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BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE NAVIGABILITY)
OF THE VERDE RIVER FROM ITS) NO. 04-009-NAV
HEADWATERS AT SULLIVAN LAKE TO)
THE CONFLUENCE WITH THE SALT) ADMINISTRATIVE
RIVER, YAVAPAI, GILA AND MARICOPA) HEARING
COUNTIES, ARIZONA.)
_____)

At: Phoenix, Arizona
Date: April 3, 2015
Filed: April 22, 2015

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 16

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1	BE IT REMEMBERED that the above-entitled
2	and numbered matter came on regularly to be heard
3	before the Arizona Navigable Stream Adjudication
4	Commission, at Squire Patton Boggs (US), LLP, 1 east
5	Washington Street, Suite 2700, Phoenix, Arizona,
6	commencing at 9:40 a.m. on the 3rd day of April, 2015.
7	
8	BEFORE: WADE NOBLE, Chairman
	JIM HENNESS, Vice Chairman
9	JIM HORTON, Commissioner
	BILL ALLEN, Commissioner
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1 CHAIRMAN NOBLE: Good morning.
2 Mr. Mehnert, will you call the roll.
3 DIRECTOR MEHNERT: Commissioner Allen.
4 COMMISSIONER ALLEN: Present.
5 DIRECTOR MEHNERT: Commissioner Henness.
6 COMMISSIONER HENNESS: Present.
7 DIRECTOR MEHNERT: Commissioner Horton.
8 COMMISSIONER HORTON: Here.
9 DIRECTOR MEHNERT: Chairman Noble.
10 CHAIRMAN NOBLE: Here.
11 DIRECTOR MEHNERT: Legal counsel is
12 here, and we have a quorum.
13 CHAIRMAN NOBLE: Good morning, Jon.
14 THE WITNESS: Good morning, sir.
15 CHAIRMAN NOBLE: Joy, are you ready to
16 proceed?
17 MS. HERNBRODE: In just a moment,
18 Mr. Chairman. Sorry, I needed a writing utensil.
19 CHAIRMAN NOBLE: Okay. Joy.
20 MS. HERNBRODE: Yes.
21 CHAIRMAN NOBLE: I heard some comment
22 that you expect to be through with Mr. Fuller about
23 3:00 this afternoon. We would appreciate it if you
24 would do your best to be done with him by 11:00 a.m.
25 MS. HERNBRODE: I was aiming for noon,

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1 hoping for earlier, Mr. Chairman.
2 CHAIRMAN NOBLE: Thank you.
3 MS. HERNBRODE: But I've also been
4 strongly warned by a very wonderful woman that if I
5 talk too fast, chaos will ensue.
6 CHAIRMAN NOBLE: There will be an
7 informal meeting with the Chair and the lawyers
8 following today's testimony.
9 MS. HERNBRODE: That's ominous.
10 CHAIRMAN NOBLE: It is, I assure you.
11 MR. HELM: Here or at a bar?
12 CHAIRMAN NOBLE: Well, this Mormon boy
13 ain't going to show up at no bar.
14 Please.
15
16 JONATHAN FULLER,
17 called as a rebuttal witness on behalf of the State
18 Land Department, was examined and testified as follows:
19
20 REBUTTAL DIRECT EXAMINATION
21 BY MS. HERNBRODE:
22 Q. Good morning, Jon.
23 A. Good morning.
24 Q. Joy Hernbrode for the State Land Department,
25 for the record. And you are?

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1 A. I'm Jonathan Fuller. I reside in Phoenix,
2 Arizona.
3 Q. All right. Jon, did you rely on other
4 experts in preparing your report and testimony?
5 A. Yes, I did.
6 Q. Historians?
7 A. Yes.
8 Q. Archaeologists?
9 A. Yes.
10 Q. Other hydrologists, geomorphologists?
11 A. Yes.
12 Q. Let's start --
13 A. Check that. Other geomorphologists, no other
14 hydrologists.
15 Q. Okay. Let's start by talking about some of
16 the testimony.
17 CHAIRMAN NOBLE: Okay, now is going to
18 have to have a little interruption. The Chair has
19 difficulty hearing the witness. Perhaps he's
20 recovering. But is there some sort of device that may
21 amplify Mr. Fuller's voice?
22 (An off-the-record discussion ensued.)
23 CHAIRMAN NOBLE: Okay, continue.
24 THE WITNESS: And I'll do my best to
25 project towards you.

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1 COMMISSIONER ALLEN: Please.
2 CHAIRMAN NOBLE: Depends on how well you
3 feel.
4 BY MS. HERNBRODE:
5 Q. Let's start by talking about some of the
6 stuff that Win testified to.
7 Do you recall Win was asked about a
8 pool-and-riffle system on the Verde that included
9 5-foot deep pools and 1-inch deep riffles and whether
10 that would be fun to boat?
11 A. Yes, I do.
12 Q. Based on your experience as a geomorphologist
13 and a boater, is there anywhere on the Verde where
14 there's a 1-inch deep riffle?
15 A. Not that I'm aware of.
16 I take that back. There may be in Segment 0.
17 Q. And, again, we're not asserting navigability
18 on Segment 0; is that correct?
19 A. We are not.
20 COMMISSIONER ALLEN: Joy, just one
21 question real quick.
22 Define the limits of Section 0 for me
23 again, Jon.
24 THE WITNESS: Segment 0 goes from
25 Sullivan Dam down to Forest Road 638, which I believe

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1 is at Mile 7.1, somewhere in there.
2 COMMISSIONER ALLEN: What about Stillman
3 Lake?
4 THE WITNESS: Stillman Lake was in
5 Segment 0.
6 COMMISSIONER ALLEN: Would you not be
7 able to navigate Stillman Lake?
8 THE WITNESS: Yeah, Stillman Lake is a
9 pool. I assume, by the fact that you're asking the
10 question, that you've been there. And the pool is
11 about a quarter to a third of a mile long, to my
12 recollection. It's a couple of feet deep, at the most.
13 You can definitely put a boat in it and
14 paddle around in it; but in my opinion, because it's
15 isolated by very shallow reaches or reaches that have
16 other characteristics of nonnavigability, I didn't feel
17 like it met the reach of significant length that the
18 courts have asked for in defining segments.
19 BY MS. HERNBRODE:
20 Q. And, Jon, to follow up on that, if you
21 recall, Mr. Burtell read a passage out of Williams'
22 Guide that was describing Segment 0. Was part of your
23 conclusion based on the fact that Mr. Williams didn't
24 believe that Segment 0 was particularly navigable?
25 A. Well, Mr. Williams doesn't actually make any

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1 opinions about navigability; but he does describe the
2 boatability, and he also mentions what's been called
3 Stillman Lake and the fact that you can paddle around
4 in it and actually encourages people to paddle up to
5 the top of that and say this is the point where boating
6 begins.
7 Up above that, upstream of Stillman Lake, I
8 think his descriptions of it are pretty accurate. He
9 says it's very steep, it's very rocky, it's not very
10 wet. And I would concur. It would be very difficult
11 to get a boat down there without being significantly
12 bruised, or your person being significantly bruised.
13 Your boat might survive, and you might not.
14 Q. All right. Let's go back to Win here.
15 Do you remember Win talking about using
16 Google Maps to look for obstructions on the river?
17 A. Yeah, I believe Win said something like that,
18 that's a good way to view the river, and Win and I have
19 talked about that, and I think it's a good way to view
20 the river if you can't be there in person.
21 It's certainly not anywhere close to the
22 perspective you get from standing with your toe in the
23 water, I guess the phrase is we used earlier this week,
24 or sitting in a boat. It's just not as good. There's
25 an entirely different perspective on the water than

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1 when viewed from the sky.
2 Q. Win was also asked about channel shifts
3 during floods and whether those are typical. What do
4 you think?
5 A. I think possible would be a better word,
6 rather than typical. I showed in my presentation a
7 series of photographs, historic aerial photographs,
8 that bracket a number of large floods in Segment 5 down
9 near the Fort McDowell Indian Community, where the
10 river is basically in the same place. It's readily
11 identifiable.
12 I showed USGS maps for all of the segments,
13 the oldest USGS maps that I could find, and in every
14 case the river position is nearly identical in those
15 older maps to its current position. There had been, of
16 course, some changes locally, but those kinds of
17 changes tend to be relatively minor, and certainly the
18 character of the river hasn't changed from the oldest
19 maps.
20 Q. If there were going to be channel shifts,
21 though, they would occur during floods, not at other
22 times?
23 A. That would be typically when they would
24 occur, at their greatest rate.
25 Q. Win talked about why he felt mean depths were

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1 less helpful in determining navigability. What are
2 your thoughts on that?
3 A. Joy, can I go back just one second?
4 Q. Yes.
5 A. I said the river hasn't changed in character,
6 and I would like to clarify. It certainly has changed
7 in character due to the flow depletion in Segment 2.
8 It's a much smaller wet part of the river than it was
9 prior to -- in its ordinary and natural condition.
10 And now we can go to the mean depths. So you
11 asked me a question, I believe, is whether the mean
12 depths were a good or a bad way to look at depth.
13 I think if mean depth is all you have, mean
14 depth is a good way to look at the depths of the river.
15 When you're boating, you don't boat the average depth
16 of the channel. You put your boat in the deepest part
17 of the channel. That's just plain common sense.
18 So I think maximum depths is the way to look
19 at -- the appropriate way to look at determining the
20 boatability of a river segment.
21 Q. And when you say maximum depth, you're not
22 talking about judging depth based on the pools; you're
23 talking about the deepest part of the shallow places,
24 correct?
25 A. Right. In any given cross-section of the

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1 river, I would be talking about the maximum depth at
 2 that cross-section. Clearly there are pools on the
 3 Verde River that are probably 20 feet deep. They're
 4 deeper than I can dive without my scuba equipment. And
 5 I'm not talking about those depths as being
 6 representative.
 7 I am talking about when you're looking at a
 8 particular cross-section, what's the deepest point
 9 there. That's where you put your boat. That's what
 10 determines boatability.
 11 Q. And does mean depth underestimate natural
 12 channels, depth in natural channels?
 13 A. It can. If the channel is a perfect
 14 rectangle, then the mean depth and the maximum depth
 15 are the same. There are very few perfect rectangles in
 16 nature, and so in most cases there's an offset, and in
 17 almost every case --
 18 Sorry. My wife would like us to know that
 19 her flight reservations have been made. And I've just
 20 turned on my mute. Sorry.
 21 So in most cases the mean depth is lower than
 22 the maximum depth; in some cases, significantly. And I
 23 had a slide in my presentation that gave a
 24 cross-section example of that case.
 25 Q. You used average depths in the Land

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1 Department report?
 2 A. Yes.
 3 Q. And if you had to do it again, what would you
 4 use?
 5 A. If I had to do it again, with the budget I
 6 had at the time, which was pretty challenging, I
 7 probably would end up with the same -- using the same
 8 thing.
 9 If I had more time and budget when we did our
 10 first round of studies, I would have taken a probe and
 11 measured depths every hundred feet down the entire
 12 river and reported that.
 13 Q. We're still using the depth calculations and
 14 the rating curves you developed for the 1993 study, is
 15 that --
 16 A. Yes, yes. So we had that data. I didn't
 17 feel like it was fair to abandon that data. But we've
 18 certainly supplemented it with the detailed fieldwork
 19 and estimates that we've been able to make, as well as
 20 information that other folks have come to.
 21 For instance, Dr. Mussetter did some modeling
 22 of a couple of reaches, and able to look at that, and
 23 that depicts some maximum depths and that shows how the
 24 means are different. So we've been able to supplement
 25 that and I think give a better depiction of what the

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1 real depths of the river on the Verde are.
 2 Q. Okay. I would like to talk about a couple of
 3 things that the historians testified to. In your
 4 opinion, when you're looking at historical information,
 5 is it more important to pay attention to someone's
 6 characterization of the river, i.e., is it navigable or
 7 not, or their observations about the river, it's 3 to
 8 5 feet deep and flowing slowly or something like that?
 9 A. Well, I guess I've been doing these studies a
 10 long time, and in listening and reading and hearing
 11 about different observations of someone might have said
 12 there are navigable streams, there are navigable
 13 streams, it's very difficult to get inside their head
 14 and understand what they meant by navigable, what their
 15 definition was. And certainly we've spent many hours
 16 talking about definitions of navigability and standards
 17 thereof.
 18 So I would say it's more important to look
 19 at, from an expert's perspective and a scientist's
 20 perspective, to look at what actual physical
 21 measurements they were making, estimates they were
 22 making. So if somebody said they thought it was 2 foot
 23 deep, I think that's more relevant than if they were
 24 saying it was navigable or nonnavigable.
 25 Q. Both of the historians talked about

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1 boosterism. What's your understanding of what
 2 boosterism means?
 3 A. Yeah, so boosterism is something that we're
 4 well aware of if you're studying historical documents.
 5 And when we were doing the original studies, we had
 6 historians on our team that were certified and
 7 qualified historians, and we had these kinds of
 8 conversations. It came up in the context of the Santa
 9 Cruz River study, in which there were some clearly
 10 boosterish articles that talked about the ever-flowing
 11 Santa Cruz River and lakes on the Santa Cruz and
 12 sailing on the Santa Cruz that were more than just
 13 fanciful. They were probably closer to land fraud.
 14 And so we were well aware of that. So
 15 boosterism is kind of trying to promote your community,
 16 say a little more than is really there and describing
 17 in a way that makes it sound bigger, more enticing than
 18 it is, as a way to get people to come and move here and
 19 make investments in your community.
 20 Q. And I think you found us an example of what
 21 you think of as boosterism, and it's Page 15 of the
 22 slides that were provided or it will be up here on the
 23 screen.
 24 A. Slides? Sorry.
 25 Q. It's in there too.

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1 A. So this is from the Arizona Republican back
2 in July of I believe it's 1891.
3 And I think you're all struggling to read
4 that, so let's hopefully skip down.
5 CHAIRMAN NOBLE: Could you please
6 proceed?
7 THE WITNESS: Yes.
8 So it's an article that describes the
9 prosperity of Tempe and talks about what a beautiful,
10 wonderful place it is and the streets lined with wagons
11 full of the golden produce or the amber crops,
12 et cetera, et cetera, et cetera. And you can all, at
13 your leisure, take a look at this article.
14 I believe I actually have -- for some
15 reason my screen --
16 CHAIRMAN NOBLE: Joy, is this something
17 that wasn't previously presented?
18 MS. HERNBRODE: It was not previously
19 presented. It is now in evidence as X083, and we are
20 looking at Page 15, and there's a blowup on Page 15 and
21 the entire article on Page 16.
22 CHAIRMAN NOBLE: Thank you very much.
23 THE WITNESS: And I understand from the
24 chair you would like us to move on.
25 CHAIRMAN NOBLE: Very quickly.

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1 THE WITNESS: Thank you.
2 BY MS. HERNBRODE:
3 Q. All right. Do you see anything about the Day
4 brothers' account that makes you feel it's a boosterism
5 article?
6 A. I do not.
7 Q. It's published in the Yuma paper?
8 A. It's published in the Yuma paper. There is
9 some language and use of adjectives that you wouldn't
10 typically find in today's paper, but it's clearly a
11 factual-type article, an account of something that they
12 believe happened.
13 Q. Is it difficult to evaluate historical
14 information if the information an expert relies on
15 isn't in the record?
16 A. Yes.
17 Q. Okay, look let's move on to Dr. Mussetter's
18 slides, which are Exhibit X060 is the original, and
19 then you have some changes you made, some illustrations
20 you did.
21 There was a huge discussion with both Win and
22 Bob regarding the bankfull concept and whether the
23 lower Verde was likely to be sinuous or braided?
24 A. Yes.
25 Q. So looking at X083, Page 1, which are your

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1 modifications to Bob's Slide No. 4, can you explain the
2 differences in opinion here?
3 A. You're talking about this slide right here?
4 Q. Yeah.
5 A. All right. So this was in Dr. Mussetter's
6 presentation. It's certainly a slide we've seen before
7 and we've seen in the literature. It's commonly used.
8 There's a couple of things I would like to point out
9 besides the typo that says "Gila River" instead of
10 Verde River.
11 Is that this really isn't a slide about
12 navigability. This is a slide about channel pattern,
13 and it does have three categories; Straight,
14 Meandering, and Braided. When asked about where the
15 Verde sits, I believe the answer that I recall was in
16 the 3, possibly 4 category, which, when you highlight
17 the limits of the little -- what do you call that sign
18 there that's on there? If you highlight this area that
19 sits in that --
20 Q. Blue.
21 A. -- meandering area, the channel sits up here,
22 which is what I've been saying. It's more meandering
23 than it is braided.
24 Braided is down here, and I showed you
25 pictures, and I'll say again and I'll say as many times

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1 as I'm asked, the Verde River does not look like this.
2 It looks like this, and it's in the meandering
3 category.
4 CHAIRMAN NOBLE: Mr. Fuller, is that
5 what you previously testified to?
6 THE WITNESS: Yes, it is.
7 CHAIRMAN NOBLE: Why are we revisiting
8 this?
9 THE WITNESS: Because it's rebutting
10 testimony from Dr. Mussetter.
11 CHAIRMAN NOBLE: Did you previously
12 testify about it?
13 THE WITNESS: Yes.
14 CHAIRMAN NOBLE: Thank you. The
15 Commission heard it the first time.
16 MS. HERNBRODE: Sorry, Mr. Chairman.
17 BY MS. HERNBRODE:
18 Q. Okay, let's move on to Bob's Slide 61, which
19 is Page 2 in X083.
20 There was a lot of discussion about where the
21 Verde falls on this. Can you explain the differences
22 in opinion and where you think the Verde falls on this?
23 A. Yes. Let's say where the Verde lies here, so
24 we don't get confused about Verde Falls. And the
25 reason we're including this is because the

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1 Commissioners had a number of questions on this
2 particular category, and I think this clears up a lot
3 of the questions and discussion.
4 There was discussion about Win saying
5 bankfull discharges were in this range, but typically
6 geomorphologists will tell you that bankfull discharges
7 are somewhere between a 1.5-year event up to
8 potentially a 10-year event.
9 So if we take that at face value, I've added
10 some information. Bob's slide was this information. I
11 added this blue box and this blue arrow. The two-year
12 discharge at Clarkdale is about 6,600 cfs, and at
13 Tangle Creek it's about 61,000 cfs. That's in this
14 range represented by the arrow. And if you're looking
15 at those kind of bankfull discharges, the two to
16 ten-year, it clearly does plot in the braided category.
17 So we would expect, between a two and a ten-year
18 discharge, the river to be braided.
19 That is not, however, within the range of the
20 ordinary and natural flows by any expert's opinion on
21 the Verde River. The ordinary flows are in this range
22 right down in here, and those flows at that flow rate
23 predict strongly in the meandering category, which is
24 completely consistent with the testimony I originally
25 gave; that the river has a compound channel with a

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1 meandering, generally sinuous single channel, and at
2 flood stages it has a braided channel.
3 Q. Okay. Can you tell how deep a river is from
4 the air?
5 A. Not very well.
6 Q. So does it hold true that you can't tell
7 depth from any of the aerial photos?
8 A. Places where you can see depth is where if
9 you see a rock sticking out, you know the rock is
10 sticking out and it's not deep there at all.
11 On the Verde River, because of the character
12 of the water, you don't really see more than 6 inches
13 into the -- anything that's 6 inches down or below
14 you're really not going to pick up from the air.
15 Q. Let's talk a little bit about Site 1, the
16 Tangle Creek site. This would be Page 5 in the X083.
17 Okay, so there was some discussion about
18 whether or not the effects of the dam had any impact on
19 this site. It's above, is it Horseshoe Dam; is that
20 correct?
21 A. Horseshoe Dam is the upstream. Horseshoe
22 Reservoir is the upstream reservoir, yes.
23 Q. And this is in Segment --
24 A. This is in Segment 4.
25 Q. You had some concerns about the modeled

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1 depths here?
2 A. Do you want to talk about the impacts of the
3 reservoir, or do you want to talk about this map here?
4 Q. Well, since I asked you about the reservoir,
5 let's go there first, and then we'll circle back.
6 Sorry.
7 A. There was a discussion --
8 Q. We're at Page 11 now.
9 A. Page 11. This is Dr. Mussetter's Slide 73,
10 about whether there was any influence of the reservoir
11 on the channel at the Tangle Creek gage.
12 And I would just like to clarify with Bob, in
13 his discussion about effective discharge and when
14 sediment's moving and whatnot, and that the reservoir,
15 you can only have -- the reservoir can only have an
16 effect on the Tangle Creek site when it was up that
17 high.
18 And I would just like to point out that the
19 top of the spillway gates, as shown right here for the
20 dam, the reservoir for Horseshoe, is at 2026, which
21 falls in the middle of Site No. 1. Well, a little bit
22 above Site No. 1, the cross-sections. And the maximum
23 water surface is well above that. Spillway crest is
24 quite a bit lower.
25 So it's entirely possible that when that

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1 reservoir is full, sediment will start to form a small
2 delta, which you see this illustrating this process.
3 When the reservoir is full, you dump sediment at the
4 upstream end, and that clearly looks what's happening.
5 I think Bob made a nice presentation that showed that
6 that had occurred episodically, and it was coincident
7 with the time when there had been large
8 reservoir-filling floods, and so it's very likely.
9 Q. So --
10 A. So having said that, I believe that there has
11 been an impact. Joy, you want to interrupt me.
12 Q. I just want to say what you're talking about
13 is Page 12 of X083.
14 A. Thank you.
15 So my reading of the record is that it's
16 entirely possible that there has been an impact from
17 the reservoir at that site.
18 Having said that, I would agree with Bob that
19 the channel downstream of that impact point, which
20 occurs basically at the gage itself that Win was
21 talking about, the channel downstream of there bears
22 characteristics that are very similar to the rest of
23 the river, and I don't know that the morphology of the
24 channel has been impacted that much downstream of this
25 point right by the gage.

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1 Q. And you've boated this area?
2 A. I have boated it.
3 Q. Would it have been more boatable absent any
4 impacts by the dam?
5 A. There's something odd that's gone on right at
6 the gage there that's created a little pool with a
7 three-side overflows that go into a narrow channel, and
8 that's a little trickier to boat than I think most of
9 the rest of the river is. And I think that's probably
10 due to these very rare, but episodic, and somewhat
11 significant at the gage here.
12 And I really don't want to talk more about it
13 than that, so...
14 Q. Okay. And you did take a video of boating
15 through this area. In the interest of time, we'll be
16 submitting that, rather than playing it today.
17 CHAIRMAN NOBLE: Thank you.
18 BY MS. HERNBRODE:
19 Q. And you also boated back upstream through
20 this site?
21 A. I did, so...
22 And I did that for the reason of it's really
23 interesting to look at computer model results. They
24 inform on lots of things. We do a lot of computer
25 modeling ourselves, in our firm, myself. I've done

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1 tons and tons of modeling.
2 But it's a very different perspective what
3 you get out of a computer than what you see in the real
4 world when you are sitting in the seat of a boat. So I
5 thought I would go out to Dr. Mussetter's Site 1, since
6 it's somewhat easy to get to, and paddle on through it.
7 And I have a GoPro video that shows myself paddling
8 through it in one of my solo canoes, and it's an easy
9 paddle.
10 Went on through. I got down to the bottom,
11 and I brought the particular canoe that I brought
12 because it's easy to carry, easier to carry, and I had
13 about a mile walk back upstream. When I got to the
14 bottom, I realized I could paddle back upstream. The
15 current's not that swift. And so I did. I paddled
16 back upstream. I got to the riffles, and I will tell
17 you right now in advance that I tried to paddle through
18 the riffles, and if I had had a poling boat, I probably
19 could do it, or maybe bigger shoulders; but I did not,
20 so I stopped, I dragged my boat to the edge of the
21 riffle, and kept on paddling up through the areas of
22 less current.
23 And one of the reasons I bring that up is
24 because we also had a discussion about what the typical
25 velocity of the Verde River is, in discussing some of

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1 the GLO data and Mr. Burtell's checks that he had done
2 on some GLO estimates of flow depth and width, which is
3 a perfectly reasonable thing to do. It's something I
4 would do myself.
5 But one thing you need to know is the
6 velocity is not constant across the river, and that's
7 what you discover when you're a boater. There is a
8 portion of the channel that has current and portions of
9 the channel that sometimes have very little current and
10 sometimes there are eddies where the current's actually
11 going in the upstream direction. And so a much smaller
12 segment of the width of a channel has velocity than the
13 entire width of the channel. And you see that in this
14 video.
15 Q. All right. Let's go back to the Slide 5 or
16 Page 5. You had some concerns about the modeled depths
17 here?
18 A. There's a couple of things I would like to
19 point out about these profiles that Bob did. And,
20 again, we do modeling, and this is typically the kind
21 of thing that you see.
22 So there's a couple -- if you look at the
23 diagram here, I want you to view this in its proper
24 context. So, one, this is the modeling reach. This is
25 the reach that I paddled through. And what's shown on

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1 this diagram is the channel bed elevations for
2 cross-sections that were surveyed and then I believe
3 interpolated from some kind of aerial mapping. And
4 this blue and the reddish line are the computed
5 water-surface profiles, and there's a really good
6 match. These dots are actually the measured
7 water-surface elevations from the field, and there's
8 pretty good correlation between those, until you get up
9 into this upper riffle reach right up in here near the
10 top of his Site No. 1, and you can see in some places
11 these are off by nearly a foot in some places.
12 So when we're talking about making estimates
13 of depth and we're saying, well, it's 1.7 or 1.3,
14 knowing that we missed the prediction by almost a foot,
15 you need to view those estimates in that context.
16 The other thing is that Bob picked out three
17 of the shallower points, and I understand why he did
18 that, and as Rich pointed out the last couple of days,
19 their theory is that these limiting points are what
20 dictate whether streams are boatable or not.
21 But I would advance to you and ask for your
22 consideration that that's not a very reasonable
23 depiction of the average depth of this reach, and this
24 reach was chosen for its characteristics of having
25 multiple riffles.

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1 So we have maximum depths at Section 2 of
2 2.4, 2.6. At Section 4 and at Section 5 it's 3.3. If
3 I take all of the maximums for all of the sections that
4 were modeled, the average for the reach is 3.9 feet,
5 and this is at 296 cfs.
6 If Bob had submitted his RAS model, I could
7 have rerun it for the median flow rate, but this is a
8 decent flow rate to use. And, actually, the day I was
9 out there canoeing it happened to be at 294, so the
10 video is a very good perspective on what this feels
11 like on the river.
12 So then the next thing to think about in the
13 information that was presented was what was actually
14 presented to us was this rating curve, and that uses
15 the average depths, not the maximum depths.
16 Q. And, Jon, you've moved on to Page 6?
17 A. This is Bob's Slide No. 35 and my page No. 6
18 for whatever this exhibit number is.
19 So I've put the average depths down here, but
20 then also the maximum depths. So at Cross-section 2,
21 the average depth at 296 cfs is 2.05 and maximum is
22 2.4; and, again, you see these differences of a half
23 foot or sometimes double the difference.
24 So this is why the maximum depth, to me, is a
25 much better read on the depth than the average depth,

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1 because in putting a small boat on the river, you're
2 very close to the maximum depth if you at all have any
3 kind of talent as a boater.
4 Q. There's a question.
5 COMMISSIONER ALLEN: In regard to
6 Page 5, the depths that you're recording on here, these
7 are the depths of the river in the thalweg, is that
8 what this represents?
9 THE WITNESS: Yes, because the blue line
10 is the water surface, and the dark line here at the
11 bottom is the thalweg or the minimum elevation of the
12 bed.
13 COMMISSIONER ALLEN: Okay. Thank you.
14 BY MS. HERNBRODE:
15 Q. Did you have another -- do you want to go to
16 Slide 7?
17 A. You see the same pattern in the other Sites 2
18 and 3, but I don't think there's any need to beat that
19 horse.
20 Q. Okay.
21 A. We can look, however, if you would like, at
22 the average depth at the corrected or the ordinary and
23 natural median flow rate, which I believe is 440 cfs,
24 and it basically also moves those depths up above at
25 those three cross-sections.

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1 Q. And this would be Page 7?
2 A. Page 7.
3 So I looked at that just for the sake of
4 making a comparison what the -- rather than the 296
5 that Bob was modeling for whatever science he was doing
6 for that study to the discharge that we've been
7 considering lately for navigability.
8 Q. Okay.
9 A. But, again, those are averages, not maximum?
10 Q. And there were some questions about the
11 aerials that were shown in Bob's PowerPoint, which is
12 X060, Pages 39 to 41.
13 A. And this is something on the disc you gave
14 me?
15 Q. No.
16 A. This is one of mine here?
17 Q. Well, no, this would be out of Bob's
18 PowerPoint. Do you not have it?
19 A. I do.
20 Q. Okay.
21 A. What Page?
22 Q. 39.
23 COMMISSIONER HORTON: Mr. Chairman, I
24 wanted to ask a question.
25 CHAIRMAN NOBLE: Please do. Let

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1 Mr. Fuller find where he wants to go first, and then
2 you can ask a question.
3 Are you ready, Jon?
4 THE WITNESS: Sure. I'm ready.
5 COMMISSIONER HORTON: It must have
6 passed me by. What is thalweg? Weg just means trail
7 or way in German.
8 THE WITNESS: Ah, yes. So in German
9 it's thalweg, actually. I remember a really nasty
10 argument between two experts.
11 COMMISSIONER HORTON: Das vichte.
12 THE WITNESS: It's the deepest part of
13 the channel. So if you take the water down to its last
14 drop, that's where you'll find it.
15 COMMISSIONER HORTON: Okay.
16 BY MS. HERNBRODE:
17 Q. But is the deepest part of a side-to-side
18 slice of the channel, not a length slice?
19 A. The thalweg is a line that connects the
20 deepest parts of all the channels. I guess that would
21 be a better way of saying it, all the cross-sections.
22 Q. Okay. All right. There were some questions
23 about these aerials.
24 A. Yes. I believe Commissioner Allen was asking
25 about these dates, so I looked them up. If you're

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1 interested in the Fairchild Series, you can actually go
2 to the University of California-Santa Barbara Library
3 Collection has these online now. These are February
4 1934, and I believe the average discharge for that
5 month was 269 cfs. And this is Photo Series C-2920.
6 There was a flood in 1932, which was two
7 years prior, of 53,000. So we're seeing some marks of
8 a fairly large flood a couple of years prior. This is
9 fairly close to baseflow in this photo. So I just
10 thought I would answer those questions for you.
11 COMMISSIONER ALLEN: Thank you.
12 BY MS. HERNBRODE:
13 Q. And you have boated through Dr. Mussetter's
14 Sites 2 and 3 as well?
15 A. Yes.
16 Q. Any problems there?
17 A. It's a little strainer downstream of the
18 dams because of the impact of floods that others have
19 talked about and correctly depicted.
20 Q. And do you think that it would be more
21 boatable absent the dams, or less?
22 A. Yes. I think it would clean out a lot of the
23 strainers and create a more natural channel that you
24 see similar upstream of the dams in Segment 4. Well, I
25 believe, Segment 4 would be cohesive in terms of its

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1 characteristics, as I have characterized it, and that
2 would go down to Needle Rock, which is basically where
3 the river comes out of the canyon and enters the valley
4 upstream of the Rio Verde and -- what's now Rio Verde
5 and Fort McDowell. And that's why I chose to change
6 the segments there. Since we're looking at the
7 ordinary and natural condition, it didn't make sense to
8 make the break at a manmade feature.
9 Q. Are there any other -- I know we had a bunch
10 of other questions or a bunch of other discussion
11 slated for Dr. Mussetter's presentation. Do you have
12 anything else that you think we really need to talk
13 about considering the concerns of time?
14 A. I would just say in general that view from
15 the air, again, is not the same as the view on the
16 ground. It's nice to have a helicopter tour. My first
17 view of the Verde was in the SRP's helicopter in
18 graduate school. It's a nice way to kind of get the
19 general context, but it's not the same as being there.
20 Q. Would you have a concern if you were asked to
21 opine about navigability without having a specific type
22 of boat in mind?
23 A. I don't know how you can make a determination
24 of boatability or navigability without a specific boat
25 in mind. And, in fact, when we wrote the original

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1 reports back in the early '90s, that was one of the
2 questions we put in the summary, and you can go back
3 and look at those original reports, was what kind of
4 boat type are you interested in talking about? Because
5 the question of whether it's boatable or not changes
6 whether you're talking about steamboats or keel boats
7 or Queen Marys or canoes or kayaks or what. It's a
8 different question.
9 Q. And in all of the other navigability
10 litigation that you've been involved in, there's been a
11 specific type of boat?
12 A. Yes. Some States refer to it as the
13 criterion craft, and so they have arguments about what
14 that criterion craft would be, but they use it, and
15 they calculate its characteristics and determine
16 whether it could or couldn't be in areas, particularly
17 for answering the susceptibility question.
18 Q. And you mentioned the change in the segments,
19 and I think most of the other -- oh, I'm sorry.
20 COMMISSIONER ALLEN: Yeah, before we go
21 any further, what is the criterion craft that would be
22 used here on the Verde?
23 THE WITNESS: I would say, based on the
24 historical record, that it would be small, low draft
25 boats, and that would include canoes and flatboats.

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1 That's what we see were successfully used in the
2 historic period. I don't think you could make a
3 nonsmirking argument that steamboats could be used in
4 Segment 3.
5 CHAIRMAN NOBLE: Oh, Jon, come on.
6 THE WITNESS: The gentleman from the
7 Apache Tribe seemed to think they could be used in
8 Segment 2, but we don't have any historical examples of
9 that.
10 And I feel very comfortable saying that
11 canoes of a whole wide variety of canoes, as well as a
12 wide variety of flatboats of the type that Brad Dimock
13 talked about, could be used on the entire Verde, with
14 the exception of Segment 0.
15 BY MS. HERNBRODE:
16 Q. And you would characterize the Edith as a
17 flat boat because she has a flat bottom?
18 A. Yes. Yeah, so flat boat has a wide
19 character. And Commissioner Noble has told me not to
20 repeat my testimony, but if you look at the boating
21 character in the presentation I gave, I talked all
22 about that.
23 CHAIRMAN NOBLE: Jon, you're
24 specifically invited to that little small group
25 discussion following today's testimony.

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1 THE WITNESS: Is that a good thing or a
2 bad thing? I was thinking about going home.
3 CHAIRMAN NOBLE: For you it's a good
4 thing.
5 BY MS. HERNBRODE:
6 Q. Okay. So I think you answered this, but I'm
7 not confident. So why did you change your
8 segmentation? We changed both at the top and the
9 bottom; is that true?
10 A. I already answered the bottom, so I'm not
11 going back to that.
12 Q. Thank you.
13 A. The top, I decided to break Segment 1 into a
14 Segment 0, and then I further segmented it to the 0-A
15 and 0-B. And I thought long and hard about this.
16 Navigability is not an easy decision to make in some
17 cases, and in the upper part of the Verde I thought
18 long and hard. The boating guides talk about being
19 able to start to boat at the top of the lake that
20 Commissioner Allen asked me about. So I think above
21 that it was an easy decision, so I called that
22 Segment 0-A.
23 0-B was a little tougher decision. I had
24 read Williams and, as I testified, I went out and
25 boated it for the first time in, I believe it was,

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1 October down to Forest Road 638. And I found it to be
2 much easier to paddle through there than what Williams
3 describes and what I had heard from other boaters.
4 I expected to have to drag my boat for a
5 quarter mile at a time. And, basically, I dragged my
6 boat for a couple hundred yards from the confluence of
7 Granite Creek and said, "Oh, I can paddle that," jumped
8 in and paddled, and I paddled the rest of the way down
9 to Forest Road 638, so...
10 And yet there were characteristics in that
11 reach that I felt were not conducive to navigability,
12 and so I could not, in good conscience, advance that.
13 And so I talked to the State, and we changed the
14 segmentation and went forward from there.
15 Q. In the difference between the old boundaries
16 between Segments 4 and 5 and the new one, does that
17 move any major rapids or other obstructions into a
18 different segment?
19 A. Well, I don't know that there are any
20 significant obstructions in Segment 4 at all, and there
21 are no significant rapids that we know of downstream of
22 Bob's Site No. 1, so that would include the reservoir
23 reach.
24 Q. Rich thinks ferry crossings should be
25 disregarded. You didn't count ferry accounts as

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1 boating accounts, right?
2 A. Well, I listed them in my accounts of
3 boating, but when I summed up my this is the number of
4 times people went down the river, I did not use the
5 ferries.
6 But I think that it's important to think
7 about ferries because it tells you some things. It
8 tells you that the river was deep enough that somebody
9 decided that it would be better to be in a boat than
10 trying to wade it or to wait it, to wait it out; but
11 they needed some kind of a vessel to get across.
12 And in the case of some ferries in some
13 places, those are significantly sized boats that
14 carried thousands of pounds. On the Verde it's not the
15 case. They were small boats. They were carrying mail
16 couriers and small amounts of supplies in the case of
17 the Camp Verde/Fort Verde ferry.
18 But it does tell you that there's a condition
19 there that makes it more pleasant to be in a boat than
20 it is to be trying to wade it. And I think that's
21 significant, particularly for the susceptibility
22 argument.
23 Q. Do you see any reason to disregard a boating
24 account if the people who were in the boat were
25 hunting?

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1 A. No.
2 Q. Could they have been hunting for a commercial
3 purpose?
4 A. They could have been. Could have been
5 putting food on their table, if you use Rich's words.
6 Q. And does a couple of guys with a couple
7 hundred pounds of camping gear or hunting gear, is that
8 any different than a couple of guys with a couple of
9 hundred pounds of commercial goods?
10 A. The material is different, but the weight,
11 weight is weight, whether that's a fat guy or whether
12 it's a big sack of something else.
13 Q. And the way it would float down the river is
14 the same?
15 A. Yes, if the weight is the same.
16 Q. Do you understand Mr. Dimock's testimony to
17 indicate the Verde wasn't navigable?
18 A. No. Quite the contrary.
19 Q. Do you understand him to say that no one
20 built boats for the Verde?
21 CHAIRMAN NOBLE: Excuse me, Joy.
22 MS. HERNBRODE: Okay.
23 CHAIRMAN NOBLE: Better get off that one
24 pretty fast.
25 MS. HERNBRODE: All right. That was my

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1 last question for that one, but we'll skip it.
2 BY MS. HERNBRODE:
3 Q. Do people always use the best boat for the
4 purpose historically?
5 A. No.
6 Q. Even today?
7 A. Even today.
8 Q. Did you see some odd boats on the river
9 during the race last weekend?
10 A. I did the -- but I keep forgetting the name
11 of this race. But, yes, I went up and did it on
12 Saturday. And as I was paddling along, in the misery
13 of trying to catch up to this guy with a kayak paddle,
14 in a canoe, I went past two people in an aluminum Jon
15 boat, a flat-bottomed boat, loaded to the gills and
16 over the gunnels, probably 2 feet over the gunnels with
17 gear, woman sitting on top of the gear, and on top of
18 that was a little dog carrier cage with a dog in it.
19 And this is at 123 cfs.
20 And as I paddled by, I said, "How far are you
21 going?"
22 And they said, "All the way."
23 And I said, "All the way to the Salt?"
24 And he said, "All the way to the Salt."
25 Don't know if he's made it yet. I doubt it,

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1 so far.
2 Later that day I went down to the Camp Verde
3 gage, which is downstream of Beasley below The Falls,
4 and I was looking for some depths in the pools there
5 and at the control section. And as I was standing in
6 the water, a rubber raft came through. They had eight
7 people operating as a paddle raft, and they went
8 through just fine. They were having a pleasant time.
9 They were going down to Gap Creek, which is a little
10 eight-mile run through the whitewater reach. And,
11 again, this is at 123 cfs.
12 And I bring that up because if you read the
13 boating guides and you rely solely on the boating
14 guides, they tell you things like you can't raft it
15 below 700 cfs or they have different rates for
16 different boating guides, and this was 123 cfs and
17 these people were having a great time.
18 So there's the perspective on the river of
19 the boater, and there's the perspective of what the
20 books tell you. And I told you this story of my
21 research work in graduate school when the Forest
22 Service said you can't boat that river, and every day
23 we were on it and boats went by us.
24 Q. And just for clarity, the race you were in
25 last weekend was on the Verde?

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1 A. Yes.
2 Q. Okay.
3 A. Went from the 260 bridge or the White Bridge
4 down to Beasley Flat, about 10 miles, took me an hour
5 to --
6 CHAIRMAN NOBLE: Joy, would that be
7 considered new testimony?
8 MS. HERNBRODE: Possibly.
9 THE WITNESS: I've done it before.
10 CHAIRMAN NOBLE: Jon, we don't want the
11 record to reflect that, that you've brought in new
12 testimony after your direct.
13 BY MS. HERNBRODE:
14 Q. Were you concerned about the lack of log
15 floats on the Verde to demonstrate navigability?
16 A. No. I think if you've been to the Verde, you
17 kind of understand why there's not log floats. Until
18 people start building houses out of saguaros, which is
19 what the vegetation lining the canyon walls of most of
20 the Verde River, and there's some Juniper and pinion up
21 high, but it's not really a log-heavy, rich watershed.
22 Also, the fact that as soon as humans were
23 there, they had irrigation dams across the river. So
24 you really shouldn't have to spend much time wondering
25 why people weren't trying to float logs. It would take

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1 out irrigation dams, and there weren't just that many
2 logs to be floated.
3 Q. There was some discussion about the Black
4 River and why the State didn't advocate for its
5 navigability, despite the fact it's used for modern
6 recreational boating.
7 Can you talk a little bit about why we did
8 not advocate for navigability on the Black?
9 A. The shortest answer is --
10 CHAIRMAN NOBLE: I thought we talked
11 about that before.
12 MS. HERNBRODE: We did not. We did not.
13 CHAIRMAN NOBLE: You did not?
14 MS. HERNBRODE: I did not.
15 CHAIRMAN NOBLE: Okay. Go ahead, Jon.
16 THE WITNESS: The shortest answer is
17 that the existence of recreational boating was not the
18 sole criteria that we used in determining whether to
19 make a case of navigability or not. That's simply not
20 the case.
21 BY MS. HERNBRODE:
22 Q. The Black River has a very short boating
23 season, depending on snowmelt?
24 A. That would be the other reason, is that it
25 has a very, I would say, undependable season of

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1 boating; and when it is boatable, it's a very difficult
2 river to boat. There's lots of Class III's and IV
3 rapids. It's very tortuous, lots of rocks, and it's a
4 very small river.
5 Q. No history of historic boating?
6 A. We had no history of historic boating. It
7 was one of the ones that we went through in the small
8 and minor watercourse screening process, and it did not
9 reach to the Level 4, as I recall.
10 Q. Let's talk a moment about GLO surveys.
11 Are GLO surveys a reliable source of depth
12 information?
13 A. The question was are they a reliable source
14 of information?
15 Q. Yes.
16 A. Oh, absolutely, yes.
17 Q. About depth?
18 A. They're as reliable as probably any other
19 historical document that describes the depth of the
20 rivers. Those are folks that were out there and had
21 some training in what they were doing; I would assume
22 some part of their survey crew did. And, yeah, they
23 were on the river. They were in the field. They made
24 observations. As Rich pointed out, what exactly they
25 meant by depth, you know, we can discuss and talk

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1 about; but it is an observation. It's certainly a data
2 point to be considered.
3 Q. If there had been lots of beaver dams on the
4 Verde, hypothetically, would that raise depths and
5 decrease velocities?
6 A. Yes.
7 Q. Are the GLO surveys consistent with other
8 historical observations we have of the Verde?
9 A. Yes, they are.
10 COMMISSIONER ALLEN: Joy, question.
11 MS. HERNBRODE: Yes.
12 COMMISSIONER ALLEN: In regard to the
13 depth records that we see in GLO surveys, those, most
14 probably, although one would have a hard time proving
15 it, are a representation of the maximum depth of the
16 channel?
17 THE WITNESS: We had lots of discussion
18 on this point, and I'm not sure how much additional
19 light I can give. Like I say, I don't think you can
20 prove it one way or the other.
21 I will give you my opinion, based on
22 having looked at a lot of GLO data over the years. If
23 I had been out there doing that kind of work, walking
24 along the river, carrying a rod and chain, and somebody
25 said to me, "How deep's the Verde River," I would be

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1 thinking about, well, I crossed it here, I crossed it
2 there. Yeah, it's been about 2 feet, I would say. Was
3 it always 2 feet? Of course, not. Was it any ever
4 deeper than 2 feet? Probably. Was it shallower than
5 2 feet? Could have been.
6 So I took it as a general
7 characterization of the river in that area during the
8 period of their observation.
9 COMMISSIONER ALLEN: Thanks.
10 BY MS. HERNBRODE:
11 Q. Does the video of you crossing a beaver
12 dam --
13 MS. HERNBRODE: This is the only
14 question I have for this video, Mr. Chairman.
15 BY MS. HERNBRODE:
16 Q. Of you crossing a beaver dam in your canoe,
17 was that an adventure?
18 A. No.
19 I need to say one more thing about that. The
20 only difficult part about crossing that beaver dam was
21 the fact that there was a riffle immediately
22 downstream, and getting into your boat in a riffle is
23 just a little bit delicate.
24 Q. Can you pull up the Geolobo blog that
25 Mr. Burtell talked about yesterday and that has just

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1 been entered into the record as X084?
2 A. The GLO what?
3 Q. The Geolobo blog. It's that "When the Verde
4 Runs Gold."
5 And I believe the two photos of beaver dams
6 are down at the bottom.
7 CHAIRMAN NOBLE: Joy, while we're
8 waiting for that, I thought that originally we had seen
9 at least one video on direct of Mr. Fuller crossing a
10 beaver dam. Did I misremember that?
11 MS. HERNBRODE: I know that it's in the
12 evidence. I don't remember showing it, but I would
13 defer to your memory at this point.
14 CHAIRMAN NOBLE: However, regardless of
15 whether it's in evidence or not, I don't believe the
16 Commission has any doubt that Mr. Fuller can cross a
17 beaver dam in a fully loaded, perhaps even overloaded,
18 boat.
19 THE WITNESS: If I'm in it, it's
20 generally overloaded.
21 BY MS. HERNBRODE:
22 Q. I just want to hit these two photos.
23 Do you have any problem crossing that beaver
24 dam in a loaded canoe?
25 A. No, ma'am.

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1 Q. And the one above it?
2 A. No, ma'am; easy peasy.
3 Q. And are those likely in Segment 0?
4 A. I don't exactly know where they are, but
5 looking at the terrain, that's where they look like to
6 me.
7 And, in fact, when I paddled Segment 0, there
8 were beaver dams there.
9 Q. Okay.
10 MS. HERNBRODE: Mr. Chairman, I'm afraid
11 I need a clarification. You have just indicated that
12 you are not interested in hearing any evidence that was
13 not in the record prior to -- or references to things
14 that have happened since his last testimony?
15 CHAIRMAN NOBLE: If you are going to
16 have Mr. Fuller introduce new evidence or bring in new
17 experiences that have occurred since he originally
18 testified in this case, in the Verde, we're going to
19 have some -- not a lack of interest. We're going to
20 have difficulty with that, simply because we're not
21 sure we understand how it fits within proper rebuttal.
22 MS. HERNBRODE: Okay.
23 CHAIRMAN NOBLE: And if it is not
24 something that was already in the record and it was
25 deemed necessary to go out and find it and it hasn't

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1 already been presented to the other parties, then we're
2 going to have some problems with that.
3 MS. HERNBRODE: Okay.
4 CHAIRMAN NOBLE: And, Joy, just to
5 help out here, going back and having Mr. Fuller repeat
6 his previous testimony or referring to previous
7 exhibits that he has already discussed and saying "I
8 meant what I said," that doesn't help us a whole lot
9 either.
10 MS. HERNBRODE: I had gotten that one
11 loud and clear, Mr. Chairman.
12 CHAIRMAN NOBLE: Okay.
13 MS. HERNBRODE: So I'm trying to --
14 that's why I'm skipping a little bit here.
15 BY MS. HERNBRODE:
16 Q. Do you believe that if there were marshes in
17 the Camp Verde area, those were on the main stem of the
18 Verde?
19 A. I believe that they were along the main stem
20 of the Verde. In looking at the GLO survey notes, they
21 don't record any of that kind of information. So my
22 suspicion is that there was a clear channel of some ilk
23 along the middle, albeit there may have been a lot more
24 slues and whatnot along the side.
25 Q. And you would have expected to see marshes

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1 and braiding on the GLO surveys if they had observed
2 those conditions?
3 A. They put them in places on the Gila River on
4 the GLO maps.
5 Q. There was a lot of discussion about the
6 difference between how Win calculated his depths and
7 how Rich calculated his depths. We, in fact, spent
8 hours on that issue.
9 Does the Commission really need to figure out
10 who is correct?
11 A. No. They should use my depths.
12 Q. And why is that?
13 A. Well, certainly I'll speak for the depths
14 that I put in there. The depths that I put in there
15 are averages, so they are lower than the maximum. And
16 I will say from the perspective of having boated the
17 entire river, they significantly underestimate what you
18 see when you go out there. The river is deeper than
19 what is shown in those rating curves. I think you get
20 that consistently from all of the people who have
21 actually boated and put their toes in the water.
22 Q. It's boatable now?
23 A. I'm being concise.
24 Q. It's boatable now?
25 A. Yes, it is.

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1 Q. Why didn't you do a flow reconstruction?
2 A. I don't believe the Court instructs us and
3 says you have to do a flow reconstruction. It says you
4 need to consider the river in its ordinary and natural
5 condition and its flow rate. I did do that
6 consideration.
7 It's painfully obvious to anybody with
8 expertise in hydrology that if you take water out of
9 the river -- and perhaps those who don't even have any
10 expertise in hydrology and just have a dose of common
11 sense. If you take water out of the river, there's
12 going to be less of it in the river. So if you can boat
13 it now with the water that's there now, if you put more
14 in it, you can still boat it.
15 Q. There was a question raised about how you
16 measured pool and riffle distances. How did you do it?
17 A. Used GIS software myself. I did the
18 calculations. I looked at aerial photographs. I
19 looked at the Williams Guide. I looked at other
20 boating guides. Marked out the extent of each rapid,
21 the beginning and end, and I was fairly generous in
22 those marks. Most riffle sequences have small pools or
23 sometimes larger pools in the riffle sequence.
24 I incorporated all those distances as part of
25 the riffle distance, so I probably have more rapid

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1 length than -- I've been saying riffle; I should say
2 rapids. -- in those calculations. Added them up and
3 did the math.
4 Q. And those marks of how long the rapids are
5 are included on the maps that were provided to the
6 Commission?
7 A. Yes, they are. And I should also say that I
8 sat down with Don Farmer after I had did those, and we
9 kind of went through them and said, "What do you think,
10 what do you think, what do you think?"
11 And he concurred, and he has much more
12 experience paddling the river than I do.
13 Q. Can you give me an estimate of how long it
14 would take for the river to rise after a rainfall on
15 the Verde?
16 A. Oh, you would have a response in some parts
17 within a day or within hours in some places. If you're
18 asking me how long would it take a hydrograph to move
19 from the top to the bottom, it's going to depend on a
20 number of factors, which Rich went through, but
21 primarily on the size of the storm.
22 So in a large storm I would say you're
23 looking at about two days to get from Camp Verde down
24 to the Salt River confluence. For smaller events
25 you're probably looking at maybe up to four days. In

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1 some cases the flood would dissipate over the course of
2 its journey.
3 Q. And you've been over Verde Falls several
4 times?
5 A. I've portaged the Verde Falls. I haven't
6 paddled it. But I've been down there.
7 Q. You've been at Verde Falls several times?
8 A. Yes, been there a number of times.
9 Q. Is it 10 feet tall?
10 A. No. It's 4 to 6 feet tall, and at high flows
11 it becomes a hydraulic. It's really not a falls.
12 Q. Do you know what a freshet is?
13 A. A freshet is a flood.
14 Q. The Washington study looked at average flows,
15 and you were lucky enough to leave early yesterday and
16 miss most of this discussion, but I think Rich said
17 yesterday that mean flows were comparable to the
18 average flows in Washington because of the differences
19 between Arizona and Washington.
20 Do you agree?
21 A. I was not here for that part of Rich's
22 testimony, so I'm not testifying as to what he actually
23 said.
24 Q. Grant it.
25 A. So I'm going to answer the question as what I

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1 think -- I'm actually not quite sure what you asked.
2 But you're asking me about mean and median discharges
3 in the state of Washington?
4 Q. I'm asking you if you think it would be
5 appropriate to take a study from Washington that says
6 you need to look at average flows and, instead, look at
7 mean flows?
8 A. Oh, yeah.
9 MR. HOOD: You mean median flows.
10 BY MS. HERNBRODE:
11 Q. Median. Sorry. Thank you.
12 A. Well, if you were intending to use the
13 Washington study outside of the state of Washington, I
14 think at first brush, you should use the methodology as
15 they proposed it.
16 I teach a number of hydrology classes, and
17 it's a question that comes up frequently in those
18 classes, is, hey, we've got a different data set to put
19 in this particular methodology. And my recommendation
20 is to always use the data set and the procedures that
21 come with the methodology.
22 Once you start tweaking with it, until you
23 know the outcomes of those tweaks, it's kind of
24 dangerous. So I would suggest if the State of
25 Washington says use average annual flow, use the

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1 average annual flow.
2 CHAIRMAN NOBLE: Did you use average
3 annual flow or median flows?
4 THE WITNESS: Both.
5 CHAIRMAN NOBLE: Thank you.
6 BY MS. HERNBRODE:
7 Q. But did you plug any numbers into the
8 Washington study?
9 A. I didn't use the Washington study at all, and
10 there's a reason for that.
11 Q. What is that?
12 A. Well, the State of Arizona paid a lot of
13 money for our own screening process to determine
14 characteristics of navigability. We call it the Small
15 and Minor Watercourse Study. We spent years going
16 through that, and we sorted out by criteria that we
17 felt were relevant for the State of Arizona. And some
18 of you were here for that and saw how we proceeded
19 through that.
20 We developed those criteria and went through
21 it, and sitting at the top of our heap is the Verde,
22 Gila and Salt. Those rivers had most characteristics
23 of navigability and required hearings to determine
24 whether they were non or navigable.
25 Q. Were you the man behind the camera for both

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1 videos of Brad Dimock?
2 A. Yes.
3 Q. Are you his present company exempted for his
4 comment that canoeists are not good boaters?
5 A. Yes.
6 Q. Did you contact Brad at some point in the
7 past about navigability?
8 A. I did. Someone in his testimony asked him if
9 we had had communication, and he apparently did not
10 remember that I became acquainted with him through his
11 books, but also through a chat forum that I participate
12 in sometimes, and I had contacted him. People said,
13 "If you want to talk about historic boats, you should
14 talk to Brad. He knows a lot about them."
15 So I sent him an e-mail maybe two years
16 ago now. I'm not exactly sure when it was. But he
17 was on the river and said, "I'm on the river. I'm
18 going to ignore you." And I moved on, and that was the
19 last --
20 CHAIRMAN NOBLE: Is this Brad Dimock?
21 MS. HERNBRODE: Yes.
22 THE WITNESS: Yes.
23 CHAIRMAN NOBLE: Is the State
24 challenging Mr. Dimock's memory at this point?
25 THE WITNESS: No.

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1 MS. HERNBRODE: We are clarifying when
2 we contacted him, to make sure that ANSAC has the truth
3 of the matter.
4 CHAIRMAN NOBLE: Okay.
5 THE WITNESS: There's a digital record
6 that says I contacted him longer than what he testified
7 to.
8 CHAIRMAN NOBLE: Okay.
9 BY MS. HERNBRODE:
10 Q. Did you introduce --
11 A. No, not him.
12 Q. -- Mr. Dimock to Mr. Farmer?
13 A. No. No.
14 MS. HERNBRODE: Mr. Chairman, if we
15 could have maybe a quick break I would like to consult
16 with my co-counsel about anything I've missed and how
17 we might shorten this.
18 CHAIRMAN NOBLE: Do you have your watch
19 on?
20 MS. HERNBRODE: I do.
21 CHAIRMAN NOBLE: How did you know it was
22 time for a break?
23 COMMISSIONER ALLEN: You missed it by
24 three minutes.
25 CHAIRMAN NOBLE: So smooth, smooth.

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1 Let's go 15 minutes, 15 minutes now, which means we
2 will convene at 10:15.
3 (A recess was taken from 10:03 a.m. to
4 10:16 a.m.)
5 MS. HERNBRODE: Mr. Chairman,
6 Mr. Fuller, Rich talked about where the depths are
7 calculated at gages. In response to that testimony, we
8 did ask you to go out and measure some depths at gages.
9 If you do not want me to go into --
10 CHAIRMAN NOBLE: Be glad to hear this.
11 Thank you.
12 MS. HERNBRODE: Okay.
13 BY MS. HERNBRODE:
14 Q. Can you explain what gages you went to and
15 what you did at those gages?
16 A. I went to the Verde Clarkdale gage and I went
17 to the Verde near Camp Verde gage, which the Clarkdale
18 is at the upstream end of Segment 2. The Verde near
19 Camp Verde gage is in Segment 3 just downstream of The
20 Falls. I also went to the near Tangle Creek gage,
21 which is in Segment 4.
22 And what I did at those gages was, in the
23 case of the Clarkdale gage, I had a survey rod with me.
24 I went to the gage itself, to the station where the
25 transmitter is that sends the data, and, generally, the

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1 cable is located near or at that, and made a transect
2 to the river to identify the depths.
3 In the case of the Clarkdale gage, they were
4 over my head deep at that point, and then I went down
5 to the control section, or as near as I could estimate
6 where the control would be, and with my survey rod,
7 walked across there, took photographs standing in the
8 water, and in that case, at the flow rate of I believe
9 that day it was 59 cfs. It's in the material that
10 we'll submit. But it was close to baseflow. And it
11 was 2.2 feet deep at that section. And it was a way of
12 checking the data that we have for the rating curves at
13 those sections.
14 And I also walked through the -- in that case
15 walked through the riffle. And the reason I didn't
16 bring a boat to that is because it's a quarter mile
17 hike down a very steep draw and cliff, and carrying a
18 boat would be maybe a little bit dangerous. I've
19 boated through there in the past and had no issues at
20 all boating that riffle.
21 When I went to the Camp Verde, the Verde near
22 Camp Verde gage, that was last week.
23 CHAIRMAN NOBLE: Excuse me, Mr. Fuller.
24 Did you do something the same or similar for every
25 gage?

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1 THE WITNESS: Did the same thing at all
2 of them and the same kind of findings.
3 CHAIRMAN NOBLE: Will that be presented
4 in some sort of written form?
5 THE WITNESS: Pictures.
6 CHAIRMAN NOBLE: Not pictures. Not
7 written form? There won't be any measurements that
8 you're going to present?
9 THE WITNESS: Pictures of depth.
10 CHAIRMAN NOBLE: Pictures of depth. You
11 took a photograph of the rod?
12 THE WITNESS: Yes.
13 CHAIRMAN NOBLE: Okay, that will be
14 fine. Thank you, Joy.
15 BY MS. HERNBRODE:
16 Q. So you found in all of those instances that
17 the measured depths were deeper than the rating curve
18 would predict the depths would be?
19 A. Yes.
20 In the neighborhood, but somewhat deeper.
21 Q. Okay. Not wildly off?
22 A. No, except at the pools, of course, which are
23 very deep.
24 Q. Are rapids limiting to boating?
25 A. No. No, they're not. And this is in

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1 rebuttal to a number of folks who have testified to
2 that case, that aspect; and they just simply are. We
3 know that for a number of reasons. There are boating
4 guides written to tell you this is how you go down the
5 rapids and riffles. The riffles are so inconsequential
6 that they're not mentioned in most of the boating
7 guides. We have thousands, literally thousands, of
8 people that boat the river every year and were not
9 having known significant difficulties. I never had any
10 significant difficulties. We have historical accounts
11 where people got to the bottom and said, yeah, that was
12 a pleasant ride. Anybody could do it if they had the
13 patience and time. They're just not an impediment to
14 navigation in small, low draft boats.
15 Now, I will agree that they can be a slight
16 impediment going upstream. You have to get out of your
17 boat and drag through many of the riffles, or if you're
18 in a very big boat, a barge or whatnot, they would be
19 an impediment to that kind of boating.
20 Q. Do you find the idea that a boating guide
21 would be used as evidence of nonnavigability a little
22 strange?
23 A. Yes.
24 Q. Do you rely on online boating guides, and
25 what can they tell us?

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1 A. I would say I use them. It's always nice to
2 look at a picture of a river if you haven't been there
3 and haven't done it yourself. If you have done it
4 yourself, it's nice to look back and see, well, is that
5 what I thought I saw.
6 But the real proof is when you're there in
7 person and you see the conditions on that day that
8 you're there, with your skill level, comfort level.
9 That's when you decide what the rapid is like, what the
10 nonrapid is like, what the pools are like, what the
11 camping is like, et cetera.
12 Q. Do the boating guides have uniform
13 requirements for when the Verde is boatable? Do they
14 all say you can only do it during this season or only
15 at these flow levels?
16 A. No, they don't. They are inconsistent.
17 Q. Why do you think that that is?
18 A. People have different levels of experience.
19 People are writing for their particular type of boat.
20 Slingluff wrote for canoes. He was a canoeist. Other
21 boating guides, particularly the online ones, tend to
22 be focused on rafts.
23 People who are in rafts doing whitewater
24 rafting, they're more looking for an adventure. And
25 for them, in choosing what river they're going to go

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1 on, they're thinking about, well, how big is the water
2 going to be. They want the excitement. They want the
3 thrill. The other folks that are just traveling down,
4 and they're looking for a quiet ride.
5 So it depends on who their audience is what
6 they say. Some of them are writing to protect
7 themselves because there are lots of rooms that have
8 more lawyers than experts in it and they're just
9 trying to say, well, be cautious; I've told you be
10 cautious.
11 So there's lots of that kind of stuff. The
12 gas pump I pump tells me not to drink the gas because
13 we have to protect ourselves.
14 Q. Were you prepared today to talk individually
15 about the other sides' arguments about each of the
16 historic accounts?
17 A. Yes, I was.
18 Q. Okay. But we're not going to do that.
19 A. I believe my original testimony would
20 effectively rebut the kinds of spin I think was put on
21 those stories.
22 Q. Okay. But, generally, what do you think
23 about the spin on those accounts?
24 A. I think that as I -- I'm not going to change
25 my testimony from the original testimony. I told you

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1 which I thought -- I gave a very fair accounting of
2 which accounts were successful and which ones were not
3 and what kinds of boats they used and what we do and
4 don't know about those accounts. Most of them were
5 successful.
6 MS. HERNBRODE: Thank you very much,
7 Mr. Chairman. I believe we have exceeded your time
8 limitation requirement.
9 CHAIRMAN NOBLE: Well, I think you have
10 exceeded our expectations about when you were going to
11 finish, and we appreciate that.
12 Is there anyone that has some questions
13 for Mr. Fuller regarding his testimony today?
14 MR. MCGINNIS: Yes, Mr. Chairman.
15 CHAIRMAN NOBLE: Mr. McGinnis.
16 MR. HOOD: And I will likely have very
17 few following Mr. McGinnis, Mr. Chairman.
18 CHAIRMAN NOBLE: I'm not sure we can
19 trust you anymore after yesterday afternoon.
20 MR. HOOD: My recollection,
21 Mr. Chairman, is my examination was hijacked by a
22 couple of other gentlemen who asked questions in the
23 meantime.
24 MR. MCGINNIS: I think I have about a
25 half an hour. We'll be quick. Maybe shorter.

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1 REBUTTAL CROSS-EXAMINATION
2 BY MR. MCGINNIS:
3 Q. Good morning, Mr. Fuller.
4 A. Good morning.
5 Q. In your discussion with Ms. Hernbrode this
6 morning, you made the point that there's no place on
7 the Verde River where there are 5-foot pools and 1-inch
8 riffles. Do you recall that?
9 A. I remember that discussion.
10 Q. You have seen some pretty shallow riffles at
11 times on the Verde, haven't you?
12 A. Yes, I have.
13 Q. What's the most shallow riffle you've ever
14 seen on the Verde?
15 A. Well, in Segment 0, as I mentioned, there are
16 dry segments that I have seen.
17 Q. Outside of Segment 0.
18 A. There are portions in Segment 1, primarily
19 upstream of Perkinsville, where there are going to
20 be -- and you're asking me about maximum depths?
21 Q. Yes, riffles.
22 A. I didn't measure them in there, so I'm going
23 on recollection; but I'm guessing that there are
24 probably riffles in there that I've seen that are
25 4 inches as a single point, a single cross-section.

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1 Q. How about on Segments 2 through 5?
2 A. Well, 2 is significantly altered. So what I
3 have seen is what you're asking me about. So I have
4 not seen the ordinary and natural condition with the
5 reconstructed flow.
6 Downstream of the Verde Ditch, the river is
7 completely dry when they're diverting. So I have seen
8 it dry in that reach. A couple in the case where I
9 paddled through there, we carried over the dam. We saw
10 the dry river and said now what do we do? We dragged
11 our boats about a hundred yards, somewhere in that
12 neighborhood, found a pool, put it in the pool, paddled
13 across the pool, dry, drag. By the time we were a
14 quarter mile downstream, we were paddling again
15 continuously.
16 Q. How about in Segments 3, 4, and 5?
17 A. In Segment 3 I would doubt that there was a
18 point anywhere out there -- well, let me think about
19 that.
20 I can tell you that in paddling those, I
21 never had to get out of my boat for shallow water, and
22 I did it as low as 190, 190 cfs.
23 Q. And I don't mean to cut you off, but my
24 question is very specific and to the shallowest riffle
25 you've ever seen on those three segments.

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1 A. Yes, and so there's 190 miles of river and
2 I'm processing a lot of data here, so -- and a
3 55-year-old brain that is --
4 CHAIRMAN NOBLE: Young, very young.
5 THE WITNESS: Doesn't feel like that in
6 the morning.
7 Off the top of my head, I've probably
8 seen places where at a single point it's 6 inches as a
9 maximum depth.
10 BY MR. MCGINNIS:
11 Q. You talked some in your direct testimony this
12 morning on rebuttal about some boating you had done on
13 the Verde recently. Do you recall that?
14 A. Yes.
15 Q. And I think you said at one point you brought
16 a particular boat because it's easy to carry. Do you
17 recall that?
18 A. Yes.
19 Q. When was that trip?
20 A. The 21st of March.
21 Q. And you said the flow was about 294 cfs?
22 A. Yes.
23 Q. And you chose to make that trip in a modern
24 boat rather than a replica boat like those made by
25 Mr. Dimock, correct?

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1 A. I do not own a replica boat.
2 Q. And I believe Mr. Dimock testified that you
3 didn't ask him to borrow one of his replica boats and
4 try it on the Verde, right?
5 A. That's correct.
6 Q. Can you tell me why that is?
7 A. Why I didn't ask him to borrow his boat?
8 Q. Yes.
9 A. I don't like it when people ask to borrow my
10 boats, and they're not handmade. He put a lot of
11 effort into that. He doesn't know me very well at all.
12 We've met the once.
13 Q. And the 294 cfs that was there when you made
14 this last trip, that's in the general area of your
15 reconstructed median flow rate, right?
16 A. I believe Rich's reconstruction there is 440.
17 Q. It's within 100 cfs or so?
18 A. Well, it's half again as much, so...
19 But, you know, it's certainly not a flood.
20 Q. And so you had a pretty good flow at 294 cfs?
21 A. Yes.
22 Q. You had a gentleman who had made replica
23 boats, so there were replicas of those available before
24 statehood, right?
25 A. It was a replica of a boat that was available

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1 before statehood, is that what you said?
2 Q. Yes.
3 A. Yes. Yes, it was.
4 Q. And you didn't ask him, "Hey, let's go take
5 it down the river?"
6 A. We did, and he couldn't because of his knees.
7 This was his testimony.
8 Q. And when he said he couldn't go, you never
9 asked him, "Hey, can somebody else take it?"
10 A. Yeah, we may have, and I'm not sure he -- he
11 said he didn't know of anybody he wanted to have do
12 that. I don't recall, to tell you the truth. We may
13 have, though.
14 Q. So all the boating you've done recently on
15 the Verde has been with a modern kayak or canoe?
16 A. Kayak, canoe, inflatable or a rubber raft.
17 Q. And the people you said you saw on the raft
18 that were having a great time at 123 cfs, how long of a
19 time did you see them?
20 A. They were going through the pool where the
21 Camp Verde gage is, and they maybe -- we stopped to
22 chat for a minute, and so they maybe took five minutes
23 to get across the pool.
24 Q. Did you see them go through any riffles?
25 A. There's a riffle at the downstream end of the

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1 pool.
2 Q. Did you see them go through any rapids?
3 A. No.
4 Q. So you don't know if they were still having a
5 great time when they got to a rapid?
6 A. Well, I asked them if they did Verde Falls;
7 and they said they had run the Pre Falls, and they said
8 they took a stab at Verde Falls and got stuck and
9 picked up their raft and threw it to the bottom and
10 climbed back in.
11 Q. You talked some about the depths in the GLO
12 surveys. Do you recall that?
13 A. I do.
14 Q. You don't know, when you look at a GLO
15 survey, in most situations, where in the river the
16 surveyor was talking about the depth being?
17 A. No.
18 Q. So it could be anywhere?
19 A. Well, you assume it's generally in the area
20 where they surveyed, but anywhere within that area,
21 sure.
22 Q. You don't know whether it's in a pool or
23 riffle or rapid or Verde Falls?
24 A. They did not specify. So no, to answer your
25 question.

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1 Q. Do you still have the PowerPoint you did this
2 morning available?
3 A. I do.
4 Q. And I'm not sure you need to -- well, let's
5 pull it up.
6 I want to particularly go to Page 1.
7 A. Just a moment here.
8 Q. This is the slide that was originally
9 prepared by Dr. Schumm, is that your understanding?
10 A. I believe it's from one of Dr. Schumm's
11 publications, yes.
12 Q. And your testimony this morning was that you
13 understood that Dr. Mussetter had said that the Verde
14 River fell between 3a and 3b. Do you recall that?
15 A. I thought I had said 3b or 4.
16 Q. Okay. And if he said 3b, 4, or 5 in the
17 record, in the transcript, you never heard that?
18 A. I did not.
19 Q. And would your opinion change about what his
20 opinion was if he said 3b, 4, or 5?
21 A. If he said 5, then there apparently was some
22 segment that he was considering it looks just like
23 that, in which is case I would disagree. But, yeah,
24 then I would need to amend that.
25 Q. Let's move on to Page 2. This is the green

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1 blob diagram, what I referred to as least.
2 Have you read the USGS professional paper
3 that this chart comes from, where Mr. Hjalmarson got
4 it?
5 A. As I sit here today, I don't recall
6 specifically reading this paper; but I've read a lot of
7 papers in the last 30 years, and I may have.
8 Q. Do you know if that paper has any relevance
9 at all to the low flow channel?
10 A. No. As I pointed out, typically when people
11 are talking about braided/meandering, they're looking
12 at a bankfull discharge and they're thinking about
13 something in a two-year.
14 And as I've testified previously, and we
15 won't spend more time on today, we talked about this in
16 great depth about this idea of a flood channel and the
17 low flow channel. And I completely agree that the
18 flood channels have characteristics of braiding. And I
19 believe that Dr. Schumm and Dr. Mussetter, when they
20 call those flood channels braided, I believe that
21 completely.
22 We part company when we're talking about the
23 low flow channel, and that was the point of my rebuttal
24 this morning.
25 Q. But you would agree that if you used the

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1 bankfull discharge number, which is what's called for
2 in this USGS document, the Verde comes on the braided
3 side of the line?
4 A. If you use the bankfull discharge of the
5 flood channel, yes, it is on the braided side. That is
6 what I testified this morning.
7 Q. And you testified, also, this morning about
8 how it's a bad idea to take a particular document and
9 change the assumptions and change the things you're
10 putting into it and try to think you're going to get
11 that same result. Do you recall that, with respect to
12 the Washington study?
13 A. I did, and I would add that I believe I
14 testified unless you've made analysis of the
15 consequences; and in this case, I do believe I have.
16 Q. And how could you have made an analysis of
17 the consequences if you're not even sure you read the
18 paper that this came from?
19 A. Well, this concept here is hardly unique to
20 this paper. This is something that's pretty widely
21 known by geomorphologists, and I have looked at a lot
22 of rivers in a lot of places, and I stand by my
23 testimony.
24 Q. I'm going to hand you a new exhibit. This is
25 a new exhibit, and I don't have a lot of questions

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1 about it.
2 A. This is new evidence?
3 Q. Yes, sir.
4 CHAIRMAN NOBLE: Mr. McGinnis, what are
5 we doing?
6 MR. MCGINNIS: I'm going to ask him a
7 few questions about this one photograph of the Stoneman
8 Road in relation to his opinion about the navigability
9 of the lower Verde.
10 THE WITNESS: I don't think I made any
11 testimony in my rebuttal about the Stoneman Road.
12 BY MR. MCGINNIS:
13 Q. Well, I don't think my cross-examination is
14 limited to your rebuttal, but I have just a few
15 questions about this.
16 Let me ask you this: Can you look at this
17 for me, please?
18 CHAIRMAN NOBLE: Okay, where are we
19 going with this?
20 MR. MCGINNIS: I have some questions
21 about this picture of the Stoneman Road, and there's
22 been a lot of evidence in the last week about the
23 Stoneman Road and the difference between traveling on
24 the Stoneman Road and traveling on the Verde River.
25 This gentleman has already testified

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1 this morning about his recent boating trips on the
2 Verde River. I probably will have fewer questions
3 about it and it will take less time than what we've
4 spent talking about it so far.
5 CHAIRMAN NOBLE: But this is not about
6 the Verde River.
7 MR. MCGINNIS: Well, it is about the
8 Verde River, because we've been talking about -- we
9 have had a lot of testimony this week about
10 transportation on roads versus transportation on the
11 Verde.
12 THE WITNESS: Mr. Commissioner, I'm
13 happy to answer some questions. I'll be brief.
14 CHAIRMAN NOBLE: Jon, I'm happy you're
15 happy, but that's not the issue.
16 Anyway, go ahead, Mr. McGinnis, for a
17 little bit.
18 MR. MCGINNIS: For a very little bit.
19 BY MR. MCGINNIS:
20 Q. I will represent to you, Mr. Fuller, this is
21 a picture that we got off the internet that's from 1870
22 of the Stoneman Road, okay. That's my representation
23 to you. Do you understand?
24 A. I understand that's your representation, yes.
25 Q. And it says that on the next page, if we were

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1 going to take the time to deal with it.
2 A. Sure. I have not seen this picture or its
3 source or anything, but, sure, I'll take your word for
4 it.
5 Q. Take a look at this picture; and if you
6 assume the Stoneman Road looks like this picture for
7 its entire distance, would it be easier to travel on
8 this road or on the Verde River in its condition as it
9 existed in 1870?
10 A. What am I traveling in?
11 Q. Your one person traveling by yourself with no
12 gear.
13 A. You're asking me if it's easier to walk on a
14 road or walk in a river?
15 Q. You've got a boat.
16 A. What kind of boat?
17 Q. The criterion boat that you used in this
18 case.
19 A. Okay. If it would be easier to boat. Am I
20 going upstream or am I going downstream?
21 Q. Downstream.
22 A. And I'm walking.
23 And you're purporting to me that this is the
24 condition of the Stoneman Road as of the time of
25 statehood, and I'm thinking about the river as of the

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1 time of statehood.
2 Q. No, this is a condition of Stoneman Road, the
3 photograph on the second page says, 1870.
4 A. Okay.
5 Q. So think of the river in 1870. That's the
6 only question I have about it.
7 A. All right. I would say -- and when you say
8 easier, level of effort, and I'm carrying no gear?
9 Q. Yes.
10 A. About the same.
11 But you're asking me a question about
12 something that I hadn't testified before, and I would
13 like to go on a little bit. So it's really not a
14 question --
15 Q. We'll go on all day, if you would like, but I
16 don't think Mr. Chairman would.
17 MR. SLADE: Mr. Chairman.
18 THE WITNESS: You know what --
19 CHAIRMAN NOBLE: Eddie.
20 MR. MCGINNIS: I'm going to let him
21 answer. I'm not stopping him.
22 CHAIRMAN NOBLE: Jon, what would you
23 like to talk about?
24 THE WITNESS: Well, I don't believe --
25 my testimony was characterized as I said it was easier

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1 to go on a road than on the river. And what my
2 testimony actually was, if you go back and look at it,
3 was that if you're carrying heavy loads, it's easier to
4 go on a road than in the river.
5 I never said it was easy to go on the
6 roads; or if I did, that's not what I meant to say.
7 Clearly, going down a bumpy road pulling a mule or
8 having the mule pull you, or a team of mules, is a
9 difficult thing and the roads are bumpy and hard.
10 CHAIRMAN NOBLE: So since we're enjoying
11 this experience, just let me ask you, if you had
12 200 pounds of gear on the same day and you could choose
13 between that road and the river, which would you take?
14 THE WITNESS: If I'm carrying
15 200 pounds, it's going to be a short walk for me.
16 CHAIRMAN NOBLE: You don't have to walk.
17 You can have something on the road to help you carry
18 it, just like on the river you have something to help
19 you carry it.
20 THE WITNESS: Yeah, and that's closer to
21 the real question. So the real question is which would
22 you choose? So if I'm going downstream with 200 pounds
23 and I have my wooden canoe or a wooden flat boat and
24 the river is at its median discharge, I would go
25 downstream in the boat.

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1 If I were going back upstream or if I
2 knew that when I got there, to wherever there was, I
3 had to go overland or I needed transportation of some
4 other kind, like I needed to get up to Jerome for
5 something, well, it doesn't do me much good to arrive
6 at a place and need a horse, a mule, a wagon, and not
7 have one. So I would probably take the horse, mule and
8 wagon.
9 Depends on what I'm bringing. And as
10 the loads get heavier, as Mr. Dimock testified when
11 somebody asked him the question about getting a lot of
12 ore or something down the river, he said, "Well, yeah,
13 I would take a whole lot of boats." Well, in my wagon
14 I can carry a ton of material. In my small boat, I
15 can't. So that makes the economics very different, and
16 that's what I was testifying to when I gave my direct.
17 CHAIRMAN NOBLE: Thank you.
18 Mr. McGinnis.
19 BY MR. MCGINNIS:
20 Q. Okay. You didn't talk a lot about the
21 historical accounts this morning, but I have a few
22 questions about those, about things you've talked
23 about.
24 Do you recall the photograph of the two guys
25 in the boat?

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1 A. I do.
2 Q. Well, I've got a bunch of documents here that
3 we can go through, if we need to, but I'm trying to
4 short-circuit it.
5 Is it your testimony that when you testified
6 back in 2006, you equated this photograph with the boat
7 used to cross the river at Fort McDowell, or Fort
8 Verde, excuse me?
9 A. I don't recall.
10 Q. Okay.
11 CHAIRMAN NOBLE: Mark, are we staying
12 within his --
13 THE WITNESS: Nope.
14 CHAIRMAN NOBLE: -- rebuttal testimony?
15 MR. MCGINNIS: I believe so. He talked
16 about historical boating, I think, to some extent.
17 THE WITNESS: I did not talk about this
18 account.
19 MR. MCGINNIS: He said he didn't recall.
20 I'm just going to remind him.
21 THE WITNESS: Mr. Commissioner, I --
22 CHAIRMAN NOBLE: You're not reminding
23 him of something he said during his testimony today.
24 MR. MCGINNIS: I am not reminding him of
25 something he said during his testimony today. I'm

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1 reminding him of something that came out through the
2 whole hearing, after he testified the first time, that
3 I think is incredibly relevant to what we're talking
4 about here with these accounts. It will be a very
5 short period of time. It's up to you whether you let
6 me do it.
7 THE WITNESS: I testified in 2006, as
8 this says. I further testified about this photograph
9 in the first round of hearings, and I was
10 cross-examined for the better part of two days on these
11 things. We had plenty of opportunity to have this
12 conversation previously.
13 MR. MCGINNIS: And my point is you
14 testified differently in 2006 than you did this time.
15 THE WITNESS: But I did not testify this
16 morning.
17 CHAIRMAN NOBLE: Mr. McGinnis, we would
18 appreciate it if you would call that to our attention
19 in any type of documents that you submit as part of the
20 briefing.
21 MR. MCGINNIS: Certainly will.
22 CHAIRMAN NOBLE: We would appreciate
23 that.
24 BY MR. MCGINNIS:
25 Q. You did testify about the Day brothers this

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1 morning. Do you recall that?
2 A. Yes, vaguely.
3 Q. Pardon me?
4 A. Vaguely.
5 Q. There was some questioning by Mr. Slade of
6 Mr. Burtell, I think it was the day before yesterday,
7 about the reliability and credibility of historic
8 accounts. Do you recall being here for that?
9 A. Yes.
10 Q. And do you recall Mr. Slade asking
11 Mr. Burtell whether the credibility of the person
12 giving the account should be considered when you're
13 figuring out how much weight to give the account? Do
14 you recall that?
15 A. Yes.
16 Q. And do you agree with that?
17 A. Yeah, I think that's one of the factors, yes.
18 Q. And do you recall Mr. Slade asking about
19 whether Mr. Day was a man of stature because he had
20 been the Arizona Game & Fish Commissioner?
21 A. I don't specifically recall that.
22 Q. What do you know about J.K. Day?
23 A. I know that he was a trapper. I know that
24 later in his life he became some kind of Game & Fish
25 Commissioner. I've seen his obituary and some things

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1 people said about him as being an extremely loyal
2 friend, and that's pretty much what I recall about him.
3 Q. Do you recall anything else about his
4 obituary?
5 A. There was an account of a friend who was
6 mauled by a bear on a hunting trip and went out to find
7 him or something like that.
8 Q. Do you recall there being some controversy
9 about whether that was maybe a fraudulent insurance
10 scam?
11 A. No.
12 Q. Okay. I've just got a couple of exhibits to
13 talk about that.
14 MR. MCGINNIS: This is a new exhibit.
15 BY MR. MCGINNIS:
16 Q. Mr. Fuller, what I'm giving you is --
17 A. You're asking me a question about Mr. --
18 Q. Mr. Day and his partner, Mr. McCarty.
19 A. Rich's testimony about this account or
20 something?
21 Q. No, I'm asking you a question about the John
22 Day -- the credibility of the Day brothers' account
23 that you testified about this morning, that you
24 testified about several other times, okay?
25 A. Okay.

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1 Q. I've given you a newspaper article dated
2 October 15th, 1898. Do you see that on the front of
3 the first page?
4 A. Do.
5 Q. Okay. The second page is a blowup of that
6 that's a little easier to read for us old guys. And it
7 says "John McCarty and J.K. Day have been appointed
8 fish and game commissioners for Arizona."
9 Do you see that?
10 A. I do.
11 Q. It says "Heretofore the duties of
12 commissioner have not been onerous. There was nothing
13 to do but draw salaries and make reports. It is not
14 within the memory of any man now living that a report
15 was ever submitted. As to the salary, no legislature
16 ever made an appropriation or any other provision for
17 it. It was not even fixed. So the commissioners have
18 practically...nothing to do."
19 Do you see that?
20 A. I do.
21 Q. So would you agree with me that the position
22 of State Game & Fish Commissioner was a little bit
23 different in 1898 than it is today?
24 A. I have no doubt that the Commission job is
25 different than it is today, if that's your question.

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1 Q. And the Fish & Game Commissioner position was
2 not prestigious or relating to stature quite as much as
3 it would be today, would it?
4 A. Yeah, I don't -- to tell you the truth, I
5 have no idea what kind of prestige comes with that job
6 today or then.
7 CHAIRMAN NOBLE: Mr. McGinnis, was that
8 document in a preceding exhibit?
9 MR. MCGINNIS: No.
10 CHAIRMAN NOBLE: Have we marked it in
11 some way so we can identify it for the record?
12 DIRECTOR MEHNERT: Yes.
13 THE WITNESS: George is going to get us
14 a number, I think.
15 DIRECTOR MEHNERT: 86.
16 MS. HERNBRODE: 86.
17 BY MR. MCGINNIS:
18 Q. Mr. Fuller, this is another newspaper article
19 from the Arizona Republican dated September 18th, 1905.
20 Have you seen this article before?
21 A. No, I have not.
22 Q. And this is an article entitled "Is John
23 McCarty dead?"
24 Do you see that?
25 A. Yes.

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1 Q. And John McCarty is the same person that was
2 the Game & Fish Commissioner with Mr. Day. Do you
3 recall that from the prior article?
4 A. I don't, but I'll look.
5 There is a John McCarty, yes.
6 Q. And if you look at the third paragraph of
7 this article I just gave you, it refers to
8 Mr. McCarty's friend and partner, J.K. Day.
9 Do you see that?
10 A. Okay.
11 Q. And it refers to this episode that you were
12 talking about about the person being mauled by the
13 bear. Do you see that? You can take some time to read
14 it, if you need to.
15 A. Okay, I haven't seen this article before and
16 I have not done any research on the topic of John
17 McCarty. I don't know what subsequent articles came
18 out regarding this. This is completely new to me.
19 Q. So --
20 A. I have no idea what part of the testimony in
21 the record you're giving me here. You're just throwing
22 some stuff in front of me I've never seen before.
23 Q. Let me ask you just a simple question.
24 If there is evidence in this article that
25 implies that Mr. Day was involved in a conspiracy to

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1 defraud a life insurance company with Mr. McCarty,
2 would that affect the amount of weight you would give
3 to the article about the Day brothers' trip in the
4 1890s?
5 A. You're asking me a hypothetical. Let's just
6 call that out right here.
7 Q. Yes, I am.
8 A. And I guess I don't know what other
9 information. If you're telling me that this article
10 says that he was found guilty or he admitted his guilt,
11 and if it was some sort of a pattern of behavior on his
12 part that could be traced throughout his life, then I
13 think I would tend to look at his other account more
14 critically. Not to say I would disagree with anything
15 that was said in the previous account, but I would look
16 at it more critically.
17 MR. MCGINNIS: That's all I have,
18 Mr. Chairman.
19 MS. HERNBRODE: That last exhibit
20 George, would that be X087?
21 DIRECTOR MEHNERT: Correct.
22 CHAIRMAN NOBLE: Do you have something
23 else?
24 MR. MCGINNIS: Could I have one more
25 line? I'm sorry.

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1 CHAIRMAN NOBLE: Are we going to start
2 calling you Sean?
3 MR. MCGINNIS: I know. I had one more
4 set of questions, and I think it's relevant to his
5 segmentation.
6 BY MR. MCGINNIS:
7 Q. One more set of questions that will lead to
8 your segmentation that we talked about this morning.
9 It was your understanding that -- it's your
10 opinion that Segments 1 through 5 are all navigable,
11 right?
12 A. Yes.
13 Q. Could you rank for me, from the most
14 navigable to the least navigable, those five segments?
15 A. Sure. Yeah, that was an interesting question
16 that somebody asked Rich yesterday.
17 Q. Yeah, I thought it was really good, so I
18 thought I would copy it.
19 A. Yeah. And, actually, I'm going to go back,
20 because as he was answering, I was making my own notes,
21 so I will tell you what I came up with.
22 COMMISSIONER ALLEN: Going from what to
23 what?
24 BY MR. MCGINNIS:
25 Q. From most to least, most navigable to least

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1 navigable.
2 A. And, you know, Eddie asked that question in
3 like the exact triple opposite of what you did, so --
4 Q. Because your opinion is --
5 A. -- my notes aren't going to do me any good.
6 Q. Actually, your opinion is the exact triple
7 opposite of Mr. Burtell in the same thing; and,
8 frankly, my question to you requires less
9 double-negatives than Eddie's did. So I got the easy
10 side of it.
11 A. Less double-negatives. I don't know.
12 Q. Most to least.
13 A. Most navigable --
14 CHAIRMAN NOBLE: Jody, are you okay?
15 MR. MCGINNIS: I didn't have him read
16 the whole newspaper article. You should be happy.
17 CHAIRMAN NOBLE: Are you ready, Jon?
18 THE WITNESS: Same rules, no ties?
19 BY MR. MCGINNIS:
20 Q. Yes, sir.
21 A. I would say Segment 2 is most navigable,
22 followed by 4, followed by 5, followed by 3, followed
23 by 1.
24 Q. Okay.
25 A. 1 being the least navigable.

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1 Q. Tell me the characteristics of Segment 4 that
2 make it less navigable than Segment 2.
3 A. They're quite close. They're quite close.
4 And, again, I'm thinking about this in their ordinary
5 and natural condition, as I understand it.
6 I think we have a stronger historical record
7 in 2. My own experience on the river, it's quite easy
8 to boat. In fact, I would guess that in its natural
9 condition, in a small boat, I could take it upstream
10 quite easily in Segment 2. And I think Mr. Randall, I
11 believe his name was --
12 Q. You've flipped my question around a little
13 bit. I've asked you the characteristics of 4 that make
14 it less navigable than 2, and you're telling me the
15 characteristics of 2 that make it more navigable than
16 4.
17 A. It's potato/potato; more one, less the other.
18 There are more rapids in Segment 4 than there
19 are in 2. That would probably be the only one that
20 comes to mind right now.
21 Q. Okay. Tell me the characteristics of
22 Segment 5 that make it less navigable than 2 or 4.
23 A. I kind of feel like I'm at the optometrist
24 where the guy is going back and forth.
25 Q. And I hate to ask, but that's my question.

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1 A. And my dad was an optometrist, and he used to
2 get so mad at me because I changed my mind.
3 Q. I always thought I had the wrong answer if
4 they keep asking you, but there you go.
5 A. And you wanted 2 and 5 --
6 Q. Yeah.
7 A. -- or 4 and 5?
8 Q. What are the characteristics of 5 that make
9 it less navigable than 2 and 4?
10 A. I've paddled both. I have a pretty strong
11 record in 5 as well. And if you ask me on a different
12 day, I might flip-flop those two. There are actually
13 fewer rapids in 5. So that kind of argues against what
14 I was saying.
15 CHAIRMAN NOBLE: You're winning, though.
16 THE WITNESS: Thank you.
17 Yeah, I might actually switch that
18 around, if I thought about it a little more. I'm
19 probably being swayed by my modern boating experience
20 because Segment 5 tends to be a little strainer. You
21 know, the flows aren't quite what they used to be.
22 There's been a lot of disturbance in there, access is
23 an issue. And these days with the Indian Community,
24 it's darn near impossible to get approval to paddle
25 through there.

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1 Some of that's probably swaying my
2 decision in a way it shouldn't in considering the river
3 in its ordinary and natural condition.
4 So, yeah, I think if you allowed me to
5 be equal, I would say 4 and 5 are pretty much equal.
6 BY MR. MCGINNIS:
7 Q. Okay. How about let's just talk between 5
8 and 2 if you're having problems between 4 and 5.
9 A. 5 and 2?
10 Q. What are the characteristics of 5 that make
11 it less navigable than 2?
12 A. Boy, this was really easy when I was watching
13 Rich do it yesterday.
14 Q. It's just like being on a game show on TV,
15 right?
16 A. Yeah, all the pressure.
17 CHAIRMAN NOBLE: And you were willing to
18 help Rich a lot.
19 THE WITNESS: If he had looked over, I
20 would have. I would have.
21 BY MR. MCGINNIS:
22 Q. You can blame Mr. Slade for this.
23 A. Yeah, I think a little more record. Again,
24 being on the water there, having done 2 so many times,
25 I'm very, very familiar with it. I've done 5 fewer

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1 times. It's wider. It's wider.
2 Q. 5 is wider?
3 A. 5 is wider than 2.
4 Q. So you think that's why it's less navigable?
5 A. Yeah. So for an equivalent discharge,
6 because it's wider, it's going to be a little less
7 deep. But as we discussed in our cross-examination,
8 there is a little more braiding, more split channels
9 that bring some flow out of the main channel in
10 certainly more places than there are in Segment 2.
11 Still wouldn't go so far as to call it braided, but we
12 would have less of an argument down there.
13 Yeah, that's probably about it.
14 Q. How about why is 3 less navigable than 2, 4,
15 or 5?
16 A. This is a long one more question.
17 Q. I said one more set of questions. It's just
18 a big set.
19 A. Oh, yeah, clarify there.
20 Now, this is 1 versus what?
21 Q. The three that you had ranked above it, 2, 4
22 and 5.
23 MR. HOOD: Segment 3 versus 2, 4 and 5.
24 THE WITNESS: Segment 3 versus 2, 4, and
25 5.

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1 MR. MCGINNIS: Thanks, Sean.
2 MR. HOOD: Someone said Segment 1.
3 BY MR. MCGINNIS:
4 Q. So let me ask the question again.
5 A. Okay.
6 Q. Tell me the characteristics of Segment 3 that
7 make it less navigable than Segments 2, 4, and 5.
8 A. Segment 3 is the whitewater reach and that's
9 where the Class IV rapid is. Sometimes it's a
10 Class IV. It's Verde Falls. And Punk Rock is another
11 one that's a III, that I've scouted that one. The
12 first time I went down I scouted it. I probably
13 scouted it the second time. So it requires a little
14 more skill.
15 Q. Is that all?
16 A. Yeah.
17 Q. Okay. How about the characteristics of
18 Segment 1 that make it the least navigable of the five
19 segments?
20 A. There's the least amount of flow up there,
21 particularly above Perkinsville.
22 MR. MCGINNIS: Okay. Thank you.
23 CHAIRMAN NOBLE: Thank you, Sean.
24 MR. MCGINNIS: He's probably more
25 offended by that than I am, I hate to tell you.

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1 CHAIRMAN NOBLE: Mr. Hood, do you have
2 some questions?
3 MR. HOOD: I will be very brief.
4 CHAIRMAN NOBLE: Lawyers always say
5 that.
6 COMMISSIONER HORTON: Ain't that the
7 truth.
8 MS. HERNBRODE: Most of us lie.
9 MR. HOOD: Good morning, Mr. Fuller.
10 THE WITNESS: Good morning.
11 CHAIRMAN NOBLE: Now, when you say very
12 brief, are we going to need to take a break now or --
13 THE WITNESS: Depending on how many
14 interjections I receive, I think I will be done here
15 very shortly.
16 CHAIRMAN NOBLE: You heard that,
17 Mr. Allen.
18 MR. HOOD: I had Fred in mind, actually;
19 but, no, I will be brief.
20 MR. BREEDLOVE: I don't understand that.
21
22 REBUTTAL CROSS-EXAMINATION
23 BY MR. HOOD:
24 Q. A couple questions for you, Mr. Fuller, about
25 your recent work in the field taking some measurements

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1 out in the stream.
2 Do you recall that testimony from earlier
3 this morning?
4 A. I do.
5 Q. And it sounds like we're going to be getting
6 some materials added to the record reflecting that
7 work; is that your understanding?
8 MR. SLADE: Yes.
9 THE WITNESS: Yes.
10 BY MR. HOOD:
11 Q. Okay. Will those materials indicate for us
12 what date that work was done?
13 A. Yes.
14 Q. Will those materials indicate the discharge
15 at the gage at the time that you were making those
16 depth measurements?
17 A. Yes. I included the USGS gage data for that
18 day as a JPEG in the file.
19 Q. And I assume that the depths that you
20 measured were the maximum depth of the cross-section?
21 A. I did traverses across the cross-section,
22 yes.
23 And to be clear, I think somebody asked me if
24 I had a survey rod in every one of them. I had the
25 survey rod at Clarkdale. You're not going to be able

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1 to read the survey rod. You're going to be able to
2 look at me and see he's holding a survey rod and it's
3 up to his knees.
4 CHAIRMAN NOBLE: Did you record the
5 depth somewhere?
6 THE WITNESS: Yes.
7 CHAIRMAN NOBLE: Okay, if you recorded
8 the depth. And you said that we were going to get
9 photographs.
10 THE WITNESS: Yes.
11 CHAIRMAN NOBLE: I wonder how much
12 longer I can take and really use up his time. Anybody
13 have any good ideas?
14 THE WITNESS: So I did not have the
15 survey rod with me at Tangle Creek or Camp Verde.
16 CHAIRMAN NOBLE: But somehow you
17 recorded a depth, and you have --
18 THE WITNESS: Yes.
19 CHAIRMAN NOBLE: -- then reported that
20 depth that you did record?
21 THE WITNESS: Yes.
22 CHAIRMAN NOBLE: Okay.
23 BY MR. HOOD:
24 Q. Mr. Fuller, you had some discussion earlier
25 today about mean flows versus median flows. Do you

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1 recall that discussion generally?
2 A. I don't.
3 Q. Okay. Let me ask you a straightforward
4 question. I think I've asked this to you before, so I
5 apologize for the repetition, but I just want to make
6 sure we've got it.
7 In the state of Arizona and probably across
8 the Southwest, median flows are more representative of
9 typical flow conditions for a Southwestern stream than
10 would be the mean flow; true?
11 A. Yes.
12 Q. You had a little bit of discussion earlier
13 this morning about Black River. Do you recall that?
14 A. Yes.
15 Q. And the rapids that you mentioned as playing
16 a role in your decision to recommend against pursuing
17 additional study on that river to evaluate navigability
18 was the presence of some rapids, and I think you said
19 they were Class III and IV; is that right?
20 A. Yes.
21 Q. The folks who you saw last weekend having a
22 great time in a raft, was it a rubber raft?
23 A. Yes.
24 MR. HOOD: Thank you, Mr. Fuller.
25 CHAIRMAN NOBLE: Is there anyone else

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1 who wishes to question Mr. Fuller?
2 MR. HELM: I just have one question.
3 CHAIRMAN NOBLE: Mr. Helm, as long as
4 you come or stand there and do it, but with no notepad.
5 MR. HELM: I will not have a notepad. I
6 didn't make a note of this deal, other than the numbers
7 of the exhibits.
8
9 REBUTTAL CROSS-EXAMINATION
10 BY MR. HELM:
11 Q. Were there more than one Class IV rapid on
12 the Black River section you talked about?
13 A. Yes, and that was the issue. It was not the
14 presence of a single Class IV. It was the number and
15 spacing of them, and as well as a number of other
16 factors. Rapids was not the only factor.
17 Q. What were the other factors?
18 A. The factors of the seasonality of the flow, a
19 very brief season that is not very predictable, and as
20 well as there are years when there is no season on that
21 particular river.
22 MR. HELM: Thank you.
23 CHAIRMAN NOBLE: Joy.
24 MS. HERNBRODE: Unless anybody else over
25 here has any more. I just have two.

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1 CHAIRMAN NOBLE: Going once.
2
3 REBUTTAL REDIRECT EXAMINATION
4 BY MS. HERNBRODE:
5 Q. Jon, when you brought a lightweight boat to
6 carry, it was because you were just planning to boat
7 down Bob's site and then go back to the car, correct?
8 A. I thought I was going to have to walk the
9 mile and a half back up. I have a bad shoulder. My
10 other boat that I use that you see in my other
11 pictures, I had to move the seat, so it's not quite
12 balanced, and so you're carrying it on your arms, and
13 this one I can set on my shoulder, other shoulder.
14 Q. And I just want to make sure the record is
15 really clear. In the video it appears that there may
16 be cargo in the front of that boat. Those are empty
17 bags, it's lightweight; is that true?
18 A. Yeah. That boat has airbags in it, yeah. I
19 didn't need them that day, but I keep them in the boat.
20 Q. Okay. If the evidence shows that the life
21 insurance company -- we're back to the Day brothers.
22 Sorry.
23 If the evidence shows that the life insurance
24 companies associated with Mr. McCarty's death
25 eventually paid out, and there was no evidence, other

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1 than newspaper speculation after Mr. Day's death, that
2 Mr. Day had any involvement, would the whole
3 controversy have any weight at all regarding Mr. Day's
4 credibility, in your mind?
5 A. No. That's why I was asking for the
6 clarifying questions. So, no, it wouldn't.
7 CHAIRMAN NOBLE: Just a masterful
8 question, Joy.
9 MS. HERNBRODE: Took me a whole five
10 minutes to write it.
11 CHAIRMAN NOBLE: Sewed that thing up
12 really tight.
13 Okay. Is there anyone else who would
14 like to ask Mr. --
15 MS. HERNBRODE: Fuller.
16 CHAIRMAN NOBLE: -- Fuller some
17 questions?
18 If not, are there any other witnesses
19 for the Verde River?
20 MS. HERNBRODE: Mr. Chairman, we do not
21 have any more witnesses.
22 CHAIRMAN NOBLE: There are no other
23 witnesses for the Verde River. The testimony for the
24 Verde River is now closed.
25 Fred, have we set the briefing schedule

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1 on this?
2 MR. BREEDLOVE: No.
3 CHAIRMAN NOBLE: The briefing schedule
4 will begin no earlier, that is, the first day of the
5 time period in which you have to begin the briefing
6 will begin no earlier than three weeks from today, and
7 it will begin no earlier than one week after the
8 transcript is filed.
9 We won't set -- you know, 45 days for
10 your first brief, that won't happen until one week
11 after the transcript is filed.
12 MR. BREEDLOVE: We need a deadline for
13 filing additional evidence. Typically, haven't we done
14 two weeks after the close of hearing for the deadline
15 for filing additional evidence? Is that correct?
16 MS. HERNBRODE: It has been coinciding
17 with the date of the filing -- the anticipated date of
18 the filing of the transcript, which was about two
19 weeks, I believe, but we have to give the court
20 reporter an extra week, I believe, for a week of
21 hearing.
22 CHAIRMAN NOBLE: Well, I have to look at
23 the calendar now.
24 Let's have all additional evidence will
25 be filed by the 17th, Friday. How does that sound?

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1 MS. HERNBRODE: Of April?
2 CHAIRMAN NOBLE: April.
3 MS. HERNBRODE: And, Mr. Chairman, I
4 understand there are some parties who may wish to make
5 some corrections on the transcripts that have been
6 previously filed. Would those also be due on that
7 date?
8 CHAIRMAN NOBLE: You know, you bring up
9 an interesting point, Joy. Typically, we do not
10 correct or alter the transcript. However, in this
11 case, due to some language issues, we are going to
12 alter the transcript, but only as to the language
13 issues.
14 MR. BREEDLOVE: And the correction for
15 the name.
16 CHAIRMAN NOBLE: You had to bring that
17 up.
18 We will do the typical thing like for a
19 deposition. If you find something in there that you
20 say I wish I hadn't said, well, you can file something
21 that says I wish I hadn't said that, but that don't
22 change the transcript. The transcript is what it is,
23 unless you want to challenge the reporter. Yeah, we're
24 probably not going to go through that proceeding
25 either.

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1 Any other questions, comments, or
2 issues?
3 Okay. Then the hearing is concluded,
4 and we will gather over here for a little discussion.
5 (The proceedings concluded at
6 11:06 a.m.)
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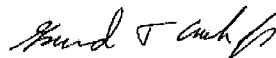
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2 COUNTY OF MARICOPA }
3
4 BE IT KNOWN that the foregoing proceedings
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6 a full, true, and accurate record of the proceedings,
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8 the proceedings were taken down by me in shorthand
9 and thereafter reduced to print under my direction.
10
11 I CERTIFY that I am in no way related to
12 any of the parties hereto, nor am I in any way
13 interested in the outcome hereof.
14
15 I CERTIFY that I have complied with the
16 ethical obligations set forth in ACJA 7-206(F)(3)
17 and ACJA 7-206 (J)(1)(g)(1) and (2). Dated at
18 Phoenix, Arizona, this 19th day of April, 2015.
19
20
21
22
23
24
25



JODY L. LENSCHOW, RMR, CRR
Certified Reporter
Arizona CR No. 50192

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complied with the ethical obligations set forth in
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