



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT
Executive Director

MEETING MINUTES
Yuma, Arizona, January 24, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

Jim Henness.

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 12:06 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. November 15, 2004, Gila County.

Motion by: Dolly Echeverria Second by: Cecil Miller

Motion: To approve the minutes of November 15 2004. Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE GILA RIVER 03-007-NAV.

Cheryl Doyle and Dr. Ottozawa Chatupron appeared on behalf of the State Land Department.

They discussed the report regarding the Gila River from the Colorado River confluence to the town of Safford;

5. STATUS OF CASES AND BUDGET (discussion and action).

Director: The Governor's Office and the Legislature are presently engaged in the budget process. The Commission is not asking for any additional funding for either FY2005 or FY2006 beyond that recommended by the OSPB and the JLBC, unless and until appeals are filed. The greater problem is for the Land Department which needs funding to pay outside engineers to prepare reports and appear at hearings. The issue we are working on right now with the Deputy Land Commissioner and with the Governor's Office and the Legislature is money versus time table, related to how soon we can get hearings done. Jay Brashear: Raised the issue of hearings notification beyond legal advertising and funding for such notification. Mr. Brashear asked about the status of the newsletter publications and the director pointed out that we have had no need to do a newsletter lately and it has never been notice because everyone who receives the newsletter also receives agendas. Mr. Brashear said he doubts anyone ever reads legal notices. Mr. Brashear said we need to put the word out in another form that is better than the legal notice. Mr. Brashear stated that he believes only the people who are really interested in our work actually read the legal notices. Mr. Brashear said that to believe the legal notices really engage the public in the process is a fiction because the public really doesn't know that anything is taking place. The director said that a couple of years ago we asked for an additional \$50,000.00 beyond our base budget for the purpose of advertising, but that money was never approved.

6. ATTORNEY HOURLY RATE (discussion and action).

The director indicated that we are considering an additional \$25.00 or \$50.00 per hour, but we will not be able to make any changes until after the new contract with the attorney has been signed and an amendment to the contract for the hourly rate will have to be approved. The Commissioners discussed the hourly rate of the Commission's Attorney (\$150.00 per hour) and tabled the matter until a future date. Regarding attorney costs the Director indicated the attorney fees are also related to the Land Department's budget and how many reports they can have prepared and how many experts they can have appear at hearings and during what period of time. He said we also must determine at which hearings the Commissioners want an expert. Chairman Brashear indicated that he was Chair when we hired our attorney and that Curtis was the only

applicant when the Commission sent out bids, and that SPO told him we should expect to pay \$225.00 per hour. The Chair indicated that we would make a decision following our budget hearings.

7. CALL FOR PUBLIC COMMENT (comment sheets).

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

Dr. Ottozawa Chatupron representing the State Land Department: Dr. Chatupron asked the Commission not to send reports to the Land Department, other than the Salt, because of the Land Department's inability to act on the reports, without additional funding. Dr. Chatupron said he recognizes the Commission has a job to do but to the extent possible he is asking us to hold off sending the State Land Department any reports other than the Salt this fiscal year. The Chair indicated that he would like to help the Land Department obtain additional money to do the Commission's work, citing the problem encountered in Globe when expert testimony was not available and the hearing regarding the Upper Salt River had to be continued as a result. Jay Brashear said he wanted to clarify that the work Dr. Chatupron was talking about is the funding needed to handle reports of navigability or non-navigability from the Commission, once they reach the Land Department. Dr. Chatupron indicated this was the work he was talking about and not the work of experts appearing at hearings. Mr. Brashear indicated that if the State wants the job done they should give us the money we need to do it. Mr. Brashear said we are talking about chump change insofar as the State budget is concerned. Dr. Chatupron indicated he was not trying to give us any heartache, but they have a considerable budget problem. Curtis Jennings said he wanted to clarify what reports the Land Department wanted us to hold off sending them for the balance of this fiscal year. Dr. Chatupron said he believes they will be able to handle our small and minor watercourse reports and that the major watercourses are the issue. The Director indicated he has discussed the matter with the Deputy Land Commissioner regarding budget and timetable. He also indicated that the budget people we deal with are aware the Commissioner's terms do not expire until June 30, 2008. The Director wanted to also point out that, regarding timetable and Sunset date, once a report from the Commission is filed with the Land Department almost 8 months of appeal time remains. Chairman Eisenhower said we will continue to hold evidentiary hearings and we will think about the determinations and reports. Commissioner Brashear said that maybe some sources would donate money to the state to get this done. The Director stated that the Commission cannot directly accept gifts without a change in the law; and that for an agency to accept such gifts the law must say it may, and the law does not presently state this.

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

The Chair discussed hearings in Yavapai County and the need for experts because of the number of watercourses. The Chair indicated we will hold off establishing hearings until we talk to the Land Department, the Governor and Legislative budget staff, etc. Mark McGinnis wanted to clarify dates of hearings so he can arrange for experts. The Chair stated we will hold hearings only on the Yavapai County watercourses in March.

9. ADJOURNMENT.

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 12:48 p.m.

Respectfully submitted,



George Mehnert, Director
January 25, 2005