



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

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

GEORGE MEHNERT
Executive Director

MEETING MINUTES
Prescott, Arizona, March 29, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

None

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 12:23 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. January 24, 2005, Yuma County.

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To approve the minutes of January 24, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE AGUA FRIA RIVER, 05-002-NAV.

Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist Jon Fuller prepared the reports regarding this matter for the State Land Department, and stated among other things that New River and Skunk Creek had been included in an earlier report as small and minor watercourses in Maricopa County with Skunk Creek flowing into New River and New River flowing into the Agua Fria.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF BURRO CREEK, 05-003-NAV. Cheryl

Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, except for report dates, and the Chair stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions. As a matter of clarification, attorney Curtis Jennings and expert Jon Fuller discussed that the report Mr. Fuller was talking about covered Burro Creek, the Big Sandy River, and the Santa Maria River, all part of a single watershed, and that the Big Sandy River flowed exclusively in Mohave County and not at all in Yavapai County.

6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE HASSAYAMPA RIVER, 05-004-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions.
7. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA MARIA RIVER, 05-005-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions.
8. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE VERDE RIVER, 04-009-NAV.** Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse

hearing, and the Chair had previously stated there would be no point in her repeating it. Jon Fuller, who prepared the Verde River Report, was present, but Ottozawa Chatupron of the State Land Department spoke and responded to questions regarding the Verde River Report. Attorney John Ryley representing the Yavapai Apache Nation spoke regarding this matter. Shanti Rosette, representing the State Land Department, also spoke. Dolly Echeverria discussed that she has had a lengthy history in Arizona and she mentioned her view that the Verde is used mainly for fun, for kayaking, etc., but indicated it is too difficult to get in and out of for conducting commercial traffic. Ms. Rosette indicated experts will be available at the final hearing in Maricopa County regarding the Verde and that those experts will present the Land Commissioner's position at that time. Mr. Brashear asked the Chair that additional information be provided to the Commission by those who provide the evidence regarding commercial boating.

9. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY, 05-001-NAV.

Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. In response to questions from the Commission Attorney Jon Fuller said that information in the report that may be pertinent to the Commission making a decision relating to Curtis Jennings' questions is that Oak Creek would be considered a boating stream for modern boating year round and that he found no evidence of historical boating around the time of statehood, but there is sufficient flow for low-draft boating and that those are some of the facts present in his report. Commissioner Miller clarified that Jon Fuller was referring to that portion of Oak Creek South of Sedona, and Mr. Fuller indicated he was talking about the area between about Cornville to the confluence with the Verde.

10. BUDGET UPDATE. The Director and the Chair indicated that ANSAC's base budget has not changed from its original request and that ANSAC asked the joint House Senate budget committee for an additional \$67,000.00 (should be \$64,000.00), a number provided by the State Land Department, for updates and for experts appearing at hearings. The State Land Department asked for an additional \$1,000,000.00 to complete Commission work. The director also said the State Land Department asked for an additional approximately \$7,000.00 for the April 25 and 26, 2005 hearings; and that this is money to pay for the experts, and is money the Land Department Engineering Section had thought was available for this purpose, but is no longer. Commissioner Henness asked what the \$7,000.00 was for and Ottozawa Chatupron indicated it was for the expert consulting engineers for review of data and appearance at hearings. The Chair explained the process that occurred at the budget hearings. Mr. Ott explained that was never an appropriation to the State Land Department for FY2005 monies to do the Commission's work. Commissioner Brashear pointed out that even if we called these hearings off at this time we will have to again pay the \$9,000.00 we have already paid for advertising when we hold these hearings in the future, and suggested that if there is a way we can do this then we should do it. Attorney Curtis Jennings indicated the appearance of the Commission paying for expert witnesses is not a good thing, and that an alternative is to hold the hearings and listen to whomever shows up. Commissioner Echeverria made the point that very few local citizens appear at our hearings. Mr. Ott pointed out that the reason the Land Department provides expert witnesses at hearings is because that is what the Commissioners want, and that they believe the Land Department has satisfied the statute by providing the reports and that it is not necessary to provide the experts at hearings. Mr. Ott pointed out that he believes the purpose for hearings is for others to present evidence and that all of the evidence the Land Department has is in the reports. Commissioner Henness wanted to make clear with Mr. Ott that the report updates contain information that comports with the court rulings and stated that he is concerned about the expert

witnesses; who retains them, who they represent, who selects them for their pedigrees, etc. Commissioner Henness indicated the process involving the Land Department's expert, particularly with the involvement of the attorney representing the Land Department, is beginning to have an edge to it. He also wanted to clarify that the \$7,000.00 is for the balance of the work for this fiscal year.

Commissioner Brashear discussed the benefit of the information and education provided to the public by the engineers who appear at Commission hearings. The Chair indicated we would check on the availability of funds and will notify the Commissioners individually.

11. ATTORNEY PAY (discussion and action).

Motion by: Jim Henness Second by: Jay Brashear

Motion: To increase the Commission Attorney's hourly rate to \$200.00 per hour. Vote: All aye.

12. CALL FOR PUBLIC COMMENT (comment sheets).

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

Attorney Mark McGinnis spoke regarding which watercourses are closed for the taking of evidence today because the closing of the taking of evidence triggers the post hearing memorandum filing clock. The Chair said that only the small and minor watercourses are closed for the taking of evidence.

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

The Chair indicated that Coconino County will be rescheduled for July, 2005 based on Mr. Fuller's unavailability in June. There was discussion of other potential meeting dates for Mohave and Maricopa County.

14. ADJOURNMENT.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 1:51 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George Mehnert". The signature is written in a cursive, slightly slanted style.

George Mehnert, Director
March 30, 2005