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11 **BEFORE THE ARIZONA NAVIGABLE STREAM**  
12 **ADJUDICATION COMMISSION**

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In re Determination of Navigability of  
the Salt River

Nos.03-005 NAV and 04-008-NAV  
(Consolidated) (Salt River)

**THE SAN CARLOS APACHE  
TRIBE'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF  
LAW AND NOTICE THAT IT JOINS  
IN THE PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
FILED BY SRP**

The San Carlos Apache Tribe ("Tribe"), through its attorneys joins in the Proposed Findings of Fact and Conclusions of Law filed by the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association (collectively "SRP") on August 17, 2016, and files the following additional Findings of Fact and Conclusions of Law. For the purposes of this submission, supplemental exhibits from the 2014-2016 Arizona Navigable Stream Adjudication Commission ("ANSAC" or "Commission") hearings on the navigability of the Salt River will be cited as "C[Evidence Item Number]. Citations to the reporter's transcripts will be cited as [Witness] TR [Date]:[Page].



1 commercial guide. At high water [the Salt River] can be deadly.” C018-1 at 114-117.

2 5. The Salt River Canyon Guide (“Canyon Guide”) states that the Upper Salt  
3 “can reach dangerous high levels in just a few hours. . . . The Salt River is a class IV  
4 whitewater river that drops over 20 feet per mile through rocky, inaccessible canyons.”  
5 C018-59 at 3.

6 6. In 1993 Quartzite Falls was considered to be:

7  
8 a big impediment to even whitewater recreational rafting. People had died  
9 trying to traverse the area. The commercial outfitters had to portage around  
10 this rapid. And so some individuals took it upon themselves to try to  
11 remove part of the obstacle, and they went in and blew part of the rapid up.  
12 And it’s still a pretty significant rapid, but not nearly as significant as it was  
13 prior to that happening.

14 SRP FF #36

15 7. The Canyon Guide classifies Quartzite Falls in Segment 2 a class V rapid,  
16 warning that “[r]iver runners have drowned in the recirculation reversal at the bottom [of  
17 the falls].” C018-59 at 5.

18 8. The Canyon Guide describes that Corkscrew Rapid as a “dangerous” class  
19 IV rapid just below Quartzite in Segment 2. *Id.* at 6.

20 9. According to The Canyon Guide, the Upper Salt as “an unpredictable entity  
21 worthy of being classified as wild.” *Id.* at 10.

22 10. The Canyon Guide says that prior to 1960 “[t]he Salt River, which  
23 previously had been thought of as a barrier to travel, came to be thought of by many as a  
24 recreational opportunity and a means of access to a prime wilderness area.” *Id.* at 60.

25 11. The Canyon Guide explained that only after 1960 did “[a]renewed sense of  
26 adventure and evolution in technology and available outdoor equipment herald a new  
27 sport and commercial industry in the Southwest; whitewater boating” *Id.*

28 12. The Arizona River Runners Guide warns about Quartzite Falls in Segment  
29 2 stating that “[t]here has been one drowning and many near drownings. Lots of boats  
30 damaged and gear lost. Take extreme caution when dealing with this problem.” C018-

1 57.

2 13. The Arizona River Runners Guide states that “only the most experienced  
3 boatmen should consider running Quartzite Falls. Reading this water is both important  
4 and difficult. If you make this run you’re half lucky and half good. . . . If not you’re  
5 dead.” *Id.*

6 14. The Arizona River Runners Guide warns about Segment 2’s ever changing  
7 condition stating that the “[a]nnual flood stage could change any part of this river  
8 drastically. It is not dam regulated, so be prepared for moved rocks, rapids, and other  
9 obstacles. . . . If you don't have experience, go with someone who does. This river is not  
10 for the beginner or unprepared.” *Id.*

11 15. When describing Quartsite Falls, the Arizona River Runners Guide states  
12 that “to be on the safe side, running this fall is not an option to be considered.” *Id.* at 17.

13 16. The Arizona River Runners Guide explains that “ten years ago [Quartzite  
14 Falls] was the site of many problems. Lots of boats got eaten and people drowned and  
15 many nearly drowned. It has only been in the last ten years that “bigger boats began  
16 running the falls” and doing so more successfully.” *Id.*

17 17. The Arizona River Runners Guide, regarding Quartzite Falls, states that:

18  
19 There is definitely a lot of recirculation water here and small boats or  
20 objects (people) in that hydraulic, most likely won't come out for awhile.  
21 The past has taught us. To be on the safe side DON'T RUN THE FALLS. If  
22 you should, do it in a bigger boat (14+) and carry no passengers. I believe  
23 it's half luck and half skill. Half luck because you have absolutely no  
24 control over what action is taken against your boat. If the boat should end  
25 up in a bad attitude, it will take one hundred percent skill and lady luck  
26 sittin' on your bow.

24 *Id.*

25 18. The Guide to the Upper Salt River, Arizona (“Upper Salt Guide”) describes  
26 the Upper Salt as having “an average gradient of almost 22 ft. per mile, the River tumbles  
27 through 33 named rapids, many of which are rated Class III-IV.” C018-199 at 1.

28 19. The Upper Salt Guide states that the Upper Salt rapids are influenced

1 greatly by sudden changes in high and low flows. “High or low flows often cause a  
2 rapids rating to increase or decrease substantially. Rocks and sandbars may appear and  
3 disappear at different water levels, causing channels to become constricted, turbulent and  
4 more difficult to negotiate.” *Id.* at 14.

5 20. Paddling Arizona, a book by ASLD expert Mr. Tyler Williams, states that  
6 Quartzite Falls in Segment 2, in its natural condition was “once a magnificent and  
7 powerful rapid [that] is now emaciated to a shadow of its former self.” A “shadow” being  
8 a class IV rapid today. C018-200 at 214.

9  
10 **C. Proponents’ Experts Actually Describe Conditions of a Non-Navigable  
11 River in Segment 2 of the Salt River.**

12 21. ASLD incorrectly asserts that its boating experts all agree that historical  
13 boats could have navigated Segment 2 of the Salt River. ASLD at 23.

14 22. ASLD expert Mr. Brad Dimock built a historical replica of a boat available  
15 in 1912 and floated it down the Colorado River in the Grand Canyon. SRP FF# 678.

16 23. Mr. Dimock testified that he would not try and run Segment 2 of the Salt  
17 River in his historic replica. Dimock TR 10/21/2015: 544-555.

18 24. Mr. Dimock testified that he has only boated Segment 2 in polyethylene  
19 plastic, post 1970’s era kayaks, and “modern, 1970’s-vintage inflatable rafts”.  
20 *Id.* at 543-544.

21 25. Mr. Dimock testified that the few trips he took navigating Segment 2 were  
22 all done during the spring runoff when the River was in temporary “high water.” *Id.* at  
23 547.

24 26. Mr. Dimock testified that he did not know what Segment 2 looked like any  
25 other time of year and could not speculate on what the Segment looked like at median  
26 flows. *Id.* at 543.

27 27. Mr. Dimock testified about the many differences between historical canoes,  
28 kayaks, and rowboats. C018-146 at 2835-2838.

1           28. Mr. Dimock stated that modern kayaks are built out of better materials, not  
2 the “gummy rubber” or “canvas” that made up the kayaks in 1912. C018-146 at 2835.

3           29. Regarding rowboats in 1912, Mr. Dimock testified that most rowboats were  
4 home-built, “and home-built boats you never know what they're going to be; a bunch of  
5 planks with a couple of sides nailed on . . . . You don't know what they were; something  
6 somebody whacked together.” *Id.* at 2836.

7           30. When asked about the expertise of a home-made boat builder in 1912, Mr.  
8 Dimock stated that “you get someone who is a half-decent craftsman and they can make a  
9 box that floats and they call it a boat and off they go. Some of the contraptions people  
10 were running on rivers were just comical.” *Id.* at 2837-2838.

11           31. Mr. Dimock testified that historical canoes used around 1912 were being  
12 used on other rivers that were described as being “flat water” with “small ripples.” C018-  
13 146 at 2836.

14           32. Mr. Dimock has never attempted to float his historical boat replica down  
15 Segment 2 of the Salt River, and “wouldn’t want to use a wooden boat on the Upper  
16 Salt.” Dimock TR 10/21/2015: 543.

17           33. ASLD expert Mr. Alex Mickel explained that a person attempting to navigate  
18 Segment 2 with a historical boat in 1912 “would damage it regularly and have to repair it  
19 . . . you would have to rebuild boats sometimes on those historic trips, at least from the  
20 accounts I’ve read.” Mickel TR 10/21/2015:399-400.

21           34. Mr. Mickel testified that it would usually take at least one overnight stay to  
22 just repair a damaged boat. He did not state how long it would take to rebuild a boat on  
23 Segment 2 of the Salt River. *Id.* at 400.

24           35. Mr. Mickel also testified that “boats even today will get rips and tears in  
25 them” when attempting to boat Segment 2 of the Salt River. *Id.* at 399.

26           36. Mr. Mickel stated that there were at least 4 or 5 rapids in Segment 2 that he  
27 would not attempt in a wooden boat. *Id.* at 472.

28

1           37. Mr. Mickel also testified that before Quartzite Falls was blasted, he was  
2 forced to portage that Segment, describing the laborious process of portaging his gear,  
3 people and his raft around the Falls. *Id.* at 395-396.

4           38. ASLD Expert Mr. Tyler Williams testified that he did not know whether a  
5 historical or modern flatboat could navigate Segment 2, and his experience regarding  
6 historic boats and the falls in Segment 2 was “very limited.” *Id.* at 345-346.

7           39. In his book, *Paddling Arizona*, Mr. Williams stated that even after Quartzite  
8 Falls was destroyed, it remains a class IV rapid. SCAT FF #20.

9           40. Mr. Williams also testified that there were 3 or 4 rapids in Segment 2 that  
10 “if you had precious cargo” and “a strong motivation not to flip over your canoe” he  
11 would not recommend running those rapids. Williams TR 10/21/2015: 283.

12           41. ASLD expert Mr. Jon Fuller claimed that the Salt River guidebooks and  
13 manuals were wrong in their descriptions about the Upper Salt being non-navigable or  
14 hard to navigate. Fuller TR 10/21/2015: 507.

15           42. While Mr. Fuller was aware that there were multiple guidebooks criticizing  
16 the navigability of Segment 2, he did not agree with that assessment, and stated that when  
17 he was driving by the Salt River “one time in summer time [he] stopped and looked and  
18 stared” and decided the guide books were wrong. *Id.* at 588-590.

19           43. On that same day, Mr. Fuller drove down the road a little further, and again  
20 “stared” at the River and determined that he could boat it and that the guidebooks were  
21 incorrect. *Id.*

22           44. Mr. Fuller was aware of people dying and being seriously injured  
23 attempting to run Quartzite Falls on Segment 2 of the Salt River. SRP FF #44.

24           45. Mr. Fuller testified that he could “think of lots of boulders in the river” in  
25 Segment 2. Fuller TR 10/22/2015:684.

26           46. None of the experts who testified before the Commission have ever boated  
27 down Segment 2 in a historical watercraft, and there is no evidence in the Record that  
28

1 anyone has ever attempted to boat Segment 2 in a flat boat, row boat or wooden canoe of  
2 any kind.

3  
4 **D. There is No Direct Evidence in the Record to Support the**  
5 **Proponents' Only Claim that the Upper Salt River Was Ever**  
6 **Boated Before Statehood.**

7 47. ASLD claims, without citation or reference to a primary source, that one  
8 historical boating account (known as the "Logan account") occurred prior to Statehood  
9 on Segments 1-6 of the Salt River. ASLD at 3, 19, 21, 24.

10 48. The single reference to the Logan account is found in a book written by  
11 Carl T. Hayden almost 100 years after the purported trip took place. Fuller TR  
12 5/19/2016: 4940-4942; SRP FF #429.

13 49. The book contains a retelling of an alleged incident that is said to have  
14 occurred in 1872 by a man named Logan who allegedly built a wooden boat and  
15 navigated all 6 Segments of the Salt River purportedly during a spring flood "caused by  
16 rain and melting snow." C053-392 at 42; SRP FF #429.

17 50. At best, the alleged incident is third-hand hearsay by the author who is  
18 retelling a story which may have been told to him by his father who may have heard  
19 about the alleged incident from a man named Logan in 1872. Fuller 5/19/2016: 4916-  
20 4917.

21 51. ASLD entered the account into the Record during Mr. Fuller's rebuttal  
22 testimony. Fuller TR 5/17/2016: 4541-4542.

23 52. Mr. Fuller could find no quotations from a man named Logan regarding  
24 this alleged trip anywhere in the Record. Fuller TR 5/19/2016: 4917.

25 53. Mr. Fuller could find no other evidence whatsoever that the alleged trip  
26 occurred or that Carl Hayden had heard the alleged account from his father. Fuller TR  
27 5/19/2016:4917.

28 54. The account is unclear as to where the trip allegedly started, or if it was  
even on Segments 1 and 2 of the Salt River. Fuller TR 5/19/2016: 4920-4926.



1           55. There is no evidence in the Record, citing to a primary source, that any  
2 person has ever navigated the Upper Salt prior to the 1960's. Fuller TR 5/19/2016: 4928.

3           56. The Arizona State Land Department has presented its argument for  
4 navigability through the extensive testimony of Mr. Jonathan E. Fuller. Mr. Fuller's is,  
5 by profession, a hydrologist, geomorphologist, and civil engineer (Fuller TR 11/18/2015:  
6 1305).

7           57. Mr. Fuller has testified that he is also a recreational boater, and that his  
8 testimony to the Commission would be, in part, from a boater's perspective. (Fuller TR  
9 11/18/2015: 1309).

10          58. Mr. Fuller has offered the Commission opinion testimony which is based  
11 on the following perspectives:

- 12          A. perspective of a boater (Fuller TR 5/18/2016: 4824; Fuller TR 10/20/2015:  
13             32, 39, 45-46, 151; Fuller TR 11/18/2015: 1343-44, 1346);
- 14          B. perspective of a qualified boater (Fuller TR 5/17/2016: 4662);
- 15          C. perspective of a boatman (Fuller TR 5/18/2016: 4829);
- 16          D. perspective of experienced boatman (Fuller TR 10/22/2015: 627);
- 17          E. perspective of whitewater boater (Fuller TR 10/21/2015: 493);
- 18          F. historical prospective (Fuller TR 5/19/2016: 5084);
- 19          G. perspective of a project manager (Fuller TR 10/23/2015: 965 (quoting  
20             Fuller TR 4/7/2003: 49); and,
- 21          H. more hypothetically, from the perspective of a frustrated irrigator (Fuller  
22             TR 5/17-20/2016: 4814).

23          59. Mr. Fuller stated in his testimony, "perspective is very important." (Fuller  
24 TR 11/18/2015: 1343).


25  
26          **E. Proponents Have Failed to Prove By a Preponderance of the**  
27          **Evidence that Segment 2 of the Upper Salt is navigable**  
28          **consistent with the Federal Test of Navigability Based on a**  
              **River's Susceptibility to Navigation at Statehood.**



1 Commissions determination was correct, and no new evidence has been presented by  
2 Proponents that would cause the Commission to change those findings. SCTA FF #1,  
3 #2, #46 – #50, #55; SCAT COL #3, #4, #6, 7.  
4

5  
6 DATED this 17<sup>th</sup> day of August, 2016.  
7

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