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BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE NAVIGABILITY)
OF THE VERDE RIVER FROM ITS) NO. 04-009-NAV
HEADWATERS AT SULLIVAN LAKE TO)
THE CONFLUENCE WITH THE SALT) ADMINISTRATIVE
RIVER, YAVAPAI, GILA AND MARICOPA) HEARING
COUNTIES, ARIZONA.)
_____)

At: Phoenix, Arizona
Date: February 23, 2015
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23
24
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INDEX TO EXAMINATIONS

WITNESS

PAGE

ROBERT A. MUSSETTER, Ph.D.

CONTINUED DIRECT EXAMINATION BY MR. MCGINNIS	1894
CROSS-EXAMINATION BY MS. HERNBRODE	1991
CROSS-EXAMINATION BY MR. HELM	2100

1 Q. Well, we had the Day brothers, who were
2 commercially trapping. Would that be a commercial use,
3 in your mind?

4 A. That's your characterization. I'm not
5 familiar with the Day brothers.

6 Q. If they were trapping for profit, would that
7 be commercial navigation?

8 A. It could be. But, again, you're getting off
9 into legal determinations. I'm not an attorney, and
10 I'm not here to interpret the law in terms of what
11 constitutes that aspect of commercial navigation. If
12 they were trapping for commercial purposes and that
13 fits the definition, then I suppose so.

14 Q. Well, you opined in your report and in your
15 PowerPoint several times that the Verde is not suitable
16 for the types of craft that were used commercially at
17 statehood; but you never anywhere in your report say
18 what type of craft those are.

19 So I'm trying to figure out what type of
20 craft you're talking about and what the requirements
21 for navigability were.

22 A. Well, the standard for navigation, from a
23 commercial standpoint, would be the types of boats that
24 could haul cargo and -- well, I shouldn't say and. Who
25 could haul cargo, and these would have to be craft that

1 would be big enough to handle a useful amount of that
2 type of material.

3 Q. So can a canoe haul cargo?

4 A. A canoe can haul cargo.

5 Q. A useful amount of cargo?

6 A. Depends on your purpose.

7 Q. Any purpose. Can you use a canoe for a
8 commercial purpose?

9 A. You can use a canoe for commercial purposes,
10 sure.

11 Q. Is that the type of boat you were talking
12 about when you talked about the Verde was not useful
13 for commercial purpose?

14 A. Well, again, I think there's a lot more to it
15 than just the question of could I get a canoe down the
16 river with some load of cargo. I don't think that's
17 the complete standard.

18 Q. Okay. So what's the rest of your standard?

19 A. Well, you need to have reliable flows. You
20 need to be able to navigate, work through long enough
21 reaches so that you're not continually having to drag
22 and portage around obstacles. I think that's the
23 primary thing that I would say.

24 Q. So if you don't have to drag, if you don't
25 have to portage, then that would be sufficient depth

1 for commercial navigation?

2 A. With the type of boats that --

3 Q. Your requirement isn't a steamboat, or are
4 you requiring that a steamboat be useful?

5 A. I certainly would not require that a
6 steamboat be.

7 Q. Okay. Something less than that?

8 A. Yes.

9 Q. Is there any circumstance where a pool and
10 riffle river could be navigable? There are going to be
11 shallower places, deeper places. Does that always mean
12 that that river's not navigable?

13 A. Not necessarily.

14 Q. Can meandering rivers ever be navigable?

15 A. Sure.

16 Q. Small rivers?

17 A. You'll have to define small.

18 Q. I can't.

19 Can a large river ever be nonnavigable?

20 A. Sure.

21 Q. How come?

22 A. In the extreme case, Niagara Falls I doubt
23 would be navigable, so -- and that's a pretty big
24 river.

25 Q. Would it surprise you that Niagara Falls is

1 there are no types of boats that could meet the
2 criteria.

3 So you said that canoes were available in
4 Arizona?

5 A. Yes.

6 Q. And that they could be used for trade and
7 travel?

8 A. Under some circumstances, yes.

9 Q. So if we have evidence of canoes being used
10 on the Verde, that would be evidence of commercial use?

11 A. I did not say that.

12 Q. Okay. So what is -- I realize that you
13 didn't say that. I'm trying to understand why you
14 didn't say that, why you disagree with that statement.

15 A. A few odd uses of a boat on some reaches of a
16 river does not constitute navigability, in my opinion.
17 And based on the data that I've shown, the information
18 that I have presented, the things that I've talked
19 about, the Verde River, there's shallow spots, there
20 are obstructions to travel. It would make it very
21 difficult to use that river for commercial purposes
22 with any type of boat.

23 Q. So it needs to be repeatable, is what you're
24 telling me?

25 A. I think it -- yes, I think it does need to be

1 repeatable.

2 Q. Do you have a threshold number of times --

3 A. I don't.

4 Q. -- you need to be able to do it in a row?

5 A. No.

6 Q. Do you have a threshold number of months that
7 it needs to be susceptible to use?

8 A. No.

9 Q. Did you do any research on the types of boats
10 commonly used for trade and travel at the time of
11 Arizona statehood?

12 A. No, I did not do research on that matter.

13 Q. Okay. And I apologize if I already asked you
14 this, because I think I jumped ahead somewhere.

15 How much cargo would a boat need to carry to
16 be, in your mind, useful for commercial navigation?

17 A. I can't give you an answer to that.

18 Q. 300 pounds, 400 pounds, 500 pounds?

19 A. Those are your words.

20 Q. You have absolutely no numbers in mind?

21 A. I did not try to quantify that number with
22 respect to the Verde River.

23 Q. Okay. Would you agree that a trip where
24 passengers paid a guide and for the rental of boats, is
25 that a commercial use?