said there might some future hearings where it may be a close question, and you'll see a lot more legal cites at that time.

Ms. Darknall asked if Mr. Jennings would address the 5 day mailing rule. Mr. Jennings said the issue came up, and said while it was an oversight on his part, the rules draft were sent out to several attorneys involved in these matters and nobody else picked up on this either. He said the rules said that once the Commission has taken the case under advisement, there is a 30 day period to file briefs and then a 20 day period thereafter to file replies. He said the state commission that deals with such matters says that if it is not answered specifically in the rules, that you are to look at the

Superior Court Rules of Civil Procedure. He said rule 6.e. states that whenever a party has a right or is required to do or take some act, take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served by mail, five calendar days shall be added to the time period. Mr. Jennings said if a person mails a brief or memorandum, he should have five additional days because of the mailing. He said the person who receives it would have 20 days, and if he or she also mails it, then five days would be added. He said any way you look at it, there is not going to be any great deal of additional time that would hinder the Commission and he believes the Commission's general rule is to invite broad and wide participation. He said the Commission should go ahead and give the five days regardless of the particular situation.

Mr. McGinnis said he received the agenda where it shows there will be oral arguments and since Ms. Kornylak filed briefs on the matter was curious why she was not present. Mr. Jennings said the Commission doesn't need to rule but they will consider Ms. Kornylak having submitted her position on the record with her briefs. Mr. Mehnert said Ms. Kornylak and the Center is on the Commission's mailing list and there is no reason to believe they didn't receive the agenda.

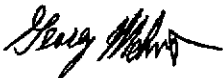
After a suggested additional phrasing by Mr. Jennings, and subsequent adoption of such as an amendment to a motion by Mr. Henness, the motion was finalized and voted on as follows:

Motion by: James Henness                      Second by: Jay Brashear                      Vote: All Aye  
Motion: **To move the small and minor watercourses in Yuma County are determined by this body to be non navigable subject to the adoption by the Commission of a proper report and opinion at a future time.**

8. **ADJOURNMENT**

Motion by: Cecil Miller                      Second by: James Henness                      Vote: All aye  
Motion: **To adjourn the meeting at approximately 3:12 p.m.**

Respectfully submitted,



George Mehnert, Director

Date: December 11, 2002



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# EXHIBIT F

TABLE A-1A  
RL1 Watercourses for Yuma County

No. (1)	W_ID (2)	W_NAME (3)	SEGCOUNT (4)	W_COUNTIES (5)	W_MILES (6)	W_ADDRESS (7)	W_PER (8)	W_MBOAT (9)	W_HBOAT (10)	W_FISH (11)	W_SSTATUS (12)	W_DIMP (11)	HITS (12)
1	128	Baragan Wash	7	Yuma	17.2482	T3.0S,R12.0W,S14	No	No	No	No	No	No	0
2	164	Bennett Wash	1	Yuma	1.7438	T7.0S,R20.0W,S32	No	No	No	No	No	No	0
3	181	Big Eye Wash	14	Yuma	23.4970	T8.0S,R17.0W,S06	No	No	No	No	No	No	0
4	396	Castle Dome Wash	8	Yuma	17.3841	T7.0S,R20.0W,S07	No	No	No	No	No	No	0
5	480	Clanton Wash	2	Yuma	10.1023	T5.0S,R11.0W,S17	No	No	No	No	No	No	0
6	505	Columbus Wash	2	Maricopa/Yuma	22.6566	T3.0S,R11.0W,S26	No	No	No	No	No	No	0
7	585	Coyote Wash - Yuma	31	Yuma	34.1531	T11.0S,R18.0W,S11	No	No	No	No	No	No	0
8	630	Deadman Wash	15	La Paz/Yuma	25.4400	T2.0S,R12.0W,S12	No	No	No	No	No	No	0
9	674	Dome Protective	6	Yuma	7.1698	T8.0S,R20.0W,S04	No	No	No	No	No	No	0
10	758	Farmers Canal	4	Yuma	7.0338	T8.0S,R11.0W,S08	No	No	No	No	No	No	0
11	787	Fortuna Wash	18	Yuma	13.9794	T8.0S,R21.0W,S29	No	No	No	No	No	No	0
12	800	French Creek	16	La Paz/Yuma	22.5922	T3.0N,R19.0W,S08	No	No	No	No	No	No	0
13	859	Gravel Wash	20	Yuma	33.3183	T4.0S,R18.0W,S13	No	No	No	No	No	No	0
14	877	Growler Wash	94	Yuma/Maricopa/Pima	178.6073	T10.0S,R11.0W,S28	No	No	No	No	No	No	0
15	37671	Hoodoo Wash	31	Yuma	59.0776	T2.0S,R14.0W,S25	No	No	No	No	No	No	0
16	37725	Indian Wash	12	La Paz/Yuma	25.1477	T4.0S,R21.0W,S33	No	No	No	No	No	No	0
17	37797	Kola Dam Wash	1	Yuma	1.8152	T2.0S,R16.0W,S05	No	No	No	No	No	No	0
18	37803	La Jolla Wash	8	Yuma	6.0724	T13.0S,R17.0W,S35	No	No	No	No	No	No	0
19	37889	Long Mountain Wash	2	Yuma	5.2849	T7.0S,R20.0W,S36	No	No	No	No	No	No	0
20	37894	Los Angeles Wash	13	La Paz/Yuma	18.7527	T5.0S,R21.0W,S09	No	No	No	No	No	No	0
21	37938	McAllister Wash	12	La Paz/Yuma	21.1795	T4.0S,R21.0W,S30	No	No	No	No	No	No	0
22	37946	McPherson Wash	10	Yuma	23.7214	T4.0S,R16.0W,S09	No	No	No	No	No	No	0
23	38011	Mohawk Wash	29	Yuma	28.0082	T12.0S,R14.0W,S14	No	No	No	No	No	No	0
24	38025	Morgan Wash	3	Yuma	5.2803	T8.0S,R19.0W,S06	No	No	No	No	No	No	0
25	38039	Muggins Wash	2	Yuma	3.0904	T8.0S,R19.0W,S06	No	No	No	No	No	No	0
26	38101	Notbusch Wash	5	Maricopa/Yuma	22.5597	T5.0S,R10.0W,S17	No	No	No	No	No	No	0
27	38102	Nugget Wash	1	Yuma	1.8089	T7.0S,R20.0W,S34	No	No	No	No	No	No	0
28	38139	Owl Wash - Yuma	3	Yuma	6.0380	T8.0S,R15.0W,S08	No	No	No	No	No	No	0
29	38186	Papago Wash	7	Yuma	10.5039	T15.0S,R11.0W,S24	No	No	No	No	No	No	0
30	38322	Red Raven Wash	19	Pima/Yuma	44.8095	T1.0N,R16.0W,S36	No	No	No	No	No	No	0
31	38410	San Cristobal Wash	53	La Paz/Yuma	75.3918	T11.0S,R11.0W,S05	No	No	No	No	No	No	0
32	38687	Tennille Wash	31	Yuma/Maricopa/Pima	69.3217	T11.0S,R5.0W,S29	No	No	No	No	No	No	0
33	38692	The Lagoon	1	Yuma	4.1919	T6.0S,R12.0W,S13	No	No	No	No	No	No	0
34	38766	Tule Wash - Yuma	1	Yuma	3.8982	T14.0S,R13.0W,S27	No	No	No	No	No	No	0
35	38794	Twin Tanks Wash	2	Yuma	4.0151	T8.0S,R20.0W,S11	No	No	No	No	No	No	0
36	38799	Tyson Wash	101	La Paz/Yuma	57.0422	T3.0N,R19.0W,S30	No	No	No	No	No	No	0
37	38813	Vinegarroon Wash	13	Yuma	14.6083	T7.0S,R20.0W,S20	No	No	No	No	No	No	0
38	38876	West Wash	1	Yuma	1.4983	T8.0S,R20.0W,S11	No	No	No	No	No	No	0
39	38955	Yaqui Wash	6	Yuma	42.2527	T1.0S,R16.0W,S30	No	No	No	No	No	No	0
40	38980	a - Seg 2 Yuma/Pima	1	Yuma	0.0509	T11.0S,R18.0W,S16	No	No	No	No	No	No	0
41	38981	a - Seg 3 Yuma/Pima	11	Yuma/Pima	13.3587	T15.0S,R11.0W,S28	No	No	No	No	No	No	0
42	38986	a - Seg 3 Yuma	14	Yuma	25.8156	T11.0S,R11.0W,S05	No	No	No	No	No	No	0
43	38991	a - Seg 6 Pima/Maricopa/Yuma	9	Yuma	36.1201	T8.0S,R11.0W,S23	No	No	No	No	No	No	0
44	38993	a - Seg 7 Yuma	8	Yuma	19.4472	T11.0S,R16.0W,S10	No	No	No	No	No	No	0
45	39002	b - Seg 181 Yuma	1	Yuma	1.5234	T13.0S,R13.0W,S10	No	No	No	No	No	No	0

TABLE A-1A  
 RL1 Watercourses for Yuma County

No. (1)	W_ID (2)	W_NAME (3)	SEG COUNT (4)	W_COUNTIES (5)	W_MILES (6)	W_ADDRESS (7)	W_PER (8)	W_MBOAT (9)	W_HBOAT (10)	W_FISH (11)	W_SSTATUS (12)	W_DIMP (11)	HITS (12)
46	39007	b - Seg 4 Yuma	4	Yuma	8.3744	T14.OS,R13.0W,S11	No	No	No	No	No	No	0
47	39015	c - Seg 22 Yuma	13	Yuma	30.1881	T3.OS,R13.0W,S11	No	No	No	No	No	No	0
48	39018	c - Seg 6 Yuma	8	Yuma	10.7869	T14.OS,R13.0W,S08	No	No	No	No	No	No	0
49	39022	d - Seg 17 Yuma	3	Yuma	3.5727	T1.OS,R19.0W,S28	No	No	No	No	No	No	0
50	39025	d - Seg 23 Yuma	4	Yuma	21.9997	T6.OS,R18.0W,S12	No	No	No	No	No	No	0
51	39026	e - Seg 18 Yuma	1	Yuma	1.9688	T1.ON,R19.0W,S07	No	No	No	No	No	No	0
52	39027	e - Seg 19 Yuma	2	Yuma	10.2219	T1.ON,R19.0W,S22	No	No	No	No	No	No	0
53	39029	f - Seg 20 Yuma	1	Yuma	7.8164	T1.ON,R19.0W,S16	No	No	No	No	No	No	0
54	39031	g - Seg 21 La Paz/Yuma	3	La Paz/Yuma	13.9008	T2.ON,R19.0W,S30	No	No	No	No	No	No	0
55	39033	h - Seg 23 Yuma	1	Yuma	5.1077	T1.ON,R19.0W,S07	No	No	No	No	No	No	0
56	39036	i - Seg 24 Yuma	3	Yuma	8.9512	T1.ON,R18.0W,S07	No	No	No	No	No	No	0
57 - 1458	-	1402 Unnamed Washes	Varies	Yuma	Varies	Varies	No	No	No	No	No	No	0



# EXHIBIT G

No.	W_ID	W_NAME	SEGCOUNT	W_COUNTIES	W_MILES	W_ADDRESS	Perennial	Modern Boat	Historical Boat	Fish	Special Status	Dam Impacted	Raw Scores	Weighted Scores
315	420	Carmontosa Wash	7	W COUNTIES La Paz/Yuma	7.7	T1.0S,R14.0W,S15	7	8	10	4	2	4	1	7
470	13531	H34_2568	1	Yuma	0.5	T5.0S,R22.0W,S85	1	0	0	0	0	0	0	7
471	13532	H34_2569	1	Yuma	0.7	T8.0S,R22.0W,S85	1	0	0	0	0	0	0	7
472	13533	H34_2570	1	Yuma	0.5	T5.0S,R22.0W,S85	1	0	0	0	0	0	0	7
473	13534	H34_2571	1	Yuma	0.0	T3.0S,R22.0W,S12	1	0	0	0	0	0	0	7
502	16135	H40_0652	1	Yuma	0.2	T8.0S,R21.0W,S03	1	0	0	0	0	0	0	7
563	19359	H44_0128	1	Yuma	0.6	T7.0S,R22.0W,S85	1	0	0	0	0	0	0	7
564	19360	H44_0130	1	Yuma	0.2	T7.0S,R22.0W,S14	1	0	0	0	0	0	0	7
565	19361	H44_0138	1	Yuma	0.7	T7.0S,R22.0W,S85	1	0	0	0	0	0	0	7
566	19369	H44_0444	1	Yuma	0.6	T7.0S,R22.0W,S85	1	0	0	0	0	0	0	7
567	19370	H44_0445	1	Yuma	0.2	T7.0S,R22.0W,S85	1	0	0	0	0	0	0	7
588	19371	H44_0446	1	Yuma	0.1	T7.0S,R22.0W,S85	1	0	0	0	0	0	0	7
589	19372	H44_0450	1	Yuma	0.7	T8.0S,R23.0W,S23	1	0	0	0	0	0	0	7
590	19373	H44_0451	1	Yuma	0.4	T8.0S,R23.0W,S15	1	0	0	0	0	0	0	7
591	19374	H44_0452	1	Yuma	0.2	T16.0S,R22.0E,S30	1	0	0	0	0	0	0	7
592	19375	H44_0453	1	Yuma	0.1	T16.0S,R22.0E,S30	1	0	0	0	0	0	0	7
800	20496	H47_0126	1	Yuma	0.0	T8.0S,R23.0W,S33	1	0	0	0	0	0	0	7

