



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
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 Kornylak, 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