



JANE DEE HULL
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
Executive Director

Meeting Minutes

Phoenix, Maricopa County

August 14, 2001

COMMISSION MEMBERS PRESENT

Jay Brashear, Dolly Echeverria (arrived approximately 10:36 a.m.), Earl Eisenhower, James Hennes and Cecil Miller.

COMMISSION MEMBERS ABSENT

None.

STAFF PRESENT

Curtis Jennings, George Mehnert and Tom Vogt.

1. CALL TO ORDER

Chair Brashear called the meeting to order at approximately 9:30 a.m.

2. ROLL CALL

See above.

3. APPROVAL OF MEETING MINUTES

A. May 16, 2001 Phoenix, Arizona (regular and executive session).

Motion by: Cecil Miller Second by: James Hennes Vote: All aye

Motion: To adopt the regular and executive session meeting minutes of May 16, 2001 in Phoenix as submitted.

B. July 11, 2001 Phoenix, Arizona (teleconference).

Motion by: Earl Eisenhower Second by: James Hennes Vote: All aye

Motion: To adopt the teleconference meeting minutes of July 11, 2001 in Phoenix as submitted.

4. COMMISSION MEMBER OATHS

Chair Brashear asked Mr. Jennings to explain and administer the commission member's oaths. Mr. Jennings said a question has been raised by the plaintiff attorneys in the lawsuit of Defenders of Wildlife v. Governor Hull that the Commissioners have disqualified themselves from rehearing watercourse issues under the new criteria since they have already given recommendations on navigability based on prior statutes and criteria. He added having a body rehear an issue is not infrequent both in administrative bodies and in the court system. He said occasionally a court will reverse a lower court judge or state board and mandate the case back to the original judge or board to rehear the case. Mr. Jennings said the oaths basically state that the Commissioner is in no way biased by a previous recommendation and is capable of rehearing each watercourse again under the new federal standards. He then gave each Commissioner three copies of the oath to be signed and notarized. Chair Brashear asked each member to have their signature notarized in the near future and turn in the document to the Commission office.

5. STATE LAND DEPARTMENT

Chair Brashear said that he, Mr. Eisenhower and Mr. Mehnert met a couple of times with the State Land Department (Department) to discuss the updated studies and their availability. V. Ottozawa-Chatupron, representing the Department, said the studies would be available when the Commission was ready for hearings. He added the Mohave, La Paz and Yuma small and minor watercourses studies would be available for November as well as the Lower Salt River study for March. Mr. Ott also said the Department would have the other studies available according to how the Commission sets forth the priority list.

6. NEW STATUTES A.R.S.§37-1101 et seq

Mr. Mehnert said this item is on the agenda to alert everyone that the statutes are now law as of last week. Mr. Jennings addressed the major changes in the new law. He said the major changes were removing the presumption of non navigability, using the ordinary high watermark and using federal standards as the criteria.

7. FUTURE HEARINGS

A. Anatomy of a hearing

Chair Brashear stated the Commission would conduct the hearing process differently from before and asked Mr. Jennings to discuss briefly how they would generally be conducted. Mr. Jennings said all previous evidence submitted may be considered. He added that parties may wish to update or resubmit their evidence. He said there will be actual testimony and cross examination by interested parties. Mr. Jennings said the Commission may need to limit cross examinations that are repetitious. He said the Commission will accept additional evidence at the hearing but once the hearing is completed, close the hearing to new evidence. He added participants would then have thirty days to file simultaneous briefs with the Commission. He said after that period there would be fifteen days for any response briefs. Mr. Jennings said the Commission would then, at some later date, publish its findings of fact and conclusions of law.

Mr. Mehnert asked if the Commission's determinations would need to be filed in the county the hearing was held. Mr. Jennings said the only provision in the statutes for traveling outside Maricopa County is to hold hearings so he said the Commission could publish their findings at anytime in Maricopa County.

Chair Brashear asked if a unanimous decision is necessary and if not, what do the dissenting Commission member(s) do. Mr. Jennings said the decision does not need to be unanimous and there could be a dissenting opinion filed whether the dissention was in full or just in part. Chair Brashear asked where the minority would get their legal advice. Mr. Jennings said the Commission can hire additional counsel if necessary, but said he is simply an adviser to all the commissioners so he could help the commissioner with a dissenting opinion.

Mr. John Helm, representing Maricopa County, asked if there are written rules which define in more detail the processes of filing briefs and other processes related to the hearings. Mr. Mehnert said those things are in the rules and he has a draft version of them and will gladly give a copy to those who request one.

Mr. Mark McGinnis, representing Salt River Project, requested that voluminous documents not be accepted the day of the hearings but be submitted at least a week before so all parties may have a chance to view the submittal for those wishing to cross examine about the documents.

Mr. John Schaper, representing Buckeye Irrigation Company, suggested that there be some limitation to the number of people who can cross examine the witnesses including the scope of the cross examination.

Mr. Tim Hogan, of the Arizona Center for Law in the Public Interest, asked if a group needed to be represented by an attorney to be heard or can citizens come to ask questions, give a statement or even cross examine others who testify. Mr. Hogan pointed out that the Corporation Commission hearings sometimes get bogged down by the number of speakers. Mr. Mehnert asked if Mr. Hogan would be willing to take a look at the proposed drafted rules. Mr. Hogan said he would be happy to look at the rules.

Chair Brashear thanked all parties for their suggestions.

B. Dates and Priorities

Chair Brashear said there needs to be a priority of watercourses set by the Commission in order for the hearings and the State Land Department to proceed with the studies. Mr. Eisenhower said he would rather not go to a County until all watercourses, both major and small and minor can be heard even if it takes two or three days. Mr. Mehnert said he scheduled for the hearings working backwards from the last possible time a hearing could be held to effectively still sunset the Commission. He added to accomplish this task, it would be necessary to combine many hearings into a single trip. Mr. Jennings suggested breaking up the Gila River somehow because it crosses so many counties.

Mr. Helm said to expect at least two days worth of hearings on major watercourses. He added that there should be a logical hydrologic division of each major watercourse hearing.

Mr. Miller said the Commission should establish hearing priorities as the Commission did previously.

Mr. Schaper said rivers were named for no apparent reason and had nothing to do with hydrology. He added it would be a mistake to segregate the Salt, Verde and Gila Rivers by name with regards to Maricopa County because the hydrology is a continuous hydrology. Chair Brashear said the Commission would get the information necessary in each of the watercourse reports, so why would the Commission need to hear all three concurrently. Mr. Schaper said you run the risk of inconsistency in your determinations based on different evidence presented about different segments of what is in fact one hydrologic unit.

Chair Brashear asked Mr. Ott on his suggestion for the segmentation of the watercourses. Mr. Ott recommended to keep the segmenting the same as the previous studies.

Mr. Jennings suggested dividing the Gila River into at least three segments to make it somewhat manageable.

Mr. McGinnis said he agrees with the engineer and added the way the Commission receives evidence is not necessarily the way they write their opinion. He also added the statutes only require the Commission to hold hearings outside of Maricopa County when a principal portion of a river flows outside of Maricopa County.

Chair Brashear asked the Commissioners if they want to go to Mohave, La Paz and Yuma Counties and hold hearings on the small and minor watercourses, to return at a later date for the major watercourses, or wait until the reports on the major watercourses are ready. Mr. Mehnert said the main reason for holding the small and minor watercourse hearings first and separately in order to hold some hearings before the legislative session and to see how the new process will take place before the Commission tackles the major watercourses. The Commissioners asked the Department what needed to be changed in the reports. Mr. Ott said the Department needed to review the changes in the new law and see how it applies to the watercourses to evaluate how much revision would be necessary.

The Commission settled on November 12, 13 and 14 for small and minor watercourse hearings in Mohave, La Paz and Yuma Counties respectively.

8. DOCKETING AND EVIDENCE

Mr. Mehnert said he would like an approval of the docket forms and some direction on how evidence should be handled. Chair Brashear said the forms are fine and to handle the evidence so it is acceptable to the courts

9. BUDGET ISSUES

Mr. Mehnert said the Commission submitted a revised budget on March 1, 2001 which was not addressed by the legislature, but remains the supplemental budget for FY2002. He said the mid-biennium budget needs to be submitted by September 4, 2001.

Chair Brashear asked the Commission to give Mr. Mehnert approval to approach the Governor if it becomes necessary for the Commission to roll funds forward from future quarters.

Motion by: James Henness Second by: Dolly Echeverria Vote: All aye

Motion: To give the chair and director approval to approach the governor for approval of rolling forward funds if it becomes necessary.

10. NOTICE OF INTENT TO STUDY WATERCOURSES

- A. Mohave County (All small and minor watercourses)**
- B. La Paz County (All small and minor watercourses)**
- C. Yuma County (All small and minor watercourses)**
- D. Lower Salt River (Granite Reef Dam to the Gila River Confluence)**

Chair Brashear said the hearings for the first three items will be in November of this year while the Lower Salt will be in March of 2002. He added these issues were discussed along with agenda item **7.B.** earlier.

11. REPORT FROM DIRECTOR

A. ANSAC Administrative Rules

Mr. Mehnert said he would welcome input from others and will give a copy of the draft rules to anyone who would like them.

B. Advertising, web site domain and e-mail address

Mr. Mehnert said the web site domain name has changed to <http://www.azstreambeds.com>.

Chair Brashear said the Commission is looking into some community outreach program to mainly inform the independent land owners throughout the state why ANSAC is holding hearings. He added he would most likely be working on this and would be stepping down as chair of the Commission, and this would probably be his last meeting as chair. Mr. Henness asked if Mr. Mehnert would find out about the Ombudsman for Private Property Owners Rights to see if the position is filled and is still designated to represent the public in these proceedings. Mr. Mehnert said he would find out.

C. Attorney invoice for professional services (Jennings, Haug & Cunningham)

1. Consideration of invoice for July services.

Mr. Mehnert said Mr. Jennings has been on vacation and we have not received his July invoice as yet.

12. CALL FOR PUBLIC COMMENT

There was no public comment.

13. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE MEETINGS

Chair Brashear said there were no changes from what was previously mentioned.

14. ADJOURNMENT

Motion by: Earl Eisenhower Second by: James Hennes
Motion: **To adjourn the meeting at approximately 11:27 a.m.**

Vote: All aye

Respectfully submitted,



George Mehnert, Director

Date: August 15, 2001