

Gila
11-17-05
Donald Jackson
jms

Deposition of DONALD C. JACKSON

January 15, 2003

Tumbling-T v. Paloma Investment

Page 1 to Page 84

CONDENSED TRANSCRIPT AND CONCORDANCE
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1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA
3
4
5 A TUMBLING-T RANCHES, an Arizona
6 general partnership; et al.,
7 Plaintiffs,
8 vs.
9 PALOMA INVESTMENT L.P., a limited
10 partnership; et al.,
11 Defendants.
12 FLOOD CONTROL DISTRICT OF MARICOPA
13 COUNTY,
14 Plaintiff,
15 vs.
16 PALOMA INVESTMENT L.P., a limited
17 partnership; et al.,
18 Defendants.
19 PALOMA INVESTMENT L.P., a limited
20 partnership; et al.,
21 Counterclaimants,
22 vs.
23 FLOOD CONTROL DISTRICT OF MARICOPA
24 COUNTY,
25 Counterdefendant.

No. CV 95-00253
No. CIV 97-07081

(Judge O'Melia)

DEPOSITION OF DONALD C. JACKSON
January 15, 2003
Phoenix, Arizona

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22 For Maricopa County Attorney's Office
23
24 ALSO PRESENT: Mr. George Sabol, Mr. Glenn Tarbox,
25 Mr. Ed Raleigh, Mr. Doug Littlefield
* * * *

BE IT REMEMBERED that pursuant to Notice of
Taking Deposition in the above-styled and numbered cause, the
deposition of DONALD C. JACKSON was taken upon oral
examination at the Hilton Suites, 10 East Thomas Road, in the
City of Phoenix, County of Maricopa, State of Arizona, before
me, Mary Meyer, Certified Court Reporter 50225, in and for
the State of Arizona, on the 15th day of January, 2003,
commencing at the hour of 9:00 a.m. on said day.
* * * *

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1 DONALD C. JACKSON,
2 having been first duly sworn, was examined and testified as
3 follows:
4 EXAMINATION
5 BY MR. BARKER:
6 MR. BARKER: Let's do our housekeeping first. If
7 we'd go around the table and state your name.
8 THE WITNESS: Donald C. Jackson.
9 MR. HELM: John Helm representing Maricopa County
10 Flood Control District.
11 MR. SABOL: George Sabol, Stantec.
12 MR. RALEIGH: Ed Raleigh, Flood Control District.
13 MR. KING: Reed King, for some of the plaintiffs.
14 MR. TARBOX: Glenn Tarbox, MWH.
15 MR. LITTLEFIELD: Doug Littlefield, historian.
16 MR. BARKER: Emery Barker, attorney to Paloma
17 Investment Limited Partnership and others.
18 Q. (By Mr. Barker) Okay. For the record, you want to
19 now restate your name again?
20 A. Donald C. Jackson.
21 Q. Thank you. Mr. Jackson, have you ever had your
22 deposition taken before?
23 A. No, I haven't.
24 Q. There are some very simple ground rules. First,
25 you're under oath. You've already been placed under oath, so

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1 your testimony exists like you're giving it in a courtroom,
2 only we're here in this deposition suite. If you don't
3 understand my question, please ask me to repeat it, rephrase
4 it, change it, correct it, whatever, until you do understand
5 it.

6 Please answer questions audibly and also either
7 with a yes or no. I always say uh-huh and uh-uh, and the
8 court reporter gets mad at me because she can't differentiate
9 between those two.

10 If you need to take a break, let me know. This is
11 not an endurance contest or time trial. So whatever time you
12 need to answer a question, please feel free to take it.

13 After the deposition is over, you'll get a chance
14 to read it and sign it, make sure we've gotten everything
15 down the way you want it. And other than that, if you have
16 any other questions, fire at any time; otherwise, we'll go
17 ahead.

18 Any questions on that, or do you understand where
19 we're heading?

20 A. I understand.

21 Q. Okay. Great.

22 Would you tell me a little bit about your
23 background? I read your CV, but after you left high school,
24 tell me about your educational background, what you did.

25 A. I went to college. I got my bachelor's degree in

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1 Q. Okay. Thank you.

2 Have you done any other consulting work other than
3 this particular project for the Maricopa County Flood Control
4 District?

5 A. No, sir.

6 Q. What were you asked to do by the Maricopa County
7 Flood Control District or by Stantec or by whomever hired
8 you?

9 A. By Stantec, I was asked to do research into the
10 history of the Gillespie Dam and to find them information
11 related to its history, its construction.

12 Q. And when did you start that?

13 A. It must have been late 1999 or 2000, I guess, we
14 had some discussion. I know that in 2000 is when I carried
15 out work. And I came and I had a research trip here, I think
16 it was in June of 2000.

17 Q. Mark this as Exhibit 1.

18 (Exhibit 1 marked for identification.)

19 Q. Let me hand you what's been marked as Exhibit 1.
20 In the center of the page are three paragraphs. Two of the
21 paragraphs relate to you and what you are expected to offer
22 opinions on. And I'll call your attention to the last
23 sentence in the first paragraph. It's from page 36. It
24 says, "Dr. Jackson is expected to opine that the Gila River
25 was navigable or susceptible of navigation in its natural and

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1 engineering from Swarthmore College, graduated in 1975. At
2 that point I took the engineer-in-training exam for the State
3 of Pennsylvania, which I passed. I never practiced as an
4 engineer.

5 That summer I went to work for the National Park
6 Service for an organization or agency called Historic
7 American Engineering Record, which is involved in the
8 documentation and recording of historic engineering sites.
9 As I say, it wasn't part of the Smokey the Bear kind of
10 National Park Service. It was involved in historic
11 preservation of the built environment. I worked there
12 through the early 1980s. I took a year leave of absence.

13 I went to the University of Pennsylvania, in
14 residence. Subsequently from that, I did get my Ph.D. from
15 the University of Pennsylvania, in American Civilization. I
16 went back -- while I was still working on the dissertation, I
17 went back to work for the National Park Service. I left
18 there in 1985. Finished my degree. Had a fellowship at the
19 Smithsonian.

20 Subsequently I went on and did some consulting work
21 with the Bureau of Reclamation, National Park Service. In
22 1989, I started as an assistant professor of history at
23 Lafayette College in Eastern Pennsylvania. I've been there
24 ever since. In 1997, I was promoted to associate professor
25 with tenure.

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1 ordinary state at the time Arizona became a state."

2 Do you see that?

3 A. Yes, sir.

4 Q. And what were you asked to do in that regard?

5 A. In that regard, actually, during the time I was
6 working or was employed by Stantec, this issue of
7 navigability came up, and then Helm and Kyle contacted me
8 about this issue.

9 I reviewed -- in that capacity, I reviewed material
10 related to the navigability, which I believe had been
11 assembled in the 1990s by the State of Arizona. It's a big
12 packet -- exact name escapes me -- a huge packet of material
13 related to that. And that's what I looked at to provide --
14 to get to that information.

15 Q. Okay. What do you understand, as a historian, the
16 same footing or equal footing doctrine in relation to the
17 issue of navigability to be?

18 MR. HELM: Object to form.

19 Q. You can ignore him. We all do.

20 A. No, no, I don't want to ignore him.

21 Q. I know, because he writes the check, but you can
22 still answer.

23 A. No, but I don't want to ignore him.

24 MR. HELM: Getting antsy early this morning.

25 A. Can you repeat the question?

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1 (Whereupon the following was read by the court
2 reporter: "Okay. What do you understand, as a historian,
3 the same footing or equal footing doctrine in relation to the
4 issue of navigability to be?")

5 A. Navigability in regards to equal footing
6 essentially derives from rulings within the federal court
7 that go back to the Daniel Ball decision in 1870 related to
8 what is a navigable river and is it -- you know, the issues
9 come up, you know, if it's navigable in fact, is it navigable
10 in law?

11 It's one which establishes a standard that the
12 courts have used subsequently to that to determine what is
13 navigability in terms of the equal footing, and it's based
14 upon Daniel Ball and subsequent rulings by the Supreme Court.

15 But, you know, that's how I've seen that, and I
16 think, you know, the issue there is, you know, is it
17 navigable or susceptible to being navigable in its ordinary
18 conditions for commerce of some type. I think the phrase is
19 directly used, as highways for commerce. And that's my
20 understanding.

21 And then there have been Supreme Court rulings
22 subsequent to that that, I think, have flushed that out. In
23 terms of that, I think one of the important ones is US versus
24 Utah, which looks at the issue of the navigability of the
25 Great Salt Lake.

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1 Q. Do you know why they call it equal footing?

2 A. Yes. It's because when states or when they -- when
3 the original 13 colonies turned into states, they came with
4 certain rights, they came -- that came to them. And part of
5 that was derived from common law, that if you were a state or
6 you were the sovereignty with navigable waters, you had
7 ownership of those -- the property under those navigable
8 rivers.

9 Subsequent to that -- it's not in the constitution,
10 even though it was discussed at the constitution convention.
11 Subsequent to that, the Supreme Court has ruled that when the
12 state comes in, they come in on equal footing. One of the
13 issues that derives from that is that they came in with those
14 same rights to the land that would be under navigable rivers.

15 Q. Okay. And I think you've answered this, but I
16 think you indicated that, under that doctrine, the state
17 holds title to the lands under the navigable rivers. Is that
18 your understanding?

19 A. That would be my -- that would be my understanding.

20 Q. Okay. Do you know whether the use of ferry boats
21 across a body of water constitutes a test to determine
22 navigability?

23 A. Uhm -- I've seen it. It's been referenced in some
24 cases. In and of itself, I think there have been some
25 rulings to indicate that that is not sufficient, in and of

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1 itself. But I think it's been perceived that something like
2 the 1971 US versus Utah case is clearly a case of ferrying
3 animals across the Great Salt Lake. So ferrying is one of
4 those issues.

5 I've also been struck by -- usually it's a totality
6 of circumstances that come into a determination, as to, for
7 any particular situation, whether it is navigable in fact or
8 susceptible to being navigable.

9 Q. Okay. Have you read any decisions or what is your
10 understanding -- strike that.

11 What is your understanding about how far the title
12 extends to the real property that you say the state would
13 retain under a navigable river?

14 MR. HELM: Object to form.

15 A. Uhm -- I believe that it's to a mean high water
16 mark.

17 Q. Okay. Do you know whether there are any decisions
18 on the issue of, if the path of the river changes that has
19 been determined to be navigable, whether the title of the
20 property changes with the river?

21 A. I'm not aware of that.

22 Q. Okay. Was the -- were the documents that you were
23 given from the Arizona Navigable Stream Adjudication
24 Commission?

25 A. Yes, I believe so.

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1 Q. Do you remember what it is you reviewed from that?

2 A. Uhm -- I reviewed many of the newspaper articles,
3 accounts that were referenced there. And then I went and
4 looked at those specific newspaper articles that made
5 reference to the use of the river for people, you know, going
6 down -- downstream, you know, using the river as a means of
7 conveyance.

8 Q. Has anybody provided you with what -- and to sort
9 of shorten up the question, we'll just call it ANSAC, the
10 Arizona Navigable Stream Adjudication --

11 MR. HELM: Commission.

12 Q. -- Commission, most folks call it just ANSAC. Do
13 you know whether or not ANSAC has adopted a definition of
14 navigability?

15 MR. HELM: Object to form.

16 A. Uhm -- no, I'm not aware, not specifically, no.

17 Q. Have you read the report of Dr. Douglas Littlefield
18 who prepared the report for us and who's seated here at the
19 table?

20 A. Yes, I have.

21 Q. Do you disagree with anything that Dr. Littlefield
22 said in his report?

23 A. His conclusion.

24 Q. Okay. And I guess that's why we're here today,
25 because you disagree with his conclusion.

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1 MR. HELM: We've gotten through the rocket science
2 now.
3 MR. BARKER: Yeah, the hard part's over.
4 Q. (By Mr. Barker) Have you undertaken any other
5 studies of navigability for anyone else?
6 A. No, I have not.
7 Q. Is this the first voyage into the issue of
8 navigability for you?
9 A. Into the legal issues regarding equal footing, yes.
10 Q. Tell us all of the different things you did in
11 undertaking your research in connection with this assignment
12 from Stantec relating to navigability.
13 A. And that would be for Helm and Kyle.
14 Q. For Helm and Kyle.
15 A. I reviewed that 1994, revised in 1996, document. I
16 looked at newspaper articles that were referenced in there
17 that then I found the original copies of, and I reviewed
18 those. And then I looked at court rulings, things to provide
19 me with a definition as a reason to, you know, to evaluate
20 navigability, what would the standard be. So I looked at
21 court cases that would give me that understanding. And
22 that's how I proceeded.
23 Q. Okay. Do you remember when you started the
24 navigability study?
25 A. I believe that was 2001 at some point. It's been a

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1 year hiatus, but it was somewhere in 2001. I believe in
2 April of 2001.
3 Q. Okay. Any idea how much time you've spent on the
4 navigability issue?
5 A. Up to this point, close to 100 hours.
6 Q. What -- you talked about looking at historical
7 newspaper accounts. How did you go about doing that?
8 A. Uhm -- I found them, made Xeroxes, read Xeroxes of
9 them, such as the Arizona Gazette, Arizona Sentinel and
10 others.
11 Q. Where did you find them? In other words, where did
12 you go to get that material?
13 A. That material was at -- either at the Arizona
14 Historical -- the Arizona State Archives. I think some was
15 also obtained actually through the Flood Control District.
16 Made Xeroxes from sources, maybe ASU, but Xeroxes were made.
17 Q. Did you use some assistant out at the Flood Control
18 District?
19 A. Vince Murray, who worked there, just provided me
20 with some copies.
21 Q. And do you know whether they were documents that
22 were in the archives of the Flood Control District?
23 A. My understanding is they were not.
24 Q. Okay. Did you do any historical research on the
25 types of watercraft that were in use at the time Arizona

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1 became a state?
2 A. Not specifically.
3 Q. Are you familiar with the Commissioner of
4 Corporations on Transportation by Water federal agency?
5 A. No, I'm not.
6 Q. Did you do any research in either the Bureau of
7 Land Management or General Land Office records?
8 A. No, but I -- in Dr. Littlefield's report I did read
9 those.
10 Q. Are those, the records of the Bureau of Land
11 Management and the previous records from the General Land
12 Office, considered to be reliable concerning land in the
13 public domain and the disposition of those lands?
14 A. I presume.
15 Q. Are you familiar with the US Government's
16 rectangular survey system?
17 A. Generally, yes.
18 Q. Have you had any experience working with the
19 Federal Land Surveyors survey of plats and field notes?
20 A. Not specifically.
21 Q. So you wouldn't have any idea whether the field
22 notes or the plats, whichever is more reliable or how they're
23 put together or anything like that?
24 A. I do have an understanding. From reading Dr.
25 Littlefield's report, I have a sense of that.

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1 Q. But that's the extent --
2 A. And I would have no reason to find what he said to
3 be in any way not accurate.
4 Q. Okay. Were you -- are you familiar with how
5 surveyors that were employed by the federal government were
6 instructed in carrying out their survey notes?
7 A. Generally. Primarily from reading Dr.
8 Littlefield's report.
9 Q. Okay. You haven't done any study into the surveyor
10 manual?
11 A. Not specifically, no.
12 Q. Are you aware of what percentage of the lands of
13 the Gila River and that abound along the Gila River were
14 surveyed before Arizona became a state?
15 A. A specific number?
16 Q. Yes.
17 A. I don't have a specific number, no.
18 Q. Or how many were surveyed after Arizona became a
19 state, do you have any idea of that either?
20 A. A specific number, no.
21 Q. Are you familiar with the term "meander" in
22 relation to rivers?
23 A. Yes.
24 Q. Okay. Are you familiar with what the instructions
25 to federal surveyors were about the use of the term meander

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1 and surveying such?
2 **A. From reading Dr. Littlefield's study, yes.**
3 **Q. Other than that, not specifically?**
4 **A. Not specifically.**
5 **Q. Do you have any independent knowledge of under what**
6 **circumstances federal surveyors were instructed to meander**
7 **non-navigable rivers?**
8 **A. No, I didn't.**
9 **Q. Are you familiar with the homesteading process that**
10 **was carried out in the American West?**
11 **A. Generally, yes.**
12 **Q. Are you familiar with any records held by the US**
13 **Government concerning homesteading?**
14 **A. Could you be more specific?**
15 **Q. When somebody homesteads a piece of property under**
16 **the Homestead Act, they fill out certain forms and do certain**
17 **things and file them with the federal government. Are you**
18 **familiar with that?**
19 **A. Generally, yeah.**
20 **Q. Have you reviewed any of those types of records in**
21 **connection with your research in this case?**
22 **A. No.**
23 **Q. Have you had any research experience in federal**
24 **land patent matters?**
25 **A. I've certainly done a fair amount of work on land**

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1 ownership of properties in the work that I've done as a
2 consultant, also as a historian, looking at patents or
3 records of land ownership and that. Beyond that, no.
4 **Q. Okay. And in connection with the issue of**
5 **navigability, you've not done any research in that area?**
6 **A. In navigability?**
7 **Q. Yes.**
8 **A. Navigability I have studied.**
9 **Q. No, but as to the land patent process and the issue**
10 **of navigability, have you done any study in connection with**
11 **that?**
12 **A. No.**
13 **Q. Have you done any study into the different types of**
14 **land patents that folks could claim?**
15 **A. Yes.**
16 **Q. Are you familiar with the different types of**
17 **requirements for the different types of land patents?**
18 **A. Generally. I mean, it's a field that's convoluted,**
19 **and, yes, I have a sense of that. In the 19th Century it**
20 **goes through a significant -- you know, yes, I have a sense.**
21 **Q. Other than reviewing the land patents and the**
22 **materials concerning them that Dr. Littlefield referred to in**
23 **his report, did you do any other research into the land**
24 **patent process and the Gila River?**
25 **A. No.**

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1 **Q. Do you know whether the records held by the US**
2 **Government concerning homesteading are generally considered**
3 **to be reliable sources of information about that process?**
4 **A. I believe it is. I would say, though, in Dr.**
5 **Littlefield's report, when it comes to navigability, he says**
6 **very straightforward that there is no definition provided for**
7 **what navigability is. So, in that sense, yes, I believe**
8 **they're reliable; I think also in the sense that there's no**
9 **definition which would give a sense of exactly what**
10 **navigability is and how you could determine reliability in**
11 **that context.**
12 **Q. And, you know, I guess, from reviewing his report,**
13 **that there were many land patents issued for land across**
14 **which the Gila River flowed.**
15 **A. Yes, I believe so.**
16 **Q. Are you familiar with the Desert Land Act?**
17 **A. Of 1877?**
18 **Q. Yes.**
19 **A. Yes.**
20 **Q. And do you recall how much acreage an individual**
21 **homesteader could apply for under the --**
22 **A. I believe it was 640 acres.**
23 **Q. Aside from settling on the land and making**
24 **improvements, what do you understand the main requirements to**
25 **obtain a Desert Land Act patent were?**

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1 **A. I believe the general requirement was, within some**
2 **period of time, you had to irrigate your land, you had to**
3 **make it productive.**
4 **Q. And are you familiar with the requirements of that**
5 **land act as to the source of the water that one had to use to**
6 **irrigate the property?**
7 **A. Not specifically, no.**
8 **Q. Do you know whether or not the land act specifies**
9 **navigable or non-navigable river sources?**
10 **A. I'm trying to recall, in Dr. Littlefield's report,**
11 **whether he says -- right at this moment, no, I could not.**
12 **Q. You don't recall?**
13 **A. I do not.**
14 **Q. Do you recall whether any of the patents in Dr.**
15 **Littlefield's report were under the Desert Land Act?**
16 **A. I believe they were.**
17 **Q. Are you familiar with the lands that Congress**
18 **granted to Arizona when they finally allowed Arizona to**
19 **become a state?**
20 **A. I have a general sense of that.**
21 **Q. Okay. Specifically, do you recall?**
22 **A. Specifically -- uhm -- could you say the question**
23 **again?**
24 **MR. HELM: Object to form. Are you asking him**
25 **whether he knows the metes and bounds for an acre of land?**

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1 MR. BARKER: No.
2 Q. (By Mr. Barker) When Arizona was admitted -- when
3 every state gets admitted, Congress says you get certain
4 properties as a part of your admission process. In Arizona's
5 case, Congress made such a pronouncement and listed certain
6 sections. Are you familiar with that?
7 A. No, I'm not specifically.
8 Q. And are you familiar with the term of "in lieu of"
9 or "indemnity" lands?
10 A. "In lieu of," I believe I have a sense of that.
11 Q. And what do you understand in lieu of lands to be?
12 A. You could -- certain lands that would be provided,
13 you could sort of trade them, transfer them. I think of that
14 primarily in the context of like railroad land grants, and
15 you can get in lieu of if you have a grant that's not very
16 good. Trades can be made. That's what it is.
17 Q. Do you know under the -- under the in lieu of
18 provisions, whether or not a state, if it received title
19 under a grant from the Congress to property that was under a
20 navigable body of water, could get additional property in
21 lieu of that property --
22 A. I have no specific knowledge.
23 Q. -- which they already owned?
24 Do you have any specific knowledge whether Arizona
25 made any claims for indemnity or in lieu of property due to

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1 navigability?
2 A. No, I do not.
3 Q. Do you know where those types of records are
4 maintained?
5 A. Specifically, no.
6 Q. Did you do any research in the Arizona Land Office?
7 A. No, sir.
8 Q. Are you familiar with the Arizona Land Office and
9 the types of records that they maintain?
10 A. Not specifically, no.
11 Q. Are you familiar with any state land patents that
12 were issued in connection with properties near or abounding
13 the Gila River?
14 A. I may have read about it in Dr. Littlefield's
15 report, but other than that, no.
16 Q. You didn't do any --
17 A. No.
18 Q. -- independent study in that?
19 A. No, sir.
20 Q. Are you familiar with the publications of the US
21 Geological Survey?
22 A. Yes, sir.
23 Q. Are they considered authoritative regarding water
24 resources in the US?
25 A. They are considered to be good.

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1 Q. Do you -- did you review any USGS publications in
2 connection with your research into the Gila River?
3 A. I believe there are some that came up. Some of the
4 ones that A.P. Davis wrote about the Salt River, the Gila,
5 might have looked at that. I think that's in one of -- it
6 was referenced. I would have seen the ones specifically
7 related to either the Gila or the Salt. And I know there is
8 an A.P. Davis one written, I think it's 1901, and that one I
9 would have seen.
10 Q. Did you review a 1905 USGS report on the floods in
11 the US, which included floods in the Gila?
12 A. I might have. If it was included in that
13 information, I probably would have seen that. I don't have a
14 specific sense in my head that I have seen that, but if it
15 was included in that document, it sounds reasonable that I
16 might have seen it.
17 Q. But as you sit here today, you don't have a
18 specific recollection?
19 A. No.
20 Q. Are you familiar with publications by the United
21 States Department of Agriculture?
22 A. Yes.
23 Q. And are they generally considered reliable sources
24 of information regarding farming and irrigation in the
25 American West?

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1 A. Generally, yes.
2 Q. In your studies, did you review the University of
3 Arizona's Agricultural Experiment Station's 1911 report
4 concerning irrigation and the Gila River?
5 A. I'm not specifically aware that I did that, no.
6 Q. Did you do any research into Spanish missionaries
7 or explorers in the 17th or 18th Centuries who explored in
8 the American West in connection with this assignment?
9 A. I think, in reading that 1994, '96 report, I think
10 they do make reference to explorations in the 17th and 18th
11 Centuries.
12 Q. And by that you're referring to ANSAC materials?
13 A. Yes, I guess that would be ANSAC, yes, yes.
14 Q. Okay. Do you know whether -- do you know who
15 Francisco Garza is?
16 A. From the context of your previous question, I
17 presume he's an explorer, but other than that, I have no
18 specific knowledge.
19 Q. Okay. Are you familiar with any historians who
20 have published books or articles about the Gila River area?
21 A. Yes.
22 Q. And which ones are you familiar with?
23 A. I think the -- what's that -- Rivers of America
24 series on the Gila River was published in the 1950s. That's
25 the most specific one. The author of that escapes me right

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1 at this moment.
2 Q. How about Odie Faulk? Do you remember Odie Faulk?
3 A. Not right at this moment.
4 Q. He wrote a book called *Destiny Rode the Gila Trail,*
5 *the Opening of the Southwest, are you familiar with that*
6 *book?*
7 A. I may be of parts of that. If they were included
8 in the ANSAC documents, if it had references to the Gila, I
9 probably did read that.
10 Q. But --
11 A. But specifically, no.
12 Q. -- no recollection?
13 A. No recollection.
14 Q. Do you know whether historians who have written
15 about it are generally considered reliable sources of
16 information about the Gila River?
17 A. I have no reason to think they aren't reliable.
18 Q. Okay. Did you do any review of the Mormon
19 Battalion in connection with the Gila?
20 A. Yes. Yes.
21 Q. And what review did you do in that regard?
22 A. I read the ANSAC material. I think I've also
23 read -- there's a transcript article at the Arizona
24 Historical Foundation on navigation on the Gila that talks
25 about it, Cook and his -- you know, his travels to California

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1 and the way they came down the Gila. Yes, I'm familiar with
2 it.
3 Q. Do you know of any other military operations that
4 may have explored or moved through the Gila River area?
5 MR. HELM: Objection, form.
6 A. I think there are some other references, but
7 specifically right at this moment, I can't recall.
8 Q. Are you familiar with William H. Emory, E-M-O-R-Y?
9 A. William H. Emory, that does not ring a bell.
10 Q. Are the military accounts of explorations in the
11 American West generally considered to be reliable by
12 historians?
13 A. Generally.
14 Q. Have you ever heard of Lieutenant Nathaniel Michler
15 or Michler, M-I-C-H-L-E-R?
16 A. I may have read about him in Dr. Littlefield's
17 report or his study, but I don't have a specific
18 recollection.
19 Q. How about Lieutenant Sylvester Mowery, M-O-W-E-R-Y?
20 A. I have no specific recollection.
21 Q. One of the things you talked about earlier was old
22 newspaper accounts that you read in your studies as a
23 historian. Have you found 19th and 20th Century newspapers
24 in the west to be accurate reporters or kind of advertising
25 executives boosting the area for folks to come out west and

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1 settle?
2 A. Both.
3 Q. Both, okay. How can you determine --
4 A. I think that's what historians do. That's how --
5 we make assessments. We make judgments. We analyze that
6 material, and then we make a judgment based upon it, the way
7 we would judge any source.
8 Q. Okay. Did you come across any 19th or early 20th
9 Century newspapers in the Gila River area which boasted or
10 reported on the Gila's being a reliable means of carrying
11 commerce on the river?
12 A. Specifically "commerce, reliable," I don't believe
13 those words were specifically used.
14 Q. Okay. And I think -- did you review any Arizona
15 statutes, either in the Arizona territory or after Arizona
16 became a state, which dealt with the issue of navigability?
17 A. Not specifically, to my knowledge, no.
18 Q. In your exhibits, you had an Exhibit DC-0002, which
19 is an article by E.H. Howard. Do you recall that?
20 A. If I had the title, I might be able to help you. I
21 could look at it.
22 MR. BARKER: John, what I'm proposing is we'll use
23 these, but not mark them into evidence. We'll just refer to
24 them by the Bates, because otherwise we'll have a stack to
25 attach to this deposition a foot high, but I thought we'd

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1 just use the Bates numbers.
2 MR. HELM: That's fine with me.
3 Q. (By Mr. Barker) Let me hand you what's marked
4 DC-00022 and let you look at that to refresh your
5 recollection.
6 A. It's a little tough to read here. Just a second.
7 Q. Okay. I don't know if my copy's any better.
8 MR. HELM: It better be. I don't think mine's any
9 better.
10 A. Okay. Just let me take a moment here.
11 Q. Let me give you mine and see if it's a better
12 generation. I think they're both made at the same time.
13 A. Oh, it's just about the same.
14 Q. That's what I figured.
15 MR. HELM: Are we going through them in order?
16 MR. BARKER: Yeah, I'm going to try to. We won't
17 do all of them, but we're staying in order for the most part,
18 as near as I can tell.
19 A. And what was the question?
20 Q. (By Mr. Barker) Yes, the question was: Do you
21 know where the original of that document came from?
22 A. Specifically, here I think it says Arizona
23 Historical Society. That would be my sense. My sense on
24 this document, this would have been something also provided
25 probably in the ANSAC materials. But beyond that, I don't

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1 have a specific knowledge here. I'm looking. Here, I see
2 the imprint. I think it says -- maybe your copy's better.
3 Arizona Historical Society is what is imprinted on the top.

4 Q. *Something like that?*

5 A. Right.

6 Q. *How did you come by this, do you recall?*

7 A. This would have been in material provided to me I
8 guess by Helm and Kyle through the ANSAC materials.

9 Q. *Okay. You furnished a list, maybe the easiest way
10 to do it would be -- I'll just get a copy. We'll mark your
11 exhibit list as Exhibit 2, and I'll ask you a couple of
12 questions about it. This is the exhibit list that we got of
13 materials to support your affidavit. Can you, by looking at
14 that list, tell us which of those items you actually went out
15 and found in some archive yourself and which were furnished
16 to you?*

17 A. You mean by -- furnished to me by whom?

18 Q. *By Helm and Kyle or Stantec.*

19 A. I can give you some sense.

20 Q. *Okay.*

21 A. Or by the Flood Control District?

22 Q. *Yes, exactly.*

23 A. I mean, most of these were originally referenced in
24 ANSAC, and perhaps all of them. And then copies of them
25 would have been provided. I can have a pretty good sense.

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1 Q. *Yeah, okay, if you would.*

2 A. Do you want me to go down? Do you want me to
3 specifically state which one?

4 Q. *I think the fastest way would be to have you run
5 down the list, and if you see something that you found
6 yourself --*

7 MR. HELM: Could I make a suggestion? Why don't we
8 give him a red pen and have him put a little mark.

9 Q. *Why don't we do this, why don't you put a pink
10 highlighter by it, the ones you found yourself.*

11 A. The ones I found myself?

12 Q. *Right.*

13 A. So those would not be ones which had been in the
14 ANSAC material.

15 Q. *Something you went out and found yourself.*

16 MR. HELM: I think what he's asking -- Emery, do
17 you want him to mark -- for example, there's a reference to
18 something in ANSAC, but the document isn't there. The
19 document's located at the state archives. So when he comes
20 out here, he goes down, and he gets the original document,
21 looks at it. State archives has a copy made of it. Does
22 that fall into your category of he went out and found it?

23 MR. BARKER: Yes, I think that's something where he
24 went and actually looked at the document at the archive.

25 A. Okay. Many of these I can't specifically recall.

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1 Vince -- we were at the historical or the Arizona State
2 Archives where they have a microfilm, and I was looking at
3 them. It would be difficult for me to say which ones that I
4 printed out at that time or perhaps Vince did later. So, in
5 that sense, there would be -- there's some uncertainty of
6 whether I specifically did it or whether, in working with
7 Vince, he might have printed it out a day later or something
8 like that.

9 Q. *(By Mr. Barker) Okay. Well, if you could, give me
10 your best recollection of those things you actually found or
11 reviewed for yourself at the particular entity, regardless of
12 how you --*

13 MR. HELM: If he went down to the Arizona
14 Historical Society, looked at the document, whether he
15 printed it, you don't care. You just want to know if he
16 looked at the document, wherever it's located.

17 MR. BARKER: Right.

18 A. For clarification, would that include looking at a
19 printout of a microfilm, a copy, a facsimile copy printed
20 out?

21 Q. *(By Mr. Barker) Sure, whatever they have at the
22 facility you were looking at. That's what I'm --*

23 A. Okay. The idea -- I would have to go specifically
24 through there. I have a sense, many of these I have looked
25 at in their facsimile copy, many of which were provided by

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1 Vince Murray. So those, it would be difficult for me to make
2 that judgment.

3 Just in eyeballing this, I've looked at a facsimile
4 copy of many, if not all, of those. But whether I
5 specifically saw them on the microfilm, it would be very
6 difficult, in a sense impossible, to distinguish which I saw
7 and which came through the agency of Vince and the Flood
8 Control District.

9 Q. *Okay. I guess the purpose of my question -- well,
10 let me ask you this question.*

11 *Do you think it's important for a historian to
12 actually go look at the documents in as near an original
13 situation in the original archives as possible in order to
14 kind of judge their authenticity or reliability?*

15 A. I think that can be useful.

16 I think in this context what I think is most
17 important in looking at newspapers is you look at facsimile
18 copies. These are always going to be copies. If you go to
19 the Arizona Archives or somewhere else, you're looking on a
20 microfilm. It's already a copy. What is important is that
21 you look at it in its facsimile to see it in context. I
22 think it's important to see it as it was printed. It's a
23 copy, but you're able to see that typeset, able to see that
24 context in which it's placed. You're able to look at a copy
25 of the original, a facsimile as opposed to a transcript,

1 someone writing it down, and I think that's important.
2 Q. And that's really the focus of the question.
3 A. In looking at these -- I could bring out my bag,
4 which ones I have. And essentially, in looking at these, all
5 of them I've seen in a facsimile copy.
6 Q. Just as we sit here you wouldn't be able to say, I
7 saw these at this place and these at that place?
8 A. Not specifically.
9 Q. Is it important for a historian to look at certain
10 documents in the context of other related materials, such as
11 the newspaper accounts before and after the date in question
12 or things like that?
13 A. That can be useful.
14 Q. Do you think it's important?
15 A. It can be important.
16 Q. You have an Exhibit DC-0004, a February 1881
17 newspaper article regarding a planned trip down the Salt and
18 Gila Rivers. Do you recall that?
19 A. Yes, I do.
20 Q. Do you know whether or not that trip ever took
21 place?
22 A. My evidence -- I think you're referring to the
23 "Yuma or Bust" articles. Is that the ones?
24 MR. LITTLEFIELD: That's DC-0005.
25 Q. This is DC-0004.

1 A. Why don't we look at it. I will look at it.
2 MR. LITTLEFIELD: If you're done with the other
3 copy --
4 THE WITNESS: Yeah, here it is, so you can keep it
5 complete.
6 Q. Okay. That's 004.
7 A. Yes, and the question?
8 MR. HELM: And that's five.
9 A. And that's 005.
10 Q. And I think 004 is different from 005.
11 A. Uhm -- they are. Even though my sense would be
12 that they refer to a similar event or the same event. But
13 they're, what, a week apart, a little over a week apart. No,
14 this is later. No, that's -- that's later in the -- in the
15 year.
16 So we'll stick with 004. And go ahead. Sorry.
17 Q. Yeah, 004, the notation that we have shows it was
18 February 17th of '81.
19 A. Yes, yes, I see that. And that's -- no, "Yuma or
20 Bust" is a later one. And the question?
21 Q. The question: Do you know whether or not that trip
22 ever took place?
23 A. Based upon the evidence here, there's no conclusion
24 drawn from that. No, this indicates an intent.
25 Q. And did you ever find any other source that

1 referred to that particular trip planned other than what's in
2 Exhibit 004?
3 A. No.
4 Q. Okay.
5 A. I'm not aware of any. There may be some, but I'm
6 not aware.
7 Q. And the next one's 005. Let me hand you 005.
8 A. Okay. Yeah. Okay. Yeah.
9 Q. In 005, that is the "Yuma or Bust" article?
10 A. Yes.
11 Q. November of 1881?
12 A. That is correct.
13 Q. They talk about the Jeanette, the boat called the
14 Jeanette?
15 A. In that article?
16 Q. I think so.
17 A. Okay. I'm looking here.
18 Q. It's right -- if you look right at the very end.
19 A. I don't see Jeanette mentioned here, unless it's --
20 let me see. If you could find it specifically. Oh, wait,
21 here, on the very first page. I'm looking at, yes, I see at
22 the bottom, the Jeanette. Yes, I see it.
23 Q. Do you know what happened to that boat?
24 A. No, I do not.
25 Q. The newspaper said it was never heard from again,

1 or something, didn't it?
2 A. That's what it says here.
3 Q. Yeah. Okay. Did you ever find any other reference
4 to what happened to that boat in any of the other things you
5 looked at?
6 A. No, I did not.
7 Q. In your exhibit 006 --
8 MR. LITTLEFIELD: Do you have my copy of 005?
9 THE WITNESS: Okay. He's keeping his, okay.
10 That's fine. Thanks.
11 Q. There was an article that you referenced about a
12 large boat being built for use on the Gila. What type of
13 watercraft was that intended to be?
14 A. It appears -- it states here, this is the one where
15 Mr. A.J. MacDonald is building a Gila ferry to be put on the
16 Salt River.
17 Q. That one, what is that? Is it your understanding
18 it's to be a ferry boat?
19 A. A ferry boat.
20 MR. HELM: Well, I don't think we're quoting from
21 the right thing, because it's talking about that boat is --
22 is going to be the same as the one that's currently in use on
23 the Gila or the one sent to the Gila.
24 Q. Tell me --
25 A. Okay. I will read what I have, what I have here.

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1 Q. What you relied on in your review of this matter,
2 would you tell us what portion of the article you were
3 relying on?
4 A. I was relying on the entirety of this paragraph,
5 which is the article.
6 Q. Sure.
7 A. What is the question?
8 Q. Yeah. Why don't you just read it into the record
9 so we don't -- so the lawyers don't debate over what it says.
10 A. It says: Mr. A.J. MacDonald is building a large
11 ferry boat for the Gila and Salt River Company to be put on
12 the Salt River below town. It will be of the same dimensions
13 as the one sent to the Gila, viz., 16 by 48 feet. It will be
14 worked on an inch and quarter steel wire cable and will be a
15 permanent arrangement.
16 Q. Other than the statement you made earlier in your
17 deposition about ferrying cattle across the Great Salt Lake,
18 do you know of any other decisions involving ferrying people
19 across a navigable body of water in the determination of
20 navigability?
21 A. Yes, I do.
22 Q. And what are those?
23 A. I believe there's a case, it was not a supreme
24 court case, but an appeals court case on the Little Missouri
25 River in which, in the context of that study, that just

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1 ferries in and of themselves were not determined by the
2 appeals court to constitute navigability.
3 Q. Let me hand you --
4 A. Did you need this one back?
5 Q. Yes, please. Let me hand you your Exhibit 009 and
6 ask you to look at that.
7 A. Yes.
8 Q. Do you know the date and name of the newspaper or
9 the publication that's from?
10 A. Specifically, no, I do not.
11 Q. Do you know where you got that?
12 A. Uhm -- I believe we got this -- you know, Vince
13 would have had a reference in ANSAC, but I cannot, at this
14 moment, looking at this document, be able to ascertain that,
15 you know.
16 MR. LITTLEFIELD: Were you looking at nine?
17 MR. BARKER: Yeah, I was looking at nine.
18 Q. (By Mr. Barker) Well, let me -- I have the same
19 question about -- and I'll just hand this to you for
20 comparison purposes, 0010.
21 A. Yeah.
22 Q. I have the same question there. Do you know where
23 that came from?
24 A. I do not know specifically. This would have been
25 provided from ANSAC or something, but I do not have specific

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1 knowledge as to exactly which newspaper, which day.
2 Q. Okay. Or where it was printed or what it's from?
3 A. No, but in looking at it, it seems reasonable that
4 it came from a newspaper.
5 Q. I agree with you there.
6 A. Okay. That's right, you know, but I do not have
7 this -- I cannot indicate a specific date.
8 Q. Or a paper?
9 A. No, even though it certainly is in the style of the
10 Arizona Gazette, Sentinel and the rest, it's certainly
11 compatible, but beyond that, no.
12 Q. Let me have those back, and I'll give you the next
13 one.
14 A. Okay.
15 Q. This is DC-00011.
16 A. Yes.
17 Q. And you have indicated the source of that one.
18 A. Yes.
19 Q. This article refers to the same "Yuma or Bust"
20 expedition that was in another exhibit you looked at.
21 A. That's correct, I believe so. 0005.
22 Q. Right. Do you recall what happened to the "Yuma or
23 Bust" boat trip?
24 A. Do I recall? Yes, I believe I have a recollection.
25 It makes it to Yuma. They have a little -- a little trouble

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1 on the way. But I think it takes -- it is reported that it
2 takes about six days to get there, and that's about a --
3 from -- I believe they leave from Phoenix. Yes, yes, I do
4 have a sense.
5 Q. But didn't they report, maybe not in either one of
6 those articles, that they spent most of the time pushing the
7 boat through the mud?
8 A. There were reports that there was some mud pushing,
9 but there were also reports they get there. You know, it
10 took about six days.
11 Q. Let me hand you DC-00012.
12 A. Um-hum.
13 Q. And that refers to Adonde, Arizona. Do you see
14 that?
15 A. The part that I have here refers to R.M. Strauss of
16 Aztec. Adonde, if you could point it out.
17 Q. Yeah, if you look in the -- in the first full
18 column.
19 A. Yes.
20 Q. In the -- and the part about Captain Lowery at the
21 top.
22 A. Okay. At the top.
23 Q. And it says: A new line from here to Adonde.
24 A. I do see that.
25 Q. Do you have any idea where Adonde is located?

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1 A. No, I do not.
2 Q. Did you ever find anything that referred to it or
3 did you see it on the map?
4 A. No. My sense here, though, I would say, is the
5 reason for this is the paragraph below where it talks about
6 R.M. Strauss of Aztec, I believe that's what this reference
7 refers to. And Captain Lowery is something separate.
8 Q. Oh, I see. And that -- that paragraph referring to
9 the new ferry boat, ready and at work crossing the Gila?
10 A. That is correct, that is my understanding of why
11 this would have been included in the documents.
12 Q. Okay. In that same article, in the next column
13 over, there are a couple of paragraphs describing the
14 Southern Pacific Railroad's improvements to its line from
15 Yuma to Adonde. Do you see that?
16 A. Does this start with Colonel William Hood?
17 Q. Yes.
18 A. If you give me a moment, I will read this.
19 Q. Yes, take your time.
20 A. Okay. And the question?
21 Q. Yeah, the question is: Why was the Southern
22 Pacific -- I mean, the Southern Pacific built a line along
23 the Gila, did it not?
24 A. Generally along the -- or in the river valley, yes,
25 that's my understanding.

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1 Q. Sort of along the old Gila Trail?
2 A. That would be my sense, yeah.
3 MR. HELM: Object to form. I think you're
4 mischaracterizing what the article says.
5 MR. BARKER: I'm not asking about the article yet.
6 Q. (By Mr. Barker) And they're referring here to
7 constructing a portion of the line from Yuma to this place,
8 Adonde, that we don't know where it is?
9 A. Presuming -- I would say, presuming it's somewhere
10 along the line, now that I read this, yeah, now I have a
11 sense, yeah, it's somewhere along the line.
12 Q. Wasn't it, at that time, much more economical, if
13 it would have been a river you can use for commerce, to have
14 run a boat up and down the river rather than construct a
15 railroad?
16 A. Could you repeat the question?
17 Q. Yeah. In other words, wasn't it more economical to
18 use a river for commerce, if it was capable of doing it,
19 between those two points, rather than constructing a railroad
20 line between those two points?
21 A. There are reasons why you build railroads and you
22 use rivers for navigation. The Southern Pacific, I'm sure,
23 had good reasons for why they wanted to build a railroad
24 there.
25 Q. Do you think they would have built it if the river

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1 was capable of commerce at that point between those two
2 points?
3 A. I see -- I could easily see them doing it, yes.
4 Q. This is DC-00016, and I --
5 A. Yes.
6 Q. -- highlighted the area for you there.
7 A. Um-hum.
8 Q. It talks about the town of Kelvin, Arizona.
9 A. Yes.
10 Q. Do you have any idea where the town is?
11 A. Specifically, no, right at this moment, no, I
12 don't.
13 Q. Did you at the time you reviewed this?
14 A. I think I might have looked on a map, but I can --
15 I do -- I do not have a recollection specifically. I would
16 say, based upon the Florence Tribune, I would say it was
17 somewhere in the Florence area.
18 Q. And there they were -- that account indicates that
19 the Gila River was extremely dangerous for passage.
20 A. If you give me a moment to read it.
21 Q. Sure.
22 A. So the question is?
23 Q. The question is, they weren't even proposing to use
24 the river there for ferries. They were -- that account says
25 the Gila was dangerous, and they were putting people across

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1 in cages.
2 A. The Gila River is a danger to ford. I think "ford"
3 is very different than "ferry".
4 Q. Is that just crossing the river?
5 A. Right. When you ford a river, you walk across it,
6 your horse walks across it.
7 Q. Okay. Let me give you 18. Tell me, out of Exhibit
8 18, what was, what was your purpose in using Exhibit 18 in
9 your research?
10 A. I believe it's -- if you look here -- well, let
11 me -- just give me a chance to read it here.
12 Q. Sure, take your time. Take a look at it.
13 A. Okay. Now, repeat the question.
14 Q. Okay. I was interested in the purpose that you
15 included this Exhibit 0018.
16 A. I believe the purpose is to indicate that there was
17 a fair amount -- a significant amount of water in the river,
18 and there was -- there was significant traffic across -- or
19 crossing at that point, and there was a desire to have a
20 bridge.
21 Q. And that was -- they wanted a bridge because, as I
22 read it, the Gila was dangerous, and the channel kept
23 shifting.
24 MR. HELM: Object to form.
25 A. Uhm -- I think what it was, there was a lot of -- a

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1 lot of water, and I think they indicated it was too low for
2 fording.
3 MR. HELM: Too high.
4 A. Too high for fording, and that's the reason I
5 included it, the indication there's water in the river.
6 Q. That was --
7 A. That was the point.
8 Q. Okay. That's all I need to know.
9 Exhibit Number 0037, take a minute and look at
10 that.
11 A. Okay.
12 Q. And I was looking at the fourth paragraph down --
13 A. Yes.
14 Q. -- which is hard to read, but it looked --
15 A. Right.
16 Q. It appeared to me that this article or something in
17 the article says that the Gila -- the complaint for the
18 lawsuit says that the river's innavigable.
19 A. Hhm --
20 Q. Did you see that?
21 A. I'm having trouble reading this, that fourth
22 paragraph. I don't want to comment till I really -- could
23 you read it to me?
24 Q. I think what it says, starting out, is that the
25 Gila River is an innavigable stream of water.

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1 A. Right, having its source -- okay --
2 Q. -- in the --
3 A. -- eastern part of Arizona.
4 Q. -- eastern part of the State of Arizona and flows
5 thereafter in a westerly --
6 A. Direction.
7 Q. -- direction to the Colorado River.
8 MR. HELM: This is a reference -- this is language
9 out of a complaint?
10 Q. Out of a complaint in a lawsuit.
11 A. Right.
12 Q. I assume that's why it was included in your
13 materials.
14 A. Uhm -- before I would -- I would want to read this
15 in its entirety.
16 Q. Sure. Take your time.
17 A. Okay, yeah.
18 Q. As a matter of fact, we can take the morning
19 recess, if you want, at this time. We'll take 15 minutes,
20 and you can read it, and we'll come back.
21 A. Okay. That's fine.
22 (Break taken.)
23 Q. (By Mr. Barker) We're back on the record.
24 Dr. Littlefield brought down a magnifying glass, if
25 that will help you, or have you --

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1 A. I think I have a sense here of this, even though --
2 well, it makes the indistinct bigger.
3 But if you could repeat the question.
4 Q. Right. What I made out of that article is the
5 complaint that was filed that's being reported in this
6 article alleges that the Gila is innavigable.
7 A. I think what's important to me in this is not that
8 issue of what the complaint says, but this article provides
9 evidence that there had been a very significant diversion of
10 water out of the Gila River dating back to 1868. Second
11 column, towards the middle of that first paragraph.
12 And I think that's very important in that, you
13 know, ever since the year 1868, that water has been
14 continuously diverted or caused to be diverted from
15 aforesaid -- from the river to said lands, blah, blah, blah.
16 What's important here is an understanding that,
17 since this is 1914, that going back almost 50 years there had
18 been a diversion out of the river. This becomes very
19 important in looking at the issue of navigability, because
20 the standard of Daniel Ball, which has been held in terms of
21 equal footing, relates to the river in its ordinary
22 condition, and that is one that is prior to diversions. It
23 is one that does not take into account diversions.
24 And with this kind of evidence, by the 20th
25 Century, we're not really looking at that river, 1914, that

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1 is, the river we would look at for navigability. We're
2 looking at something that has been significantly changed.
3 The standard under Daniel Ball is to look at the river under
4 ordinary conditions, without diversions. And what this
5 article relates to is the fact that there had been
6 significant diversions.
7 And that's why it would be included.
8 Q. Okay. I'm handing you 0053, and I'll ask you to
9 look at page 10, and it's -- I think it's really under a
10 paragraph that's sub-numbered one.
11 A. Yes, the one that starts, submerged lands?
12 Q. Yes.
13 A. Yes.
14 Q. What was your purpose in including this exhibit in
15 your -- as a basis for your conclusion?
16 A. Uhm -- I'd like to look at the whole thing, because
17 it's not just that one paragraph, you know.
18 Q. No. Go ahead, take any time you need. As I told
19 you, it's not a time test.
20 A. Okay. This is a much longer one.
21 MR. HELM: We'll take another break, because this
22 one is, what, a lot of pages to read.
23 MR. BARKER: Right. I don't think it'll take a
24 long time, because I think, as he looks at it and refreshes
25 his recollection, it'll move quickly.

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1 (Break taken.)
2 A. I think I'm ready.
3 Q. (By Mr. Barker) Have you had a chance to review
4 that?
5 A. Yes, I have.
6 Q. My first question: What was the purpose of
7 including this report as a source document for your report or
8 opinion?
9 A. It relates to the answer that was given for the --
10 to the previous article that we looked at, and that regards
11 the use of the -- or this providing evidence of the use that
12 had been made as of the 1890s to water in the Gila River.
13 And I think I would refer specifically to page
14 five, where Newell, who is, at that point, the head or chief
15 of hydrography or the chief hydrographer for the USGS -- look
16 there at the second sentence, the first full paragraph, the
17 purchase of water from -- okay, it's actually the second
18 sentence.
19 Q. The second sentence on page five?
20 A. On page five, second sentence.
21 MR. LITTLEFIELD: First full paragraph.
22 A. Although the low water flow of Gila River is fully
23 used, yet there are possibilities of restoring, through
24 floods and the large tributary of the Salt River -- I think
25 what that gets at, that gets at the heart of why this is

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1 here. There has been a significant amount of diversion.
2 The evidence is all of the low water flow, the
3 natural flow as opposed to the flood flow, has been diverted.
4 That's why this would be included. It gets to the same issue
5 of what is the ordinary condition of the stream. And this
6 indicates, even by the 1890s, there has been really a
7 significant change to the -- to the flow of the river, and
8 that's why they're interested in building a reservoir.
9 Q. On page 10 of that report, the second sentence says
10 the Gila River is a stream --
11 A. Yes, sir.
12 Q. -- that runs for miles at a good strong current,
13 and then suddenly it disappears and will not reappear for
14 miles beyond.
15 A. Um-hum.
16 Q. Is the issue of the reliability of the river an
17 issue to be determined in deciding whether or not it's
18 navigable?
19 A. Yes.
20 Q. Do you know who Arthur Davis is, the author of this
21 report or the editor of the report or whatever? Did you do
22 any research into Arthur Davis?
23 A. I'm very familiar with A.P. Davis, yes. I would
24 indicate on this page 10 that you referred to, that was
25 actually authored by R.O. Young, United States Indian agent.

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1 I do not have any knowledge of him.
2 Q. But Davis included that --
3 A. In his report.
4 Q. Davis was considered reliable?
5 A. Was considered what?
6 Q. A reliable source?
7 A. Sure.
8 Q. Okay. Did you obtain this document from ANSAC, or
9 do you know?
10 A. I'm not immediately aware of where this was
11 directly obtained. It might have been from the Flood Control
12 District.
13 Q. Okay. Okay. That's all I have on that one. Thank
14 you. Let me hand you 0054. Take a minute and look at that,
15 if you would.
16 A. All right. Okay. Yes.
17 Q. Okay. What's the source of this document, 0054?
18 A. Uhm -- specifically, I can't state that this would
19 have been material provided to me through ANSAC or through
20 the Flood Control District. This would be the kind of thing
21 that would have come, you know, from some archive.
22 It's obviously, you know, some modern day
23 historian, Bert Thomsen, you know, that transcribed,
24 essentially, material taken from books like Bancroft or Emory
25 or the -- or his diary that he took in some way. The

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1 specific origins of this I cannot speak to.
2 Q. Did you do any research to determine who this Bert
3 Thomsen was?
4 A. No, I did not.
5 Q. Do you have any idea whether this person's ever
6 published any scholarly works of any type?
7 A. Not to my knowledge.
8 Q. Do you have any idea whether the things that this
9 gentleman writes are reliable?
10 A. This strikes me as being, you know, reasonably
11 reliable, but this is not a published report, no.
12 Q. And it's by someone that we don't know who he is or
13 where he is, other than somebody signed their name Bert
14 Thomsen and wrote it out by hand?
15 A. I would say the use of this, and I believe the
16 reason it was included, it just provides a transcript. And
17 now it has refreshed my memory about Emory, and I believe you
18 asked about him earlier, who he was and his relation to
19 Kearny.
20 I believe this was primarily a transcript relating
21 or providing information about, you know, Emory and, you
22 know, his report.
23 I believe that is specifically the reason why it's
24 included here. And specifically, if you look on the very
25 last page, or second to last page, the quote from Emory that

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1 the Gila at certain stages might be navigated up to the Pima
2 Villages and possibly, with small boats, at all stages of
3 water, specifically that would be the reason that would be
4 included, to provide evidence that Emory had made that
5 statement in 1848.

6 Q. Okay. Did you do any further research into Emory's
7 report?

8 A. No, I did not.

9 Q. Did you know whether Emory continued to believe
10 that the Gila was navigable when he subsequently helped
11 survey the Gila as the US Commissioner for the US/Mexico
12 boundary survey in 1855?

13 A. If you'll allow me, I just want to read the final
14 page of this. Just one second before I answer.

15 Q. Sure.

16 A. So repeat the question. Now I feel better
17 answering it.

18 (Whereupon the following was read by the court
19 reporter: "Did you know whether Emory continued to believe
20 that the Gila was navigable when he subsequently helped
21 survey the Gila as the US Commissioner for the US/Mexico
22 boundary survey in 1855?")

23 A. I have no specific knowledge relating to that.

24 Q. Do you remember a reference in Dr. Littlefield's
25 report about that subject?

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1 A. Okay. I think you also gave me 55.

2 Q. Oh, did I?

3 A. I think when you took the two of them out, it just
4 came.

5 Q. That's exactly right.

6 Let me give you 56.

7 A. Yes.

8 Q. And here my question in 56 is: This particular
9 report, which shows that it comes, I guess, from the Arizona
10 Historical Foundation --

11 A. Yes, that's correct.

12 Q. -- did you do any investigation to find out who
13 these authors were?

14 A. No, I did not.

15 Q. Would you look at page 12 of that report?

16 A. Yes, sir.

17 Q. And on page 12, at the second sentence of the
18 second paragraph --

19 A. Yeah.

20 Q. -- the conclusion here was that going down the Gila
21 was too iffy, correct?

22 A. That's what it states, yes.

23 Q. And the last sentence, the river was not wholly
24 impracticable, yet the portrait painted by these three
25 companies suggests the route to California does not lie

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1 A. I don't recall that now. I might have read it, but
2 I do not recall it at this point.

3 Q. In this Exhibit 0054, one, two, three, four pages
4 in --

5 A. Yes.

6 Q. -- where it talks about, right at the beginning, at
7 the junction of the Gila and San Pedro Rivers --

8 A. Yes.

9 Q. -- it's principally deep dust and sand overgrown
10 with cottonwood. Did you note that, as well?

11 A. I do note that. Yes, I see it.

12 Q. That's not a description that would indicate
13 reliable navigability is it?

14 A. I believe that description relates to the Gila and
15 the San Pedro River somewhere in the Florence area.

16 Q. Okay.

17 A. And --

18 Q. Sort of in an area where Kelvin was in your earlier
19 statement?

20 A. In that area. I believe in the context of this, it
21 is upstream from the Pima Villages, or in that vicinity.

22 Q. Do you consider Emory to be a reliable commentator?

23 A. Yeah, I would have no reason to not regard him as
24 such.

25 Q. Okay. I think that's all I have on that one.

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1 within the Gila. It wasn't a navigable river.

2 A. It says it was not wholly impracticable. There's
3 no reference to the Daniel Ball decision or the definition of
4 navigability provided by the Daniel Ball decision, no
5 evidence that any of those conclusions relate to that.

6 Q. This is a really terrible copy. This is 00060. I
7 think you have a better copy.

8 MR. LITTLEFIELD: I have a better copy.

9 A. Yes, 0060, oh, yeah, right, right.

10 MR. HELM: You're right, it's a bad copy.

11 Q. Dr. Littlefield has lightened it up a little bit.

12 A. Good for him.

13 Q. And that seemed to help, and we've highlighted the
14 area of concern.

15 A. Yes, yes, I'm familiar with it.

16 Q. This -- do you know anything about this Oasis
17 Newspaper. Do you ever -- do you know where that's from?

18 A. I believe this is from the microfilm that is in the
19 Arizona Historical Foundation.

20 Q. Okay. And this was a newspaper being published --

21 A. That is my understanding.

22 Q. -- back in the 1890s?

23 A. Right. I believe I indicate here, this is my
24 handwriting there, Benson, Cochise County.

25 Q. It was published in Benson, Arizona?

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1 A. That would be my sense, yes.
2 Q. And from what we could read, it says the long --
3 the article says that the long distance up from Yuma, you
4 know, was navigable due to the waters backing up from the
5 Colorado or due to the backing up of the waters of the
6 Colorado.
7 A. If I can read it, the Gila River is navigable a
8 long distance up from Yuma at present due to the backing up
9 of the waters of the Colorado. Yes, that's what it states.
10 Q. And do you have any idea how far Benson, Arizona
11 was from the Gila River?
12 A. Quite a distance.
13 Q. Yeah, 50, 60 miles?
14 A. No. More than that.
15 Q. More than that. Is this sort of a boosterism type
16 article?
17 A. Conceivably.
18 Q. And the water backing up from the Colorado into the
19 Gila, that would not be the natural condition then of the
20 Gila, by the definition that you've given us earlier?
21 A. I would not agree with that.
22 Q. You would not agree with that?
23 A. No, I would not.
24 Q. Okay. What don't you agree with that?
25 A. I don't agree. Why would you say that's not the

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1 A. Very reliable, yeah.
2 Q. If you look on the 11th page of Exhibit 61, okay,
3 under the heading of security.
4 A. The 11th page?
5 Q. 11th page, uh-huh.
6 A. Okay. The one that starts with security?
7 Q. Yes. And then down under the section entitled
8 third --
9 A. Yes.
10 Q. -- there's an item in there that the settlers need
11 to prove they have a perpetual water right for their lands?
12 A. What line?
13 Q. If you look down one, two, three, four, the fifth
14 line down from the heading third.
15 A. Yes, I see it. Starting, before the government
16 will issue?
17 Q. Correct.
18 A. Right. Yes. Continue.
19 Q. This says -- it says, settlers could get the
20 property in amounts -- just the line above it -- of 320 acres
21 each. Do you see that?
22 A. Yes, I do.
23 Q. Is that different from the 640 acres? Is this the
24 same act, or do you know?
25 A. I presume -- in the 19th Century, with the

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1 natural condition of the Gila? The Colorado River, I
2 believe, is recognized by everyone as a navigable stream. So
3 I think it indicates it's navigable, you know, as it states
4 here. That doesn't seem unreasonable.
5 Q. Well, it says navigable at present, right?
6 A. At present, that's correct.
7 Q. Give that one back, the one you can read.
8 A. Okay. Thank you.
9 Q. This is 0061.
10 A. Yes.
11 Q. What's the source of this document?
12 A. This source, it comes from the Lippincott Papers,
13 which I believe Dr. Littlefield makes reference to, Water
14 Resource Center Archives at the University of California,
15 Berkeley. This is from his file, number 13.2, J.B.
16 Lippincott. That's where it is from.
17 Q. And did you obtain that there?
18 A. Yes, I did.
19 Q. Who was Lippincott?
20 A. Lippincott was a very important, influential
21 engineer in the late 19th, early 20th Century involved with
22 western water resources. I could be more specific if you
23 would like.
24 Q. Well, just from the standpoint of, is he
25 considered, generally considered a reliable source?

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1 Homestead Act and other means, it started off, there's 320,
2 but then a man and a wife can get, you know, 640. So that's
3 why I presume that this relates to it in some way.
4 I can't specifically say this relates to the Desert
5 Land Act of 1877. This might be, you know, something
6 different. I'm not certain.
7 Q. Do you know whether any of the other homestead acts
8 required irrigation?
9 A. No, I'm not directly familiar. Homestead acts?
10 Q. Yeah, that allowed different types of entry. This
11 was the Desert Land Entry Homestead Act of 1877.
12 A. Aren't those two -- my sense would be the Homestead
13 Act is different from the Desert Land Act.
14 Q. Right.
15 A. Right.
16 Q. It is.
17 A. Right, so --
18 Q. Do you know if any other of the acts which allowed
19 citizens to acquire property in the US through this type of
20 means required irrigation?
21 A. I'm not aware.
22 Q. Okay. The Desert Land Act did, though?
23 A. That is my understanding.
24 Q. But you have no knowledge of whether or not that
25 irrigation, proof of irrigation had to be from a

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1 non-navigable river source?
2 A. Not -- I have no specific knowledge or have no
3 recollection right at this moment as to that.
4 Q. That's all for that one. This is Exhibit 62.
5 A. Yes.
6 Q. 0062. Really, my only question about this is what
7 was the source of this document?
8 A. This is from the Lippincott Collection at the Water
9 Resource Center Archives at the University of California,
10 Berkeley.
11 Q. Okay. Same source?
12 A. Same source, right. It says 13.1. I think the
13 other one was 13.2.
14 Q. Okay. That's the only question I have on that one.
15 A. Oh, certainly.
16 Q. Just trying to identify it.
17 Let me hand you 0067. I think I know the answer to
18 this, but I just want to make sure.
19 A. Certainly.
20 Q. That's a series of photographs that you included
21 with your materials.
22 A. Yes.
23 Q. What was the source of those photos?
24 A. These are from the Arizona State Archives, and
25 these are taken -- these -- I believe all of these are from

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1 A. Yes. Yes.
2 Q. And they're mostly newspaper clippings.
3 A. Yes, sir.
4 Q. Where did you obtain those documents?
5 A. These are from the Arizona State Archives. I
6 believe these ones, they have a file that is just called
7 Gillespie Dam that they just sort of have sort of odd things
8 put in there. That is certainly -- this one that has the
9 little ND, and other ones, you can see that would be taken
10 from this file at the Arizona State Archives.
11 Q. The file?
12 A. Yes. In fact, you can look here. It's -- on one
13 of these, the one that's dated December 16, '26, it has a
14 copyright, you know, reproduced from the materials in the
15 Arizona State Archives.
16 Q. I think all we're trying to do is pin down that
17 they're all from the same source.
18 A. Yes. Certainly.
19 MR. HELM: You may have gotten a bad Xerox copy.
20 A. Sometimes if they put the mylar on it, then that
21 comes out. Let me make sure all of these are specifically
22 from there.
23 Q. Oh, there it is.
24 A. Actually, the last two are also from the Arizona
25 State Archives. They wouldn't be from that file. They were

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1 the State Highway Department and are photographs that they
2 had made there in this period, 1925 through '27, and through
3 shortly after that period is when they constructed the
4 bridge.
5 In fact, I think there are some photos here --
6 that's what this all relates to, the building of the bridge
7 in the 1920s.
8 Q. But that's the source where you got those?
9 A. That is correct.
10 Q. And did you get those or did somebody get them for
11 you?
12 A. No, I was there. I got these specifically. This
13 was part of my research. I selected those and -- yes.
14 Q. Okay. I thought that's what they were, because of
15 the JPG.
16 A. Those are the nature of the printouts.
17 Q. Right.
18 A. They're -- that was the printout, the way they had
19 the copies made.
20 Q. Others have used this, some of those same --
21 A. That's what we call, in the computer trade, J-pegs.
22 That's what the JPG is. It's not an initial.
23 Q. No. No. Right. I just have a general question
24 about all of these. These are included in your report under
25 the number 68, 0068.

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1 taken from newspapers, printed from newspaper microfilm. And
2 so the last two, the one that has Phoenix Gazette, November
3 29, 1919, that appears to be, you know, from a Xerox. And
4 certainly this one, which I printed out myself, the one that
5 is dated -- well, it's chopped off here, but we have it on
6 another one. Can we see if the other one is -- it's from the
7 floods of 1926. It doesn't have the specific date. But this
8 was printed out from microfilm at the Arizona State Archives.
9 Q. Same source, just a different source file?
10 A. Yeah. Just a different file.
11 Q. That's why we didn't know. Ours didn't have the
12 notation at the top.
13 Let me clip this one together. This is 0069.
14 A. Okay.
15 Q. And the first document's called the First Biennial
16 Report, but there are a number of documents --
17 A. Okay.
18 Q. -- included within it.
19 A. Okay.
20 Q. So would you tell us the sources for these
21 documents and what all is in there?
22 A. Oh, okay, right. Want me to just go through?
23 Q. Yeah.
24 A. Well, let me look at them first.
25 Q. Sure, go ahead.

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1 A. From my review here, these were all taken from the
2 Arizona State Archives, or as is indicated in the stamp here,
3 the Arizona -- the Department of Library and Archives in
4 Arizona --

5 Q. Okay.

6 A. -- which is there near the state capitol. As to
7 how they separate the library and archives gets a little
8 arcane to me, but it's all there. It's there sort of as part
9 of the state government, that library.

10 Some of these articles, such as the Standard Oil
11 Bulletin, they were published articles. They're included as
12 separate files. They have sort of a stamp and date. But
13 these are all from the Arizona State Archives Library or
14 whatever.

15 Q. Just for the record, because we've identified it
16 only as a single item, could you just briefly tell the court
17 reporter each of the items that are included in that item
18 number 69?

19 A. Certainly. We have the First Biennial Report of
20 the State Water Commissioner to the Governor of Arizona for
21 the period beginning July 16, 1919, ending December 31, 1920.

22 We have the Second Biennial Report of the State
23 Water Commissioner to the Governor of Arizona for the period
24 beginning January 1, 1921, ending December 31, 1922.

25 We also have the Third Biennial Report of the State

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1 newspaper, but it's called "Gillespie Dam", and it is a
2 multi-page report.

3 There is also a promotional leaflet or a copy of
4 that, called the "Gila River Valley of Arizona" from the
5 Department of Archives. The date is around 1921. It's a
6 circa, but that is what -- it's part of a pamphlet. I think
7 it was designed to entice returning war veterans to come to
8 that part of Arizona and seek their fortune. That was
9 distributed by the Gila Water Company of Phoenix, Arizona.

10 And that is all that is included.

11 Q. Okay. And would you look also and tell us if this
12 document 0070, is that the same source? And, if so, what are
13 the documents in 0070? I can't tell from my copy.

14 A. Right. We have -- these are various collections --
15 a various collection. These are from the Arizona State
16 library, ASU library, various ones. Some are from the
17 Arizona Collection. Some are also from the Arizona
18 Historical Foundation. They are very close to one another,
19 but my understanding is they have -- they are separate
20 entities, but that is what these -- these are taken from,
21 that source at the ASU library.

22 The first one I think that is indicated is from the
23 Arizona Collection, part of it.

24 And there's another one here we have from the
25 Hayden Papers, showing the Gillespie Dam, a Xerox. That's

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1 Water Commissioner to the Governor of Arizona for the period
2 beginning January 1, 1923, ending December 31, 1924.

3 These are excerpts, not the entire document.

4 Q. Okay.

5 A. Included in the Third Biennial Report we have a
6 photograph of the completed Gillespie Dam, which I believe is
7 photographed by E.C. Laru, which there are other photos,
8 which is from the Barry Goldwater Collection at the Arizona
9 Historical Foundation, but it was printed in that Third
10 Biennial Report.

11 We also have the Standard Oil Bulletin, excerpts
12 from the issue of June 1921, specifically showing the
13 Gillespie Dam under construction. We have several prints of
14 that same photograph in here.

15 We also have, from the magazine Arizona, the August
16 1919 issue, volume 10, we have a short article called "The
17 Gila Bend Project, Preliminary Work on the Gillespie Dam".
18 That is included.

19 We also have from Arizona, the May 1921 -- or the
20 magazine Arizona, the May 1921 issue, volume 11, from page
21 16, we have a large photograph showing the dam under
22 construction, showing the west end, under the title, "Don't
23 Miss the Gillespie Dam Trip".

24 We also have a typescript of a newspaper extract
25 from June 6, 1921. Does not specifically indicate the

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1 also from the Arizona Collection at ASU. And that is --
2 actually, that particular photograph Xerox is taken from one
3 of these promotional leaflets published around 1920 by the
4 American Legion Department of Arizona talking about lands
5 being opened up, and that's what that photograph is. That is
6 from the ASU Arizona Collection.

7 Other material here is also taken from the Arizona
8 Collection, also from the Hayden Papers.

9 We have a letter dated July 1, 1941, from the
10 Buckeye Irrigation Company, which is upstream from Gillespie
11 Dam, to Carl Hayden, talking about, you know, issues related
12 to the Gila River.

13 Also from the Hayden Library, this is, you know, a
14 transcript taken from somewhere in the Hayden Library,
15 specifically I'm not sure, of a soil survey of the Gila Bend
16 area. But these are from the Arizona State --

17 Q. ASU?

18 A. ASU library.

19 Q. Same question, source of materials as to DC-0071?

20 A. 0071, the first one here is just a published report
21 of the Gila and Salt Rivers, Gillespie Dam to McDowell Dam
22 site, published by the US Government printing office in 1959.
23 I believe this was Xeroxed from this -- a copy of it was in
24 the ASU library, I believe.

25 We also have other things here. These, it was

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1 different -- it was reprinted from the Arizona State
2 Archives, a notice of public hearings related to flood
3 control in, let's see, in the 1950s. Those are so noted at
4 the top, reproduced from the Arizona State Archives.
5 There's also a 1953 public notice relative to the
6 Gila and Salt Rivers, Gillespie Dam to McDowell Dam sites,
7 Arizona, dated 8 September, 1953, Corps of Engineers letter.
8 I guess that is also from the Arizona State Archives.
9 I'm not certain exactly where these are from.
10 Q. You're referring to photographs?
11 A. Yeah, the photographs. These relate -- they do
12 indicate -- and I cannot recall how they were obtained --
13 National Archives still pictures. I'm not certain here
14 exactly which archives those came from.
15 Q. Okay. Thank you. The same question as to the
16 source of the document which is 0072.
17 A. All right. That's a transcript.
18 Q. That's a transcript of some lawsuit?
19 A. Yes. This I can't recall specifically here. This
20 was -- well, clearly it is a -- you know, it's from a
21 lawsuit, Enterprise Land and Water Company and the Gila Water
22 Company, Protestants, versus Frank Herford and the James-Bent
23 Irrigation Company.
24 I believe, at this moment, I cannot be absolutely
25 certain, this was during my -- in that time I spent

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1 researching at ASU and the state archives and looking at
2 records of the Dam Safety Organization. This -- this
3 appeared somewhere. I'm not certain. It was provided to me.
4 I cannot be absolutely certain who provided it to me.
5 Q. Okay. That's all we need.
6 This is 0074, and this question is as to the source
7 of this document.
8 A. 0074?
9 Q. Right.
10 A. This, yes, this is taken from the material in the
11 Water Resource Center Archives at Berkeley. Let me see if I
12 can specifically -- it might be from the Fox Papers. It
13 might also be from Thomas Means, their archives. Right here
14 immediately, I'm not certain, but it is from -- it's from --
15 it's either, my recollection would be, from the Thomas Means
16 Papers, of which there's reference here, and it might be from
17 the Fox records. But it is from the Water Resource Center
18 Archives at the University of California.
19 Q. At Berkeley?
20 A. At Berkeley.
21 Q. Okay. That's all we need to know on that.
22 A. Okay. Conceivably it could be included in the
23 Lippincott Papers there, but it's from the Water Resource
24 Center.
25 Q. Okay. Would you look at 0075?

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1 A. Yes. Actually, in looking at this, I can see here
2 that almost certainly the previous document referred to is
3 from the Lippincott Papers, Lippincott, from this six, five.
4 Q. Document number 74?
5 A. Number 74 would come from the Lippincott Papers.
6 That would be my best, you know, way to ascertain that now,
7 that would be from the Lippincott Papers at the Water
8 Resource Center Archives, University of California, Berkeley.
9 Q. Is that where 75 came from?
10 A. Yes. If you look at the top, it says Lippincott
11 6.1, volume two.
12 Q. I did see that. So that's what that means.
13 A. That's what that would refer to.
14 Q. I had one other question or two on that.
15 That document -- that document indicates this
16 report's from the hydrographic section of the report.
17 A. Let's see here. That would be correct, that's what
18 it indicates, yes.
19 Q. Okay. Were there other sections to the report?
20 A. I believe that there are. I believe -- right at
21 this moment I cannot say what they are, but I believe that
22 there are.
23 Q. You don't recall what they are, but they would be
24 in that same collection?
25 A. That's correct. If there was anything there, it

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1 would be in Lippincott six. And I think the different
2 reports, one would be this document and -- or this volume
3 two, but it would be in there, yes, there would be.
4 Q. Okay. That's all we need on that.
5 A. There we go.
6 Q. Okay. Let me hand you 0076.
7 A. Okay. Yes.
8 Q. Looking at the cover page, do you know whose
9 handwriting that is on the top sheet?
10 A. This one?
11 Q. Yes, the one that's labeled with the 0076.
12 A. I believe that's George Sabol.
13 Q. Oh, Sabol's.
14 MR. HELM: Yes.
15 Q. Do you know, is that Sabol's writing, as well?
16 A. On the -- no, it is not. That -- my recollection,
17 that is on the original.
18 Q. Where it says Charles Kirby Fox?
19 A. That is the signature that is on --
20 Q. On the original?
21 A. That, I presume, is his signature.
22 MR. HELM: That's Charlie.
23 A. Yeah, you know, Charlie Fox.
24 Q. Look at 0077. Same question on that: Is that also
25 Sabol's handwriting?

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1 A. That is my -- that would be my sense, yes, and the
2 second one is Fox.
3 Q. Same signature.
4 MR. HELM: Charlie.
5 Q. Okay. I just want to make sure it wasn't George.
6 I assume, looking at 0078, that the cover sheet
7 handwriting would be George Sabol.
8 A. That is correct. In fact, it says right there, it
9 says George Sabol right above it. He writes his name there.
10 Q. Oh, George Sabol, material provided by. Okay, I
11 didn't read it. That would have helped.
12 Let me hand you DC-0080. It purports to be a
13 letter to Arthur Davis, written by somebody by the name of
14 Jacobs, Joseph Jacobs.
15 A. Yes.
16 Q. Did you do any research to determine who Joseph
17 Jacobs was?
18 A. Just one moment. Let me look here.
19 Q. Sure.
20 A. So your question?
21 Q. Yeah. Do you know who the author of this letter
22 was or anything about the author of the letter?
23 A. My sense is that this was a Joseph Jacobs, who I'm
24 not familiar with beyond this letter, and that is someone who
25 worked on the process of, you know, attempting to reconstruct

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1 the canal after it had failed. And this letter is just
2 material provided to Davis, I believe, who was in -- it was
3 in the context of when he was writing one of his water supply
4 papers that was published by the USGS. That's what this is.
5 Q. You have no idea --
6 A. My sense is, from reading this, that he was somehow
7 engaged in the work there in the 1890s, and he became, in a
8 sense, a correspondent for Davis. But beyond that, no, I do
9 not know about Jacobs.
10 Q. You didn't do any independent research --
11 A. Not that I -- no, I did not.
12 Q. -- or locate any other materials by Davis?
13 A. By Davis?
14 Q. Not by Davis. Jacobs.
15 A. No, I did not.
16 Q. So we don't know whether Jacobs is reliable or not?
17 A. Uhm -- I don't know that I would say that.
18 Q. Well, if we don't know who he is --
19 A. I think he could certainly be reliable.
20 Q. Or not?
21 A. Well --
22 Q. Okay. 0081.
23 A. Yes.
24 Q. Do you know who the author of that letter is?
25 A. I believe the author is Lippincott himself. He

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1 does not sign it, but that would be my understanding, that
2 this was a letter written, you know, signed by him. But I
3 had reviewed this in the process of preparing for this, and I
4 did note that -- I did note that it does not seem to be
5 signed by anyone, but my understanding would be this was
6 written by Lippincott.
7 Q. That's because of where you located it?
8 A. Because of where I located it and the character of
9 the report and the way it is written, that would be my
10 understanding.
11 Q. And it has the same L-I-P-P designation?
12 A. That's correct. It's from the Lippincott Papers.
13 Q. At Berkeley?
14 A. At Berkeley. But that would be my sense, but I
15 cannot -- I cannot point to a specific thing saying, you
16 know, where it was signed or anything, no, I cannot do that.
17 Q. Okay. A question about 0082, what is the source
18 for these photographs?
19 A. These are -- if you look at the top, LIPP-139.
20 These are from the Lippincott Papers. These are from the
21 photographic section of his papers. So these are from the
22 J.P. Lippincott Papers at the Water Resource Center Archives
23 at the University of California, Berkeley.
24 Q. Okay. This is DC-0085.
25 A. Yes.

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1 Q. Do you know the source of that photograph?
2 A. This is from the eighth edition of Edward Wakeman's
3 The Design and Construction of Dams that was published by
4 John Wiley and Sons, and this is a plate number HHH that was
5 included as part of that publication.
6 Q. And what was the author again?
7 A. Edward Wakeman.
8 Q. Wakeman. Let me go back to your Exhibit 1.
9 A. Yes. Oh, back here? Yes, I have it. Is that
10 this?
11 Q. Yes. Do you know whether there's any attribution
12 to the date of the photograph?
13 A. The date of that would be prior to 1927. Somewhere
14 between 1921 and 1927.
15 Q. So that's --
16 A. That's right. The book was published in 1927.
17 MR. HELM: Now we're done with these?
18 MR. BARKER: As far as going through the documents
19 and getting sources of material, yeah, right.
20 Q. (By Mr. Barker) All right. It says in the second
21 paragraph that you will attest to documents you compiled
22 relative to the history of Gillespie Dam and the Gila River.
23 And that's the things that we've just gone through, right?
24 A. That's correct, right.
25 Q. And will provide foundational testimony for the

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1 fact that riprap was added downstream of the dam in the
2 1920s.
3 A. In the 1920s.
4 Q. Yeah, tell me what you base that fact on, that
5 riprap was added.
6 A. That is based on a 1926 newspaper article, which
7 perhaps we can find it and go over it. In fact, I might have
8 my own copy of it here. Be a little more accessible.
9 There it is. That statement that you just
10 referenced --
11 Q. Yes.
12 A. -- relates to evidence that I found in the Arizona
13 Republican, Sunday morning, April 18, 1926, where it makes
14 specific reference to the fact that riprap was added
15 downstream of the dam, I think in 1921 or shortly after the
16 dam was completed.
17 Q. Okay. And is that the sole source of that?
18 A. That is.
19 Q. Okay. It also says, "He will testify as to the
20 likely construction technique used for placing concrete at
21 the dam." Are you going to do that?
22 A. Presumably.
23 MR. HELM: If I ask him the question.
24 Q. All right. Tell me -- tell me what you're going to
25 say in that regard.

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1 A. Can you be more specific?
2 Q. Sure. I mean, what are you going to testify to
3 about the likely construction technique used for placing
4 concrete at the dam?
5 MR. HELM: Object to the form.
6 Q. What was the likely construction technique used for
7 placement of concrete at Gillespie Dam in 1920, '21, when
8 they were building it, in your opinion?
9 A. They used a method of placing the concrete, usually
10 it was referred to at the time as chuting, C-H-U-T-I-N-G,
11 chuting the concrete.
12 It would be -- in building concrete, you have to
13 both, you know, form or mix the concrete from your materials
14 and you have a certain period of time in which then you have
15 to deliver it before it sets.
16 And one of the issues is -- the method is, you
17 know, that you -- the issue always comes down to trying to
18 find an efficient way of placing the concrete so you save
19 money.
20 The technique that was used at the Gillespie Dam
21 was to have two or three sort of central locations where you
22 would take your cement, your aggregate, your water, you would
23 bring it together, you would mix it. And then to deliver it
24 to the various parts of the dam site that stretch almost 2000
25 feet, you would then hoist it up, you know, have a large

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1 tower, and I think the photographs, you know, showed this
2 quite clearly. You would hoist that up, and then from an
3 elevation of hundred, looks like even 200, feet, then with
4 chutes or, you know, semi-circular chutes, you could direct
5 that concrete to where you wanted the concrete to be placed
6 on that particular day, you know, or for that particular
7 pour.
8 And that is what I will testify to, is to, you
9 know, that technique.
10 Q. And what do you base that on?
11 A. Photographic evidence, you know, showing -- shows
12 that hoisting system. You know, in fact, all of the photos
13 that show construction show those, from both sides of the
14 river, show that technology.
15 Q. All right. And that's the only part of the likely
16 construction technique that you're talking about, is that it
17 was chuted, based upon your examination of the photographic
18 evidence?
19 A. That's true. And also I would testify, in terms of
20 the questioning, as to how there was evidence, verbal
21 evidence, given about how excavation took place, how they,
22 you know, formed the upstream toe wall and the downstream toe
23 wall. I would testify to that primarily from written
24 material.
25 Q. Okay. Is there anything else you're going to

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1 testify to about placement of concrete that we haven't gone
2 into?
3 A. I may. It doesn't come to me right at this moment.
4 Q. If you think of it --
5 A. Perhaps, under questioning, you know, who knows.
6 Q. Do you recall doing any investigation into anything
7 else other than what we've talked about today?
8 A. Uhm -- talked -- specifically?
9 Q. In connection with this assignment, any other
10 subjects that you have investigated for either Helm and Kyle
11 or Stantec or the Flood Control District that we haven't
12 covered today.
13 MR. HELM: Object to form.
14 A. Uhm -- could you explain to me. What have we
15 covered today?
16 Q. Well, we've covered all the exhibits you've
17 produced for us, correct?
18 A. That is correct.
19 Q. Your opinions on navigability, your opinions on the
20 fact that riprap was added based on a newspaper article --
21 A. That's correct.
22 Q. -- and the fact that, in your opinion, chuting was
23 the likely construction technique used to place concrete at
24 the dam.
25 A. Those are issues that I was -- those are the

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1 issues. I would say there would be other -- other things
 2 that would come in that might relate to those. But those are
 3 the things we have -- things we've covered, and that is the
 4 work I have done for Stantec and Helm and Kyle.
 5 Q. Since Mr. Kinerk isn't here, I'll ask you this
 6 question: Have you been paid for your services?
 7 A. Yes, sir.
 8 Q. And tell me how you're paid.
 9 A. Uhm -- by check.
 10 Q. Good answer. Perfect answer. How much?
 11 A. Prior to now?
 12 Q. Yeah.
 13 A. I don't have a list. I would say it's about
 14 \$20,000 total.
 15 Q. Did you bill Stantec?
 16 A. Both. I bill Stantec, and I bill Helm and Kyle.
 17 Q. And do they pay you by the hour?
 18 A. Yes.
 19 Q. And do you mind telling us what your hourly rate
 20 is?
 21 A. \$200 an hour. My work for deposition, which I've
 22 not done before, could be higher.
 23 Q. Okay. That's all right. Whatever it is, that's
 24 me.
 25 I have no further questions.

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1 probably cross-examining Dr. Littlefield.
 2 MR. BARKER: None of which comes as a surprise to
 3 me or something I didn't know, but thank you.
 4 MR. HELM: I wanted to give you time to come and
 5 protect your interest, if you so desire.
 6 MR. BARKER: I understand, and thank you for the
 7 courtesy.
 8 MR. HELM: We'll read and sign.
 9
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 11 * * * *
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 14 (Whereupon deposition concluded at 11:50 a.m.)
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 25

DONALD C. JACKSON

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EXAMINATION

1
 2 BY MR. KING:
 3 Q. I take it in your work on the navigability of the
 4 Gila River, you haven't determined that there is simply no
 5 question that the river was navigable?
 6 In other words, you formed an opinion, I take it,
 7 but as a historian, you recognize that there probably are
 8 other opinions with some validity. Is that a fair statement?
 9 MR. HELM: Is that -- object to form.
 10 A. In the context of the Daniel Ball decision and the
 11 definition of navigability that has been established for
 12 equal footing issues, no, I don't see that, no.
 13 MR. KING: Okay. That's all I have. Thank you.
 14 MR. HELM: Before we go off the record, I need to
 15 just do a little housekeeping for both you guys.
 16 It's my understanding that in April ANSAC will be
 17 addressing the Salt River Project.
 18 MR. BARKER: That's my understanding, too.
 19 MR. HELM: It's my understanding that Dr.
 20 Littlefield will be testifying there for the Salt River
 21 Project.
 22 You need to know that I represent Maricopa County
 23 in those proceedings. You need to know that Julie represents
 24 the Flood Control District in those proceedings. And we will
 25 be participating in those proceedings, up to and including

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CERTIFICATE

1
 2
 3 State Of Arizona)
 4)ss
 5 County of Pima)
 6 BE IT KNOWN that I, Mary Meyer, R.P.R., took the
 7 foregoing deposition pursuant to Notice at the time and place
 8 stated in the caption hereto; that I was then and there a
 9 Certified Court Reporter in and for the State of Arizona;
 10 that by virtue thereof, I was authorized to administer an
 11 oath; that the witness, DONALD C. JACKSON, before testifying,
 12 was duly sworn according to law, and that the testimony of
 13 the witness was reduced to writing under my direction.
 14 I DO FURTHER CERTIFY that I am not of counsel nor
 15 attorney for either or any of the parties to said cause or
 16 otherwise interested in the event thereto, and that I am not
 17 related to either or any of the parties to said action.
 18 WITNESS MY HAND THIS 30th day of January, 2003.
 19
 20
 21
 22
 23
 24
 25

Mary Meyer, R.P.R.
Certified Court Reporter 50225

Concordance Report

 Unique Words: 1,418
 Total Occurrences: 5,098
 Noise Words: 384
 Total Words In File:
 15,897

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 Noise Word List(s):
 NOISE.NOI

 Cover Pages = 3

 Includes ALL Text
 Occurrences

 Dates ON

 Includes Pure Numbers

 Possessive Forms ON

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