

ORIGINAL

RECEIVED
2-18-97

TESTIMONY RELEVANT TO SALT RIVER, GRANITE REEF DAM
TO THE GILA RIVER CONFLUENCE

Presented by Arizona Center for Law in the Public Interest

to the

Arizona Navigable Stream Adjudication Commission

February 18, 1997

This statement is intended to supplement and discuss the evidence already in the record. All of the evidence cited appears in the existing record.

The evidence strongly supports a finding that the Salt River between Granite Reef Dam and the Gila confluence was navigable at statehood. The test of navigability is whether the watercourse was susceptible for use in its ordinary and natural condition as a highway for the transportation for people or goods. Utah v. United States, 403 U.S. 9, 11 (1971). Actual use for boating, whether or not for commercial purposes, can demonstrate susceptibility as a highway for public passage.

With respect to the reach of the Salt at issue, the evidence shows that river depths and flows were more than adequate to support navigation at the time of statehood. According to an 1850's account, the Salt through Phoenix was 80 to 120 feet wide and 2-3 feet deep. Submittal #96 002 011 (hereinafter, "Center Exh.") 005. At the general time of statehood, river depth averaged about 3.5 feet, and width about 300 feet. Submittal # 96 002 007 (hereinafter, CH2M Rept.) at 7-25. For the year of statehood, average monthly natural flows translate to a depth of about 1.4 feet, and width of 200 feet. Id. By comparison, the U.S. Department of Interior estimates that a river 1 foot deep and 6 feet wide can support travel by drift boat or row boat, and a canoe or kayak can travel with a half foot in water depth, and with of 4 feet. Center Exh. 002. Testimony from a very experienced Arizona river runner, James Slingluff, indicates that a wooden or canvas boat requires 4-6 inches of water to travel on a river, while a modern canoe can boat on 1-3 inches. Id. 001, 003. The historic depths and widths of the Salt were more than sufficient to meet these criteria.

The evidence further shows numerous accounts of actual, successful boating of this reach of the Salt. CH2M Rept. at 1-18 to -24, 4-1 to -3; Submittal #96 002 009, docs. 002 to 004; Submittal#96 002 010, docs. 001 to 003. These trips were for business and recreational purposes. Actual use of ferries on this reach was very common at the time of statehood. At least half a dozen operated between Granite Reef Dam and the Gila between 1860 and 1915. CH2M Rept. at 3-24 to -27. This use not only constitutes actual commercial travel, but also further demonstrates

Maricopa County, Lower Salt River

03-005-NAV

4/7/03

Evidence Item No. 020

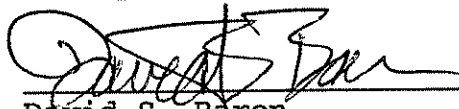
that the river depths and flows were sufficient to support boating generally. There are also accounts of logs being floated down the river for various purposes. Id. iii-iv; Recreational boating in the relevant reach of the Salt continues to this day. Id.; Submittal Nos 96 002 003; 96 001 007. The Salt was also historically used for fishing.

There is also substantial photographic evidence of substantial water levels in the Salt at the time of statehood, of boating on the river at Phoenix, and of swimming in this reach of the river. CH2M Rept. Appendix I.

The evidence of navigability becomes even more compelling if the effects of dams and diversions are removed from the equation: as it must be under the federal test of navigability. The issue is whether the river was navigable in its ordinary and natural condition. Dams and human diversions are by definition non-natural. Therefore, the conditions relevant for navigability purposes are those that would occur without dams and diversions. See Frank, Forever Free, 16 U.C. Davis L. Rev. 579, 586 (1983).

For all the foregoing reasons, and based on the extensive evidence in the record, we urge the Commission to find that the Salt River from Granite Reef Dam to the Gila Confluence was navigable at statehood.

DATED this 18th day of February, 1997.



David S. Baron
Assistant Director
Arizona Center for Law
in the Public Interest
1840 E. River, Suite 207
Tucson, AZ 85718
(520) 529-1798