

**PRESENTATION TO ARIZONA STREAM
AND NAVIGABILITY COMMISSION**

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Gila River
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The purpose of this address is to discuss the navigability of the Gila River and the resulting ownership of the riverbed lands in the reach immediately upstream of its junction with the Salt River. Most of this reach bisects the Gila River Indian Reservation. There are four points we would like to make.

First, this Commission lacks jurisdiction to determine the navigability and resulting ownership in the above-mentioned reach.

Second, ownership of most of the reach had already passed to the Pima-Maricopa's of the Gila River Indian Reservation before February 14, 1912.

Third, the Gila River in that reach, was not navigable before Anglo-American development.

Fourth, the Gila River was not, as of the date of Statehood, a navigable stream.

The first point is as to the Commission's jurisdiction. In the aforementioned reach, the ownership of the riverbed affects the ownership of the Gila River Indian Reservation. Unless Congress specifically provides for state jurisdiction on a certain matter, the Federal Government retains jurisdiction on all matters relating to the Gila River Indian Reservation and other Indian reservations. To our knowledge, no such exemption exists.

The second point concerns the ownership. Irrespective of whether the riverbed was navigable, there is no doubt that this land was held by the Pima-Maricopa Confederation prior to the advent of American sovereignty in 1848. This fact was already

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recognized by the United States Indian Claims Commission in Docket 228. The Federal Government recognized the Pima-Maricopa ownership of that land when it, on February 28, 1859, reserved for the Gila River Indian Reservation 64,000 acres of land. On several occasions after 1859, but before 1912, the Reservation was expanded along the river. The current boundaries of the Reservation encompass the expansions that occurred prior to 1912, as far as river ownership is concerned. There were three expansions in 1911, 1913, and 1915 on the south side of the Reservation that were minor in scope and well away from the river. When the State came into existence in 1912, the Federal Government only retained title to the bed of the Gila River as Trustee for the Pima-Maricopa Indians of the Gila River Indian Reservation. It did not have the ability to convey that title to the State of Arizona whether or not the River was navigable.

The third point is that the river was not navigable as of the date of Statehood. I have worked with the Gila River Indian Reservation and on the Gila River all of my professional life. I am well-acquainted with the history of the Pima Indians. To double check, I have checked with the major reference by Frank Russell entitled "The Pima Indians". In all of my studies, I have never seen any indication that the Pima Maricopas used canoes for transport of goods anywhere in their area. The records are clear that the Pimas lived on both sides of the river for extensive distances. They engaged in trade with the Yumas, the Mohaves, the Papagos, the Mexicans, and the Maricopas. Later they engaged in trade with the Forty Niners, the U.S. Army, and other settlers. None of the references makes any mention that canoes or rafts were used for this purpose. The life of the Pimas revolved around the river. Their name is Akimel O'ohdam, the river people. But they did not use rafts or canoes. The Akimel O'ohdam were one of the most

prosperous, technologically advanced groups in the region. They built large and extensive irrigation systems and irrigation diversion dams. The standard of living of the Pimas prior to the influx of Anglo-Americans upstream after the American Civil War, was higher than that of surrounding tribes or the Hispanic civilization to the south of them. Numerous accounts do chronicle how they traveled, prior to the advent of the horse, they ran. After the horse of introduced, they either ran or used horse-drawn wagons. From this record, it is apparent that the Gila River was not navigable before development began by the influx of settlers from the East.

In any case, the Gila was clearly not navigable at Statehood, my fourth point. Starting shortly after the American Civil War, irrigation development began up and down the Gila River. In 1886, the Florence Canal was built and its diversion caused the river to dry up in certain locations. Many of the expansions of the Gila River Indian Reservation occurred because the U.S. Government was trying to find new reaches of the river that had any water in them. The original reaches that had been set aside had gone dry from upstream diversions. The inclusion of the still wet reaches, which occurred do to seeps or sh-shone, as the Pima referred to them, were the reasons for the 1876-1879 and 1882 expansions of the Gila River Indian Reservation. Even those expansions failed and we know that by 1896, the Gila River was essentially dry through most of the Reservation. The large agricultural base that the Pimas had developed was destroyed by upstream diversions and during the period 1896 to 1905, the Pimas underwent what they term "the starving decade". The period was, due to a lack of water to irrigate, the Pimas were literally were starving to death due to upstream diversions. In addition, there was 50% infant mortality due to inability of women to eat enough to provide milk for their children

and large numbers of malnutrition-related disease deaths. The population actually declined through this period.

By statehood, the river only flowed on the West end. But, even if small amounts of water did flow on the west end of the Reservation, it is unlikely that it constituted a navigable river. The United States Geological Survey's description of the confluence area of the Gila River explains the nature of reemergent flow.

Water occurs near the surface over a large part of the lowlands, the western third of the reservation. Bogs and sloughs are a frequent occurrence. At the edge of one of these sloughs,... large springs were noted boiling up from the sands below.¹

In addition, the United States Supreme Court determined that federal law requires that:

A river is a navigable water of the United States when it forms, by itself or by its connection with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.²

The fact that a river may be navigable intrastate is not relevant. The United States Supreme Court also said:

If such river is only navigable between points in the same state and does not connect with a stream or lake bearing commerce between different states, it is not a navigable river of the United States, but of the State where located.³

By the time of statehood, the Gila River below Gillespie Dam was an ephemeral wash that rarely flowed water down to Yuma. In addition to the difficulty of trying to navigate a river full of diversion dams, the Gila River is shown by the USGS in its records that begin in 1922, as being dry for months at a time below Gillespie Dam. It was

¹ Hodges, Paul V., Report on Gila River showing periods of low flow above Buckeye Heading and sources of flow 1939, 8.

² Clark, Frank Emerson, A treatise on the law of surveying and boundaries 1959, 612.

³ Ibid.

also dry near Sentinel Arizona in June 1914 and for six months in 1914 at Dome near the Gila's mouth.

The Gila River is in the Gila River Indian Reservation. This ownership includes the riverbed of the Gila River. The Pima-Maricopas retain their ownership of these lands as they have since time immemorial.