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BEFORE THE

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ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

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COMMISSIONERS

9

WADE NOBLE, Chair
JIM HENNESS, Vice-Chair
JIM HORTON
BILL ALLEN

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12 IN THE MATTER OF THE
13 NAVIGABILITY OF THE SALT RIVER
14 FROM THE CONFLUENCE OF THE
15 WHITE AND BLACK RIVERS TO
16 GRANITE REEF DAM, GILA, AND
17 MARICOPA COUNTIES, ARIZONA

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

**CEMEX CEMENT, INC.'S
OPENING MEMORANDUM**

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INTRODUCTION

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19 CEMEX CEMENT, Inc. (CEMEX) submits this Opening Memorandum pursuant to
20 the Arizona Navigable Stream Adjudication (ANSAC) Scheduling Order dated May 26,
21 2016. CEMEX joins in the Memorandum submitted by Salt River Project pursuant to the
22 same ANSAC Scheduling Order. In an effort to reduce the volume of material to be
23 reviewed by the Commissioners, CEMEX does not repeat the content of the SRP
24 Memorandum and wishes the Commission to consider this filing CEMEX's adoption of
25 same. CEMEX does however submit the following additional documentation for the
26 Commission's consideration. CEMEX's brief memorandum focuses on the Navigability
Proponent's so-called evidence of historical use of the Salt River as navigable and

1 highlights for the Commission that fewer than thirty boating attempts over more than 45
2 years' time cannot constitute use of the Salt River as "a corridor or conduit within which
3 the exchange of goods, commodities or property or the transportation of persons may be
4 conducted." A.R.S. Section 37-1101 (3) (defining "highway for commerce").

5 HISTORICAL NEWSPAPERS AS PRIMARY SOURCES

6 State's witness, Mr. John Fuller after his extensive review of historical newspapers,
7 identified fewer than thirty historical boating attempts beginning in May 1873 and ending
8 in June 1919. *See* Tr. 3/10/2016:3600-01 (Littlefield). According to Mr. Fuller this record
9 of use is strong evidence of the navigability of the Salt River. Unfortunately for Mr.
10 Fuller, the source of his information on which he bases this conclusion is suspect and the
11 quantity and quality of the information provided by that source is at best thin. The
12 Commission is well within its bounds to discount entirely the so-called evidence.

13 Historians, which Mr. Fuller is not, review and use newspapers as source material,
14 but carefully review the underlying sources of newspaper articles and compare important
15 details such as the time and location of the event being reported with the time and location
16 of the newspaper article reporting and attribute a healthy bit of skepticism regarding the
17 content of the reporting due to a variety of factors, not the least of which is the desire to
18 increase readership and the population in the newspaper's area of service. *See* Tr.
19 1/26/2016:1877-78 (August) and Tr. 3/10/2016:3568 (Littlefield). Further, historians and
20 archeologists such as Dr. August, Dr. Littlefield and Dr. Newell look to the quantity and
21 quality of the reportage to determine just how much weight to give the body of reporting
22 rather than rely on an average of less than one account per year as evidence of any
23 particular way of life within a historical time period. For example, Dr. Littlefield noted:

24 [i]f the Salt River had been reliable for transportation, I would have
25 expected to have seen many, many more newspaper articles about it,
26 including advertisements for carrying goods on the river, frequency of

1 departures, which you see all the time in the Yuma newspapers. And so the
2 fact that there are, on average less than one article per year underscores to
3 me how unusual these boating attempts or events were.

4 *See* Tr. 3/10/2016:3600-01 (Littlefield).

5 Dr. August provides another example:

6 [T]he references in the newspaper accounts were episodic and sometimes
7 inaccurate. I read one account, for example, and I think it's just prior to
8 1890, where some kid stole a guy's boat and sailed down the river a ways,
9 and then the article ended saying they got – somehow were—didn't get all
10 the way to Tucson. Well and I said, that river doesn't go to Tucson. And
11 those kind of issues. That's why I think these are great accounts and
12 entertaining, but sometimes you have to really look at those sources and
13 think about their accuracy and look at them skeptically, but not critically.

14 *See* Tr.1/26/2016:2009 (August).

15 Not only should one consider the “source” of the material on which the Proponents
16 rely, but also consider how much is made of the little material available from those sources
17 and whether what is testified to is actually documented within the source referenced.
18 Turning now to the actual accounts, one can readily determine that from what little is
19 actually available, a conclusion of navigability or even of susceptibility of navigability
20 cannot stand.

21 **THE ARTICLES**

22 Mr. Fuller provided the Commission with newspaper articles about 28 accounts of
23 boating attempts made in the 46 year period from 1873 to 1919. He counts all but two of
24 these as successful. His definition of success however is thin and not a standard that could
25 be considered commercially viable. Mr. Fuller defines a successful trip as one in which
26 boat, boater and cargo reach the destination without death or serious injury and the boater

1 considers it a success. *See Fuller Rebuttal Presentation*, at 48 [CO 53 – ASLD 385]. Mr.
2 Fuller apparently does not consider it commercially necessary for goods or people to arrive
3 at their destination in any particular time frame. Mr. Fuller also apparently does not deem
4 it necessary to arrive safely, other than to be without serious injury or death. Mr. Fuller
5 also does not appear to think it commercially necessary that the economics of the trip work
6 for the commercial enterprise sponsoring the trip. Time, effort and money are common
7 sense requirements of a commercially viable trip which is the base necessity for navigation
8 on a river to be deemed a highway for commerce or susceptible of being so.

9 **1. Five Tons of Wheat:** Reportedly, Vandermark & Kilgore used a flatboat to
10 carry five tons of wheat from Hayden’s Mill to the Swilling Canal. *See Fuller*
11 *Presentation*, slide 154 [C030-ASLD 364]. This attempt was on only a “short segment” of
12 Segment 6. *See Tr. 10/20/15:199-200 (Fuller); Fuller, Presentation to ANSAC: Salt River*
13 *Navigability*, slide 158 (October 15, 2015) [C030-ASLD 364] (“Fuller Presentation”). Mr.
14 Gookin measured the distance as two miles. *See Tr. 11/19/15:1479 (Gookin)*. The trip
15 was novel and unique in order to warrant a news report about it. *See Fireman, Charles*
16 *Trumbull Hayden, The Smoke Signal (1969)*, at 202-04 [C044-4] (“Fireman 1969”); *Tr.*
17 *3/30/16:4214-24 (Newell)*.

18 The only source Mr. Fuller cites is a *Weekly Arizona Miner* article from May 3,
19 1873. *See Tr. 3/10/16:3602-08 (Littlefield); Compilation of Boating Accounts*, at 1 [C048]
20 (“Compilation”); [C002-ASLD 5]. The entire account is one sentence. The newspaper
21 was published in Prescott; the article came from “correspondence” with “someone” in
22 Maricopa County. The “someone” is not identified and thus the source is actually
23 unknown. Dr. Littlefield testified: “[I]t would have been extremely rare for them to have
24 fact-checked it. They would just take this material from Maricopa County and print it
25 verbatim.” *Tr. 3/10/16:3602-08 (Littlefield)*. The trip occurred “certainly sometime in
26 April,” rather than the May as Mr. Fuller stated. *Id.*; *see also Fuller, Presentation to*

1 ANSAC: Salt River Navigability – Rebuttal, slide 5 (May 2016) [C053-ASLD385]
2 (“Fuller Rebuttal”) (changing the date to April). At least a portion of the article was
3 “boosterism.” Tr. 3/10/16:3608-09 (Littlefield). “[T]he actual account shows that it was
4 an experiment to determine if repetitive trade and travel on the river was possible. It was
5 never repeated. Clearly it was a failure.” See Tr. 3/31/16:4320-21 (Newell).

6 **2. Hayden Log Float:** This is Charles Hayden’s failed attempt to float logs
7 down the Salt. See Fuller Presentation, slide 159. Mr. Fuller testified: “[S]ix men, and
8 some logs, who made a canoe from a tree and then tried to come down the river. They
9 found that did not work very well, and they ended up abandoning the boat. They had
10 difficulty with rapids and boulders. They lost some gear. And they got to a canyon they
11 described as being too narrow to admit the passage of a log.” Tr. 10/20/15:202 (Fuller);
12 Fuller Presentation, slide 159. Charles Hayden determined that the log float was a failure.
13 See Tr. 10/20/15:202 (Fuller); Fuller Presentation, slide 159.

14 Mr. Fuller cited three articles for this attempt. See *Arizona Citizen* (June 14, 1873)
15 [C002-ASLD 1]; *Arizona Weekly Miner* (June 21, 1873) [C028-ASLD 326]; *Arizona*
16 *Weekly Miner* (June 28, 1873). All three of the newspaper pages these articles appear on
17 include schedules, advertisements, or discussions of actual shipping on the Colorado. See
18 Tr. 3/10/16:3609-13 (Littlefield); Compilation, at Tab 2. This was a normal occurrence for
19 navigable rivers, unlike the Salt. See Tr. 3/10/16:3609-13 (Littlefield).

20 Although Mr. Fuller admitted that this boating attempt was a failure, he tried to
21 discount this failed attempt for purposes of determining the navigability of the Salt by
22 claiming that the trip actually occurred on the White or the Black Rivers above the
23 headwaters of the Salt and/or on Segment 1 of the Salt. See Tr. 5/19/16:4920 (Fuller); Tr.
24 10/20/15:203 (Fuller); Fuller Presentation, slide 159. At least one historian placed
25 Hayden’s attempt to float logs in the Sierra Anchas. See Fireman 1969, at 202. Dr.
26 August, who wrote a book about Charles Hayden’s son Carl Hayden, interviewed Carl

1 Hayden numerous times. Carl Hayden related the story of the log float “many times” to
2 Dr. August and “repeatedly” stated that the log float attempt was near Roosevelt in the
3 Sierra Anchas. Tr. 1/26/16:1970, 2019 (August).

4 **3. Hamilton, Jordan, and Halesworth:** Mr. Fuller includes the account of
5 Hamilton, Jordan, and Halesworth. See Fuller Presentation, slide 159. He cites one article
6 from the *Arizona Sentinel* (January 25, 1879). See Tr. 3/10/16:3622-28 (Littlefield);
7 Compilation, at Tab 3; C018-ASLD 128. As Dr. Littlefield testified: “This is almost
8 exclusively about the Gila River.” Tr. 3/10/16:3622-28 (Littlefield). Although the article
9 states that Phoenix citizens should attempt to ship goods to Yuma, “it’s typical of the kind
10 of boosterism or optimistic, wishful thinking that characterized newspapers of this time.”
11 *Id.* This also demonstrates that people were not shipping goods to Yuma by boat at this
12 time.

13 The article concludes:

14 By demonstrating that [Phoenix] has water communication with the
15 markets of the world, Phoenix can just make Prescott turn green and bust
16 with envy; by doing this she can oppose a check on the exactions of the
17 “monster monopoly;” if her citizens will not stand the extortionate fares
18 (ten cents a mile by rail, twenty by stage) they can navigate the Gila or
19 walk.

20 *Id.* Regarding this passage, Dr. Littlefield opined: “To me, that’s important because it
21 stresses that water transportation would be far preferable to wagons or railroads from
22 Phoenix, if you could do that, because the prices of the railroad and stages were so high.”

23 *Id.*¹

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25
26 ¹ In contrast, the newspaper page that contains this article also includes a schedule for trains and boats on the
Colorado. *Id.*

1 **4. James Stewart:** Fuller’s fourth account is “Stewart.” *See* Tr. 3/10/16:3628-
2 29 (Littlefield); Compilation, at 1, Tab 4. Mr. Fuller cites an article from the *Arizona*
3 *Republican* (October 2, 1920). The entire relevant text reads: “Supt. James Stewart of the
4 stage company will launch his boat in the Salt river tonight.” Did this trip actually
5 happen? How does Mr. Fuller know whether it happened based on this sentence? The
6 article appears under the heading “Forty Years Ago Today,” long after the fact. *See* Tr.
7 3/10/16:3628-33 (Littlefield). Furthermore, given that Stewart was the superintendent of
8 the stage coach company, it is likely that the boat was “[t]o take their passengers or goods
9 across the river in case the river was too high to ford.” *Id.*; Tr. 10/20/15:208 (Fuller);
10 Fuller Presentation, slide 162; Tr. 10/22/15:739-40 (Fuller).

11 **5. Cotton and Bingham:** Mr. Fuller’s fifth account is “Cotton and Bingham.”
12 *See* Tr. 3/10/16:3633-36 (Littlefield); Compilation, at 1, Tab 5. Mr. Fuller cites an article
13 from the *Arizona Gazette* (February 17, 1881). The article is not an account of an actual
14 boating attempt, but of two individuals’ intention to launch a boat. Did this trip actually
15 happen? How does Mr. Fuller know whether this trip occurred? This entire article is a
16 single paragraph of eight lines. The article states that the boat was specially constructed
17 for the potential trip so that it would “draw very little water” and would be “very strong
18 and durable, and able to stand a pretty sever buffering.” *Id.*

19 **6. Yuma or Bust:** Mr. Fuller’s sixth account is “Yuma or Bust.” *See* Tr.
20 3/10/16:3636-41 (Littlefield); Compilation, at 1, Tab 6. Mr. Fuller cites two articles from
21 the *Phoenix Gazette* (November 30 and December 3, 1881). The first article from
22 November 30, 1881, states that the participants were “all waiding [sic] in mud and water
23 up to their knees, pulling the boat, and apparently as happy(?) as mudturtles.” That the
24 participants were wading and pulling the boat rather than actually boating is telling. *See*
25 Tr. 3/10/16:3636-41 (Littlefield).

26

1 The second article from December 3, 1881 states: “We have advices, however, that
2 the boat reached Gila bend and ‘busted.’” It also states that the participants were
3 “enduring great hardships, being compelled to wade in the water the greater portion of the
4 time and push the craft ahead of them.” Despite these accounts, Mr. Fuller presented this
5 attempt as a “success.” Tr. 10/20/15:210 (Fuller); Fuller Presentation, slide 164.

6 7. **Willcox and Andrews**: Mr. Fuller lists “Willcox and Andrews” as another
7 successful trip. *See*; Compilation, at 1, Tab 7. Mr. Fuller cites an article from the *Arizona*
8 *Gazette* (February 14, 1883). This article does not specify how long the trip was
9 geographically, but it was within the Salt River Valley. The article states that the trip took
10 eighteen hours, and it refers to the participants as “jolly mariners.” Dr. Littlefield opined:
11 “It’s sarcasm or just sort of trying to highlight the uniqueness of the article.” Tr.
12 3/10/16:3641-44 (Littlefield). The first line of the article states: “The Salt River is a
13 navigable stream and should be included in the river and harbor appropriation bill.” Dr.
14 Littlefield testified: “I would take this as sarcasm that sort goes hand in hand with the term
15 ‘jolly mariners.’ It’s just sort of making a little bit of fun of what the article is talking
16 about.” Tr. 3/10/16:3641-44 (Littlefield).

17 8. **Meadows**: Mr. Fuller’s eighth account is “Meadows.” *See* Tr.
18 3/10/16:3645-49 (Littlefield); Compilation, at 2, Tab 8. Mr. Fuller cites an article from the
19 *Arizona Republican*, (October 4, 1909). The article is about a former pioneer, Jim
20 Meadows, who had come through town and told of his experiences twenty-seven years
21 prior. Dr. Littlefield testified: “[Credibility] depends a lot on what people’s memories
22 were and/or the accuracy of their research in finding this information. . . . [T] he further
23 you get in time or geographic distance from a particular event, the more suspect you need
24 to be about the accuracy of the information.” Tr. 3/10/16:3645-49 (Littlefield). The article
25 states: “In passing through the second box they got hung up on rocks and had to roll more
26 rocks into the water to raise the water high enough to float the boat clear.” *Id.* The article

1 does not specify what time of the year the trip occurred and claims it was the first attempt
2 to navigate the Salt. Mr. Fuller presented this boating account as “commercial,” yet
3 nothing in the article states that it was a commercial trip. *See* Tr. 10/20/15:215 (Fuller);
4 Fuller Presentation, slide 167.

5 **9. Burch:** Mr. Fuller cites five articles regarding the “Burch” trip. *See* Tr.
6 3/10/16:3649-70 (Littlefield); Compilation, at 2, Tab 9. The first article is from June 3,
7 1885. Like many others, this article claims that this was the first time someone attempted
8 to navigate the Salt River Canyon. The article states: “The rapids with numerous
9 projecting boulders make the trip a hazardous one, but the party have a staunch craft, 18
10 feet long by five feet wide, and are confident of accomplishing the passage of the canyon
11 without any mishaps.”

12 The second article is from June 5, 1985, two days later. The article states: “[O]n
13 one occasion they were wrecked, losing provisions, fire arms, etc.” This article also states
14 that the first article was actually an “excerpt” from the *Arizona Silver Belt*. Dr. Littlefield
15 testified: “[T]his is from a Globe paper. So this is one of the problems with historical
16 newspapers. This is a paper . . . relaying information that another newspaper has sent to
17 them. And that may be part of the reason why we're not seeing a consistency in the
18 number of days involved.” Tr. 3/10/16:3649-70 (Littlefield).

19 The third article is from June 6, 1885, the following day. The article states: “[T]he
20 voyage . . . was not without its excitement and pleasures as well as dangers. . . . On one
21 occasion their boat upset and much of their supplies were lost. In case of losing their
22 vessel in the canon but one recourse would be left, that of swimming down the stream to a
23 break in one bank or another and that might not be encountered for a distance of 20 miles.”
24 It also described the trip as a “desperate undertaking.” Despite the fact that they lost their
25 supplies, which Mr. Fuller claims is part of his determination as to whether an attempt was
26 a failure, Mr. Fuller called this attempt a “success.” *See* Fuller Presentation, slide 205.

1 The fourth article is from June 8, 1885. This article tells of an earlier trip through
2 the Salt River Canyon on foot. It states that during that trip, “[t]here was much less water
3 in the stream than at present.” The fifth article has nothing to do with the boating attempt.

4 Mr. Fuller acknowledged that the Burch account might be the same as the Meadows
5 trip (Account #8) due to some similarities (even though he counted them as two separate
6 trips). *See* Tr. 11/17/15:1130 (Fuller).

7 **10. Major Spaulding:** Mr. Fuller’s tenth account is “Spaulding.” *See* Tr.
8 3/10/16:3670-72 (Littlefield); Compilation, at 2, Tab 10. Mr. Fuller cites an article from
9 the *Phoenix Daily Herald* (December 12, 1888). Major Spaulding’s gun accidentally
10 discharged while carrying his canoe over Mesa dam and he was killed. The article does
11 not state where this trip started; it merely states that Major Spaulding was Commandant at
12 Ft. McDowell. Mr. Gookin testified that the Spaulding account was over a very short
13 reach and was recreational. *See* Tr. 11/19/15:1484 (Gookin).

14 **11. Gentry and Cox:** “Gentry and Fox” is account number eleven *See* Tr.
15 3/10/16:3703-06 (Littlefield); Compilation, at 3, Tab 17. Mr. Fuller cites an article from
16 the *Tombstone Daily Prospector* (January 24, 1889). This “boating account” was an
17 attempt to move a “large ferry boat which had been used for years on the Salt River at the
18 Maricopa crossing . . . with the purpose of taking her to the Gila Bend crossing.” The boat
19 broke apart on the Gila River. “She was cut in two parts as if she had come across a buzz
20 saw.” The Maricopa Crossing was approximately where Seventh Avenue intersects the
21 Salt River today. The distance from there to the Gila is “just a few miles.” *Id.* Mr. Fuller
22 testified that this boating account occurred during “higher flow conditions, maybe a small
23 flood” and that “they made the very short trip on the Salt.” *See* Tr. 10/20/15:229 (Fuller);
24 Fuller Presentation, slide 174.

25 **12. Sykes and McLean:** Mr. Fuller’s twelfth account is “Sykes.” *See* Tr.
26 3/10/16:3672-78 (Littlefield); Compilation, at 2, Tab 11. Mr. Fuller cites an article from

1 the *Coconino Sun* (September 7, 1945). The title of this article is: “Story of Boating Trip
2 across Desert Told by Local Oldtimer.” The “Oldtimer” (Stanley Sykes) did not know
3 exactly what year the trip occurred, but the article quotes him: “I think it was about 52
4 years ago.” The two men built a boat “somewhere near Phoenix” and then: “We got a
5 man with a wagon and team to haul our boat, bedding and grub to the nearest point on the
6 river that would float the boat. As I remember it, he left us at a place where the water was
7 about 15 or 20 feet wide and a foot or so deep.” The article states: “Fortunately[,] the
8 boat was of light construction, which we found later was what saved the situation. . . .
9 After riding for half a mile we were dry—in fact dusty—sand. Nothing but sand of the
10 most parched variety down the river bed as far as we could see. We camped and
11 prospected ahead, finally locating a trickle of water about a mile farther down so we
12 carried the boat and things to the water. There wasn’t enough water to float the boat with
13 us in it, but by walking along each side and helping the craft over the shallower places we
14 managed to make some progress.” In retrospect, Sykes wrote: “Perhaps to anyone else the
15 obvious thing to have done would be to make an inspection of the wetness of the river at
16 Phoenix before starting to build the boat. I admit that idea has some logic behind it.”
17 Despite this account, Mr. Fuller presented this as a “successful” boating attempt.

18 **13. Day Brothers:** Account number 13 is “JK Day.” *See* Tr. 3/10/16:3678-83
19 (Littlefield); Compilation, at 2, Tabs 12 & 13. Mr. Fuller cites an article from the *Arizona*
20 *Sentinel* (April 4, 1893). Mr. Fuller bases five of his allegedly successful boating accounts
21 on a single two-paragraph article. Four of these five Fuller-reported attempts are based on
22 one clause in one line in this one article: “The distance traveled by the Messrs. Day by the
23 river is a trip over 800 miles, and is the fifth one made by J.K. Day.” The article states that
24 the trip was “over 800 miles,” even though they allegedly started at Camp Verde and
25 arrived in Yuma. This distance is inaccurate. All the article says about the Day’s boat is
26

1 that it was “small.” The article provides no detail regarding the conditions or difficulties
2 of the trip. *See also* Tr. 3/10/16:3678-83 (Littlefield); Tr. 3/30/16:4268-69 (Newell).

3 **14. Hudson Reservoir and Irrigation Company:** Account number 14 on Mr.
4 Fuller’s list is “Hudson River Co.” See Tr. 3/10/16:3683-89 (Littlefield); Compilation, at
5 2, Tab 14. Mr. Fuller cites an article from the *Arizona Republican* (June 2, 1893). It is
6 entitled: “Adventurous Passage: The Trials of the Engineering Party.” The article was
7 written based on a “private letter” received by the *Arizona Republican*. The letter detailed
8 the “adventures and difficulties attending the passage of the eighteen miles of canyon
9 between the diversion dam and the exit of the river from Tonto Basin. Last Monday
10 afternoon one of the canvas boats employed in the passage was overturned and the
11 occupants were thrown into the water. When the boat was finally recovered two of the ribs
12 were found to be smashed and the boat was nearly rendered unserviceable.” Despite this
13 account, Mr. Fuller presented this boating attempt as “successful.” The article states that
14 the correspondence was received “yesterday,” which would have been June 1, 1883.
15 Although Mr. Fuller presented this boating attempt as if it had happened in June 1883, it
16 was almost certainly in May. Mr. Fuller testified that it is not clear on which segment this
17 boating attempt occurred. *See* Tr. 10/20/15:235 (Fuller); Fuller Presentation, slide 178.

18 **15. Lieutenant Robinson:** Account number 15 is “Robinson.” *See* Tr.
19 3/10/16:3689-93 (Littlefield); Compilation, at 3, Tab 15. Mr. Fuller cites an article from
20 the *Bisbee Daily Review* (October 6, 1909). This newspaper was published in Bisbee,
21 geographically distant from the Salt. It was also written sixteen years after the alleged trip.
22 The only reference to the Salt in the article is a single sentence: “The lieutenant and two
23 companions left Phoenix going down the Salt River by boat to Yuma and to Tiburon via
24 the Colorado.” The article states that a group from Bisbee will, in the future, be attempting
25 a trip to Tiburon, but there is nothing to suggest they would navigate the Salt. The article
26 does not mention what time of year the previous expedition occurred. The article provides

1 nothing in the way of detail about the type of boat that was used. *See* Tr. 10/20/15:237
2 (Fuller); Fuller Presentation, slide 178.

3 **16. Adams and Evans:** “Adam and Evans” is account number 16. *See* Tr.
4 3/10/16:3694-3703 (Littlefield); Compilation, at 3, Tab 16. Mr. Fuller cites three articles
5 for this account. The first article is from the *Phoenix Daily Herald* (February 18, 1895).
6 The article details the participants’ trip from Clifton to Sacaton on the Gila. The article
7 does not state they would put their boat on the Salt. Dr. Littlefield testified: “[T]hey could
8 very well have changed their mind and decided to have it hauled back to the Gila and
9 continue on the Gila, without doing any boating on the Salt.” Tr. 3/10/16:3694-3703
10 (Littlefield). The second article is also from the *Phoenix Daily Herald* (February 25,
11 1895). This article states that they passed through the Salt River Valley in February. If
12 they had boated the Salt, it was likely during higher flows. The third article is from the
13 *Arizona Sentinel* (March 9, 1895). The only relevant sentence in this article reads: “J.W.
14 Evans and Amos Adams, arrived here last Sunday from Morenci, Ariz., after a two months
15 voyage down the Gila river.”

16 **17. Shively and Schreiver:** Account number 17 is “Shively.” *See* Tr.
17 3/10/16:3715-24 (Littlefield); Compilation, at 3, Tab 21. Mr. Fuller cites articles from the
18 *Arizona Republican* (March 24, 29, and April 3, 1905). Nothing in the March 24 article
19 mentions the Salt; only the Gila is mentioned. The tone of the article lacks seriousness,
20 referring to, among other things, a “torpedo boat in disguise.” Dr. Littlefield testified:
21 “These are the local views, and it shows people were surprised that anyone would try to
22 build a boat for use on the Salt or the Gila.” Tr. 3/10/16:3715-24 (Littlefield). The boat in
23 this attempt was loaded onto a horse-drawn wagon: “The boat was finished yesterday
24 morning and the dry dock being some distance from the harbor a two horse wagon was
25 pressed into service to assist in the launching.” Dr. Littlefield testified that we have no
26 way of knowing where the launch was, whether it be on the Gila or the Salt. Tr.

1 3/10/16:3715-24 (Littlefield). The article concludes: “There are fears in some quarters
2 that the boat may prove to be a submarine before it leaves American waters.”

3 Like the March 24 article, the March 29 article does not mention the Salt. This
4 article uses tongue-in-cheek phrases, such as “Phoenix Shipbuilding yards,” “marine
5 reporters,” “lower river ports,” “Arlington Coast,” and “Buckeye coast.” It states: “The
6 captain reported having encountered rough water and for a time the boat was semi-
7 submarine. As a precaution against more billows side boards were put on somewhere
8 along the Buckeye coast.” Dr. Littlefield testified: “It sounded like the boat took on a lot
9 of water periodically.” Tr. 3/10/16:3715-24 (Littlefield).

10 The April 3rd article is entitled “Gila River Navigation.” This article, like the two
11 preceding it, does not mention the Salt. Dr. Littlefield testified that the tone of this article
12 is “tongue-in-cheek” and “it stresses how unusual this type of event was.” Tr.
13 3/10/16:3715-24 (Littlefield). He testified that, according to historical photographs, “there
14 was a tremendous amount of water in the river just a few days before the Shively boating
15 account took place, if it happened on the Salt River at all.” *Id.*; Historical Photograph
16 Presentation, slide 57 [C038-D]. Despite the fact the boat wrecked, cargo was lost, and the
17 trip occurred during a flood, Mr. Fuller called the trip a “success.” Fuller Presentation,
18 slide 185.

19 **18. Hauling Freight to Roosevelt:** Mr. Fuller’s eighteenth account is
20 “Roosevelt Freight.” See Tr. 3/10/16:3706-10 (Littlefield); Compilation, at 3, Tab 18. Mr.
21 Fuller cites an article from the *Arizona Republican* (April 30, 1905). There were large
22 floods in April and February of 1905. The trip was only four miles. Despite being at a
23 flood stage, Mr. Fuller still counted it as a “successful boating attempt.” See Tr.
24 10/20/15:242 (Fuller); Fuller Presentation, slide 183.

25 **19. Flatboat Trip Advertisement:** Account number 19 is “Advertisement.”
26 See Tr. 3/10/16:3710-12 (Littlefield); Compilation, at 3, Tab 19. Mr. Fuller cites an

1 advertisement from the *Arizona Republican* (May 23, 1905). There is no way of knowing
2 if this trip ever occurred; the advertisement was prospective, and there is no further
3 evidence. The advertisement does not even mention the Salt. Mr. Fuller testified: “We
4 don’t know whether they launched, we don’t know whether they got there.” *See* Tr.
5 10/20/15:244 (Fuller); Fuller Presentation, slide 186.

6 **20. George Greenwald:** The article in which Mr. Fuller finds the “George
7 Greenwald” account states: “The timber is carried from the road that runs to the river.
8 Just above the tunnel to the tunnel’s mouth by means of a raft.” *Arizona Republican*,
9 Growing Structure of Roosevelt Dam, at 3 (February 19, 1908) [C018-ASLD 252]. With
10 regard to the distance of this trip, Mr. Fuller testified: “[I]t’s not far.” *See* Tr.
11 11/17/15:1141-42 (Fuller); Fuller Presentation, slide 201. Mr. Fuller testified that he had
12 no argument against the trip being around two or three hundred feet. *See* Tr.
13 11/17/15:1144-45 (Fuller); Fuller Presentation, slide 201. Mr. Fuller agreed that water was
14 beginning to pool behind Roosevelt dam at the time of this account. *Id.* Mr. Fuller agreed
15 that the article does not mention the Salt and that it is unknown where these boats would
16 be used. *See* Tr. 11/17/15:1139-40 (Fuller); Fuller Presentation, slide 190. Mr. Fuller
17 admitted that the boats could have been used to cross the river or to use on Roosevelt Lake
18 when it filled. *Id.*

19 **21. Reclamation Service Engineers:** Account number 20 is “USRS.” *See* Tr.
20 3/10/16:3710-19 (Littlefield); Compilation, at 3, Tab 20. Mr. Fuller cites an article from
21 the *Arizona Republican* (December 9, 1905). The article details the attempt by
22 Reclamation Service engineers to inspect diversion facilities on the Salt after a flood using
23 a boat: “They found the Salt river a poor stream for navigation, however, and in the
24 voyage of a mile they were shipwrecked twice, though without the loss of life or property.
25 In the first accident the boat went on a rock in a rapid and the next time struck on a
26

1 sandbar.” According to the article, the engineers “finally made a landing” above the
2 Consolidated Canal and walked a mile until they found someone to drive them back.

3 **22. Rains:** Mr. Fuller’s twenty-second account is “Rains.” See Tr.
4 3/10/16:3724 (Littlefield); Compilation, at 4, Tab 22. Mr. Fuller cites an article from the
5 *Arizona Republican* (April 29, 1909). This article tells the story of some children who
6 stole a boat and went for a joy ride. The article is entitled “An Act of Piracy on the Raging
7 Salt.” The boys “found the boat anchored to a sand bar.” “They worked the craft down
8 through the shoals and rapids for a distance of two miles.” Dr. Littlefield testified that,
9 before it was stolen, the boat was probably used to ferry across the river during high water.
10 Tr. 3/10/16:3724 (Littlefield). One must also consider the use of the terms “piracy” and
11 “raging” as some evidence of mirth.

12 **23. Selly:** Account number 23 is “Selly.” See Tr. 3/10/16:3727-31 (Littlefield);
13 Compilation, at 4, Tab 23 [C048]. Mr. Fuller cites an article from the *Arizona Republican*
14 (June 27, 1909). This “boating attempt” is merely a report that a local man was building
15 boats for various individuals. It does not mention where the boats were intended to be
16 used or for what purpose. The byline of the article reads: “Roosevelt, Ariz. June 24.” See
17 Tr. 3/10/16:3727-31 (Littlefield). One of the individuals who purchased a boat was “Dan
18 Goggins, chief electrician for J. M. O’Rourke & Company.” O’Rourke & Company was a
19 contractor working on the dam. Dr. Littlefield testified that it was most likely that the boat
20 builder was at Roosevelt rather than Phoenix. See Tr. 3/10/16:3727-31 (Littlefield).
21 Despite this article being about boat building, Mr. Fuller listed this as a “successful boating
22 account.” Not only that, but he counts it as a successful boating account in Segments 3-6.
23 Dr. Littlefield testified that it was most likely boating in Segment 3 on the reservoir. See
24 Tr. 3/10/16:3727-31 (Littlefield).

25 **24. Thorpe & Crawford:** Account number 24 is “Thorpe and Crawford.” See
26 Tr. 3/10/16:3731-38 (Littlefield); Compilation, at 4, Tab 24. Mr. Fuller cites an article

1 from the *Arizona Republican* (June 28, 1910). This article, like many others, claims it was
2 the “first trip ever made from Roosevelt to Mesa by way of boat.” The article states that it
3 is “a route that is seldom frequented and also attempting a feat which has never yet been
4 accomplished.” The article states: “The row boat which was used throughout the journey
5 was in a very dilapidated condition at the end of the trip. Before the start was made three
6 bottoms had been placed on the craft and one of those had been worn through by the
7 constant friction with the boulders and sands found in shallow waters. Many times the
8 men were compelled to lift their craft from the water and carry it over obstacles and at
9 other times had to haul it along the stands.” The article also states: “One incident of the
10 trip was that just prior to leaving Roosevelt one of the men exchanged a faithful dog to
11 which he had become attached, for a puppy. The idea being that the older dog would be
12 entirely too heavy for the craft.” Dr. Littlefield testified: “It sounds like he believed the
13 boat needed to be extremely light to even attempt going down the river.” Tr.
14 3/10/16:3731-38 (Littlefield). The article also mentions “falls this side of Mormon Flat”
15 that would “offer many obstacles.” The article concludes: “The men are well pleased with
16 their adventure, but have no serious intention of attempting to go into competition with the
17 stage company.” Mr. Fuller presented this article as a “successful boating attempt.” Tr.
18 10/20/15:249 (Fuller); Fuller Presentation, slide 191; Tr. 10/23/15:779-80 (Fuller).

19 **25. Ensign and Scott:** Account number 25 is “Ensign and Scott.” See Tr.
20 3/10/16:3738-45 (Littlefield); Compilation, at 4, Tab 25 [C048]. Mr. Fuller cites an article
21 from the *Arizona Republican* (June 28, 1919). Mr. Fuller characterized this trip as having
22 happened in June. The article is based on a speech given by the two participants at a
23 Rotary Club luncheon. There is no way of knowing when the actual boating attempt
24 occurred. The article states: “The [canoe] in which the trip was made was built expressly
25 for that purpose and was made extra strong although light in order to be easily transported
26 around rapids that could not be navigated.” The article also states: “The first few rapids

1 were taken all right, Robert Ensign told the Rotarians. Then the boys had their first upset. .
2 . . It was not long after right the boat that they went over again. There are some rapids
3 that they dared not attempt to run.” The article concludes: “The description of the canoe
4 trip from Roosevelt lake to Phoenix was a veritable classic, it being so unusual and
5 probably will be the cause of several similar trips.” Dr. Littlefield testified that he saw no
6 other evidence in the historical record of people taking similar trips. *See* Tr. 3/10/16:3738-
7 45 (Littlefield). The trip occurred after Roosevelt Dam was completed and regulating the
8 flows of the river. *Id.*; Tr. 10/20/15:251 (Fuller); Fuller Presentation, slide 192.


9 **26. Logan:** During his rebuttal, Mr. Fuller added a new boating attempt. *See*
10 Carl T. Hayden, *Charles Trumbull Hayden Pioneer*, at 42-43 (1972) [C053-ASLD 392].
11 The account reads: “A highly skilled Scotch carpenter named Logan, who had been
12 employed at Fort Apache, built a stout boat with watertight compartments at each end.
13 When rain and melting snow caused a spring flood, he and three others came down the
14 White and Salt Rivers to Hayden’s Ferry.” It includes no details of the trip. Despite
15 occurring during a flood, Mr. Fuller included it in the list of boating attempts. *See* Tr.
16 5/19/2016:5110 (Fuller). The account includes further details of the Hayden log floating
17 expedition. *Id.* The account reads: “As a result of this trip, Mr. Hayden decided that **logs**
18 **would lodge in the canyons and could only be floated when the river was in flood**, but
19 that at such times it would not be possible to hold them by a boom in the river.” *Id.* Mr.
20 Fuller characterized this as Hayden determining that logs “logs float best at high water.”

21 **27. Trappers:** On rebuttal, Mr. Fuller also included a new “boating account” of
22 two trappers who had trapped in Alaska for six years. *Arizona Republican*, at 2 (February
23 11, 1894) [C053-ASLD 383]. The article states only that the brothers were building a
24 boat, but Mr. Fuller presented the account as a “successful” boating attempt. *See* Tr.
25 5/19/16:4994 (Fuller). The article offers nothing in the way of detail as to how successful
26 that potential boating attempt might have been, or if it even happened.

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RESPECTFULLY SUBMITTED this 18th day of July, 2016.

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