

BEFORE THE

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE  
NAVIGABILITY OF THE BILL  
WILLIAMS RIVER FROM THE  
CONFLUENCE OF THE BIG SANDY  
AND SANTA MARIA RIVERS TO ITS  
CONFLUENCE WITH THE COLORADO  
RIVER, MOHAVE AND LA PAZ  
COUNTIES, ARIZONA

No.: 05-012-NAV

**REPORT, FINDINGS AND DETERMINATION  
REGARDING THE NAVIGABILITY OF THE  
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Pursuant to Title 37, Chapter 7, Arizona Revised Statutes, the Arizona Navigable Stream Adjudication Commission ("Commission") has undertaken to receive, compile, review and consider relevant historical and scientific data and information, documents and other evidence regarding the issue of whether the Bill Williams River from the confluence of the Big Sandy and Santa Maria Rivers to its confluence with the Colorado River was navigable or nonnavigable for title purposes as of February 14, 1912. Proper and legal public notice was given in accordance with law and hearings were held at which all parties were afforded the opportunity to present evidence, as well as their views, on this issue. The Commission having considered all of the historical and scientific data and information, documents and other evidence, including the oral and

written presentations made by persons appearing at the public hearing and being fully advised in the premises, hereby submits its report, findings and determination.

#### **I. Procedure**

Pursuant to A.R.S. § 37-1123(B), the Commission gave proper notice by publication of its intent to receive, compile, review, study and consider all relevant historical and scientific data and information and comments and other evidence regarding the issue of navigability or nonnavigability of the Bill Williams River from its beginning at the confluence of the Big Sandy and Santa Maria Rivers to its confluence with the Colorado River through the counties of Mohave and La Paz. The notice was published on June 17, June 24 and July 1, 2005 in the Kingman Daily Miner, published in Kingman, Mohave County, Arizona and on June 22, June 29 and July 6, 2005 in the Parker Pioneer published in Parker, La Paz County, Arizona. Copies of the Notice of Intent to Receive, Compile, Review, Study and Consider Evidence on the issue of navigability of the Bill Williams River in Mohave and La Paz Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonable available evidence received pursuant to the Notice of Intent to Receive, Compile, Review, Study and Consider Evidence, the Commission scheduled public hearings to receive additional evidence and testimony regarding the navigability or nonnavigability of the Bill Williams River In Mohave and La Paz Counties. Public notice of these hearings was given by legal advertising for the Mohave County hearing on July 7, 2005 in the Kingman Daily Miner published in Kingman, Mohave County, Arizona and on July 8, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona published in Phoenix, Maricopa County, Arizona; and for the La Paz County hearing on July 8, 2005 in the Parker Pioneer published in Parker, La Paz County, Arizona and on July 8, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona published in Phoenix, Maricopa County, Arizona pursuant to A.R.S. § 37 1126 and, in addition, by mail to all

those requesting individual notice and by means of the ANSAC website (azstreambeds.com). The hearing in Mohave County was held on August 8, 2005 in the City of Kingman, the county seat of Mohave County, and a hearing for La Paz County was held on August 9, 2005, in the City of Parker, the county seat of La Paz County. These hearings were held in the county seats of each county through which the Bill Williams River flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of the Bill Williams River in their county and further because the law requires that such hearings be held in the counties in which the watercourse being studied is located. Attached hereto as Exhibit "B" are copies of the notices of the public hearings.

All parties were advised that anyone who desired to appear and give testimony at the public hearing could do so and, in making its findings and determination as to navigability or nonnavigability of the Bill Williams River from its beginning at the confluence of the Big Sandy and Santa Maria Rivers to its end at its confluence with the Colorado River, the Commission would consider all matters presented to it at the hearings, as well as other historical and scientific data, information, documents and evidence that had been submitted to the Commission at any time prior to the date of the hearing, including all data, information, documents and evidence previously submitted to the Commission under prior law. Following the final public hearing on the Bill Williams River held on August 9, 2005, in Parker, Arizona, all parties were advised that they could file post-hearing memoranda pursuant to the Commission rules. Post-hearing memoranda were filed by or on behalf of various parties, including the Salt River Project Agriculture Improvement & Power District and Salt River Valley Water Users Association, Phelps Dodge Corporation, now known as Freeport McMoRan Copper & Gold, Inc., and The Arizona Center for Law in the Public Interest, which filed a memorandum on behalf of its clients, Defenders of Wildlife, Donald Steuter, Jerry Van

Gasse and Jim Valler. Attached as Exhibit "C" is a list of the post-hearing memoranda filed by various parties.

On October 20, 2005, at a public hearing in Phoenix, Arizona, after considering all of the evidence and testimony submitted and the post-hearing memoranda filed with the Commission, and the comments and oral argument presented by the parties, and being fully advised in the premises, the Commission, with a unanimous vote, found and determined in accordance with A.R.S. § 37-1128 that the Bill Williams River from its beginning at the confluence of the Big Sandy and Santa Maria Rivers through Mohave and La Paz Counties to its end at its confluence with the Colorado River was not navigable as of February 14, 1912, nor was it susceptible of navigability. A copy of the notice for the hearing held on October 20, 2005 in Phoenix, Arizona is attached as a part of Exhibit "B." Copies of the agenda and minutes of all hearings held on August 8, 2005 in Kingman, Mohave County, Arizona, on August 9, 2005 in Parker, La Paz County, Arizona and on October 20, 2005 in Phoenix, Maricopa County, Arizona are attached hereto as Exhibit "D."

## **II. The Bill Williams River from the Confluence of the Big Sandy and Santa Maria Rivers to Its Confluence with the Colorado River**

The Bill Williams River is the largest tributary of the Colorado River between the Virgin River, which enters Lake Mead in Nevada near the Utah border, and the Gila River at Yuma, Arizona, a distance of almost 400 miles. The beginning of the Bill Williams River is at the confluence of the Big Sandy and the Santa Maria Rivers, which lies under Alamo Lake backed up by Alamo Dam, at approximately latitude 34° 18' 30" north, longitude 113° 31' 38" west in the southwest quarter of Section 8, Township 11 North, Range 12 West, Gila and Salt River Base and Meridian. The Santa Maria River and the Big Sandy River, with its major tributary Burro Creek, together with the Bill Williams River constitute the major drainage system known as the Bill Williams River Basin. The name Bill Williams River is thus applied to a relatively short reach of the

major drainage system. It flows from the confluence of the Big Sandy and Santa Maria Rivers approximately 44 miles or 77 kilometers to the east where it empties into the Colorado River.<sup>1</sup> These four rivers and their minor tributaries constitute the major drainage system known as the Bill Williams River Basin. The terrain through which they flow is very similar and all four could have been studied and treated as a single complex watercourse.

A number of the reports and evidentiary submittals considered more than one river. For example, there is a single Arizona Stream Navigability study for the Big Sandy River, Burro Creek and Santa Maria River prepared by J E Fuller Hydrology & Geomorphology, Inc. in association with SWCA, Inc. Environmental Consultants, and the Arizona Geological Society dated January 18, 1999 and reviewed and updated in June of 2004. However, each of the four rivers was treated as a separate major watercourse and together they flow through three different contiguous counties of the State (Yavapai, Mohave and La Paz) and separate hearings were held for each one so that a separate report has been prepared for each river course. When finally approved, each report will be recorded in the counties through which it flows.

This report deals solely with the Bill Williams River but does consider evidence submitted on the other three watercourses where appropriate. The lower part of the Santa Maria River and the Bill Williams River constitute the boundary between Mohave County and La Paz County and so have to be considered in both counties.

The Bill Williams River drains a watershed of approximately 5200 square miles, which makes it slightly larger than the Salt River drainage area above Roosevelt Lake and only slightly smaller than the Verde River drainage just above Horseshoe Dam Reservoir. The Big Sandy River basin constitutes approximately 65% (2810 square

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<sup>1</sup> Some sources state that the Bill Williams River is 35 miles in length – no doubt considering the beginning point to be Alamo Dam (latitude 34°13'56" north, longitude 113°36'10" west) to the east of the actual beginning of the Bill Williams River at the confluence of the Big Sandy and Santa Maria Rivers and then possibly measuring the river in a straight line rather than considering the curves it takes flowing to the Colorado River.

miles) of the drainage system, and the Santa Maria River basin constitutes approximately 35% (1520 square miles) of the drainage system. The remainder of the drainage system is made up of short creeks and washes draining into the approximate 44 miles of river between the confluence of the Big Sandy and Santa Maria Rivers and the Bill Williams River's confluence with the Colorado River at approximately latitude 34°13'56" north, longitude 113°36'10" west in between Sections 11 and 13, Township 11 North, Range 18 West, Gila and Salt River Base and Meridian.

The channel of the Bill Williams River is characterized by a series of relatively short, narrow gorges that are separated by distinctly wider alluvial reaches. The bed of the river is filled with alluvium throughout its length, although the alluvium is quite shallow in the narrow gorges where bedrock is near the surface. At low flows the river follows an abraded pattern characterized by relatively low sinuosity channels separated by medial bars composed of sand and gravel. From Alamo Dam, the river enters Alamo Gorge for five and a half miles and then widens out into Reeve Valley for a short distance of two miles, after which it goes into a second gorge and then widens out into Rankin Valley, which is three and a quarter miles long and quickly narrows into the Pipeline Canyon for two and a half miles, followed by the third gorge of five and a half miles. After the third gorge, it flows into Planet Valley and then into Havasu Canyon and the delta where it flows into the Colorado River.

Only limited agriculture was practiced along the Bill Williams River prior to 1912. It is believed that there were one or more Native American camps, probably by the Mohave Indians, along the river and only one farm by European settlers known as Murray's Farm which existed in 1870 and may have been as big as 300 acres and used irrigation water from the river. However, the 1901 map of irrigated areas in Arizona showed no irrigation along the Bill Williams River at that time. Some water was taken from the river and used for mining purposes. Below Alamo Dam the river passes through very rugged territory, including the Swansea Wilderness, the Buckskin

Mountain State Park, and the Bill Williams National Wildlife Refuge. At low flow, the Bill Williams River was most certainly used as a travel corridor to get through the rugged mountains from Central Arizona to the Colorado River, but there is no evidence of navigation on the river that occurred in either prehistoric or historic times.

The flora of the area consists of Sonoran desert plants such as saguaro, ironwood, palo verde and other desert plants, with some juniper woodlands in the higher elevations.

In 1969 Alamo Dam was built just below the confluence of the Big Sandy River and the Santa Maria River. Its purpose was flood control and water storage. At full capacity, Alamo Lake can hold 1,050,000 acre feet of water<sup>2</sup> and has a surface area of 13,300 acres. Since construction of the dam, conditions on the Bill Williams River are not even remotely comparable to the natural stream flow patterns that existed prior to construction of the dam. Maps of the Bill Williams River and area are located at Exhibit "F."

### III. Background and Historical Perspectives

#### A. Public Trust Doctrine and Equal Footing Doctrine

The reason for the legislative mandated study of navigability of watercourses within the state is to determine who holds title to the beds and banks of such rivers and watercourses. Under the Public Trust Doctrine, as developed by common law over many years, the tidal lands and beds of navigable rivers and watercourses, as well as the banks up to the high water mark, are held by the sovereign in a special title for the benefit of all the people. In quoting the U. S. Supreme Court, the Arizona Court of Appeals described the Public Trust Doctrine in its decision in *The Center for Law v. Hassell*, 172 Arizona 356, 837 P.2d 158 (App. 1991), *review denied* (October 6, 1992).

An ancient doctrine of common law restricts the sovereign's ability to dispose of resources held in public trust. This doctrine, integral to watercourse sovereignty, was explained by the Supreme Court in *Illinois*

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<sup>2</sup> An acre foot of water is the amount of water necessary to cover one acre, one foot deep, or 325,851 gallons.



*Cent. R.R. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). A state's title to lands under navigable waters is a title different in character from that which the State holds in lands intended for sale. . . . It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. *Id.* at 452, 13 S.Ct. at 118; see also *Martin v. Waddell*, 41 U.S. (16 Pet.) at 413 (describing watercourse sovereignty as "a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, as well for shellfish as floating fish").

*Id.*, 172 Ariz. at 364, 837 P.2d at 166.

This doctrine is quite ancient and was first formally codified in the Code of the Roman Emperor Justinian between 529 and 534 A.D.<sup>3</sup> The provisions of this Code, however, were based, often verbatim, upon much earlier institutes and journals of Roman and Greek law. Some historians believe that the doctrine has even earlier progenitors in the rules of travel on rivers and waterways in ancient Egypt and Mesopotamia. This rule evolved through common law in England which established that the king as sovereign owned the beds of commercially navigable waterways in order to protect their accessibility for commerce, fishing and navigation for his subjects. In England the beds of non-navigable waterways where transportation for commerce was not an issue were owned by the adjacent landowners.

This principle was well established by English common law long before the American Revolution and was a part of the law of the American colonies at the time of the Revolution. Following the American Revolution, the rights, duties and responsibilities of the crown passed to the thirteen new independent states, thus making them the owners of the beds of commercially navigable streams, lakes and other waterways within their boundaries by virtue of their newly established sovereignty. The ownership of trust lands by the thirteen original states was never ceded to the federal government. However, in exchange for the national government's agreeing to pay the debts of the thirteen original states incurred in financing the Revolutionary War, the states ceded to the national government their undeveloped

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<sup>3</sup> *Putting the Public Trust Doctrine to Work*, David C. Slade, Esq. (Nov. 1990), pp. xvii and 4.

western lands. In the Northwest Ordinance of 1787, adopted just prior to the ratification of the U.S. Constitution and subsequently re-enacted by Congress on August 7, 1789, it was provided that new states could be carved out of this western territory and allowed to join the Union and that they "shall be admitted . . . on an equal footing with the original states, in all respects whatsoever." (Ordinance of 1787: The Northwest Territorial Government, § 14, Art. V, 1 stat. 50. See also U.S. Constitution, Art. IV, Section 3). This has been interpreted by the courts to mean that on admission to the Union, the sovereign power of ownership of the beds of navigable streams passes from the federal government to the new state. *Pollard's Lessee v. Hagan, et al.*, 44 U.S. (3 How.) 212 (1845), and *Utah Division of State Lands v. United States*, 482 U.S. 193 (1987).

In discussing the Equal Footing Doctrine as it applies to the State's claim to title of beds and banks of navigable streams, the Court of Appeals stated in *Hassell*:

The state's claims originated in a common-law doctrine, dating back at least as far as Magna Charta, vesting title in the sovereign to lands affected by the ebb and flow of tides. See *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 412-13, 10 L.Ed. 997 (1842). The sovereign did not hold these lands for private usage, but as a "high prerogative trust . . . , a public trust for the benefit of the whole community." *Id.* at 413. In the American Revolution, "when the people . . . took into their own hands the powers of sovereignty, the prerogatives and regalities which before belong either to the crown or the Parliament, became immediately and rightfully vested in the state." *Id.* at 416.

Although watercourse sovereignty ran with the tidewaters in England, an island country, in America the doctrine was extended to navigable inland watercourses as well. See *Barney v. Keokuk*, 94 U.S. 324, 24 L.Ed. 224 (1877); *Illinois Cent. R.R. v. Illinois*, 146 U.S. 387, 434, 13 S.Ct. 110, 111, 36 L.Ed. 1018 (1892). Moreover, by the "equal footing" doctrine, announced in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845), the Supreme Court attributed watercourse sovereignty to future, as well as then-existent, states. The Court reasoned that the United States government held lands under territorial navigable waters in trust for future states, which would accede to sovereignty on an "equal footing" with established states upon admission to the Union. *Id.* at 222-23, 229; accord *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981); *Land Department v. O'Toole*, 154 Ariz. 43, 44, 739 P.2d 1360, 1361 (App. 1987).

The Supreme Court has grounded the states' watercourse sovereignty in the Constitution, observing that "[t]he shores of navigable waters, and the soils under them, were not granted by the Constitution to the United

States, but were reserved to the states respectively." *Pollard's Lessee*, 44 U.S. (3 How.) at 230; see also *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 374, 97 S.Ct. 582, 589, 50 L.Ed.2d 550 (1977) (states' "title to lands underlying navigable waters within [their] boundaries is conferred . . . by the [United States] constitution itself").

*Id.*, 172 Ariz. 359-60, 837 P.2d at 161-162.

In the case of Arizona, the "equal footing" doctrine means that if any stream or watercourse within the State of Arizona was navigable on February 14, 1912, the date Arizona was admitted to the Union, the title to its bed is held by the State of Arizona in a special title under the public trust doctrine. If the stream was not navigable on that date, ownership of the streambed remained in such ownership as it was prior to statehood—the United States if federal land, or some private party if it had previously been patented or disposed of by the federal government—and could later be sold or disposed of in the manner of other land since it had not been in a special or trust title under the public trust doctrine. Thus, in order to determine title to the beds of rivers, streams, and other watercourses within the State of Arizona, it must be determined whether or not they were navigable or non-navigable as of the date of statehood.

#### **B. Legal Precedent to Current State Statutes**

Until 1985, most Arizona residents assumed that all rivers and watercourses in Arizona, except for the Colorado River, were non-navigable and accordingly there was no problem with the title to the beds and banks of any rivers, streams or other watercourses. However, in 1985 Arizona officials upset this long-standing assumption and took action to claim title to the bed of the Verde River. *Land Department v. O'Toole*, 154 Ariz. 43, 739 P.2d 1360 (App. 1987). Subsequently, various State officials alleged that the State might hold title to certain lands in or near other watercourses as well. *Id.*, 154 Ariz. at 44, 739 P.2d at 1361. In order to resolve the title questions to the beds of Arizona rivers and streams, the Legislature enacted a law in 1987 substantially

relinquishing the state's interest in any such lands.<sup>4</sup> With regard to the Gila, Verde and Salt Rivers, this statute provided that any record title holder of lands in or near the beds of those rivers could obtain a quitclaim deed from the State Land Commissioner for all of the interest the state might have in such lands by the payment of a quitclaim fee of \$25.00 per acre. The Arizona Center for Law in the Public Interest filed suit against Milo J. Hassell in his capacity as State Land Commissioner, claiming that the statute was unconstitutional under the public trust doctrine and gift clause of the Arizona Constitution as no determination had been made of what interest the state had in such lands and what was the reasonable value thereof so that it could be determined that the state was getting full value for the interests it was conveying. The Superior Court entered judgment in favor of the defendants and an appeal was taken. In its decision in *Hassell*, the Court of Appeals held that this statute violated the public trust doctrine and the Arizona Constitution and further set forth guidelines under which the state could set up a procedure for determining the navigability of rivers and watercourses in Arizona. In response to this decision, the Legislature established the Arizona Navigable Stream Adjudication Commission and enacted the statutes pertaining to its operation. 1992 Arizona Session Laws, Chapter 297 (1992 Act). The charge given to the Commission by the 1992 Act was to conduct full evidentiary public hearings across the state and to adjudicate the State's claims to ownership of lands in the beds of watercourses. *See generally* former A.R.S. §§ 37-1122 to -1128.

The 1992 Act provided that the Commission would make findings of navigability or non-navigability for each watercourse. *See* former A.R.S. § 37-1128(A). Those findings were based upon the "federal test" of navigability in former A.R.S. § 37-1101(6). The Commission would examine the "public trust values" associated with

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<sup>4</sup> Prior to the enactment of the 1987 statute, the Legislature made an attempt to pass such a law, but the same was vetoed by the Governor. The 1987 enactment was signed by the Governor and became law. 1987 Arizona Session Laws, Chapter 127.

a particular watercourse only if and when it determined that the watercourse was navigable. See former A.R.S. §§ 37-1123(A)(3), 37-1128(A).

The Commission began to take evidence on certain watercourses during the fall of 1993 and spring of 1994. In light of perceived difficulties with the 1992 Act, the Legislature revisited this issue during the 1994 session and amended the underlying legislation. See 1994 Arizona Session Laws, ch. 278 ("1994 Act"). Among other things, the 1994 Act provided that the Commission would make a recommendation to the Legislature, which would then hold additional hearings and make a final determination of navigability by passing a statute with respect to each watercourse. The 1994 Act also established certain presumptions of non-navigability and exclusions of some types of evidence.

Based upon the 1994 Act, the Commission went forth with its job of compiling evidence and making a determination of whether each watercourse in the state was navigable as of February 14, 1912. The Arizona State Land Department issued technical reports on each watercourse, and numerous private parties and public agencies submitted additional evidence in favor of or opposed to navigability for particular watercourses. See *Defenders of Wildlife v. Hull*, 199 Ariz. 411, 416, 18 P.3d 722, 727 (App. 2001). The Commission reviewed the evidence and issued reports on each watercourse, which were transmitted to the Legislature. The Legislature then enacted legislation relating to the navigability of each specific watercourse. The Court of Appeals struck down that legislation in its *Hull* decision, finding that the Legislature had not applied the proper standards of navigability. *Id.* 199 Ariz. at 427-28, 18 P.2d at 738-39.

In 2001, the Legislature again amended the underlying statute in another attempt to comply with the court's pronouncements in *Hassell* and *Hull*. See 2001 Arizona Session Laws, ch. 166, § 1. The 2001 legislation now governs the Commission in making its findings with respect to rivers, streams and watercourses.

#### IV. Issues Presented

The applicable Arizona statutes state that the Commission has jurisdiction to determine which, if any, Arizona watercourses were "navigable" on February 14, 1912 and for any watercourses determined to be navigable, to identify the public trust values. A.R.S. § 37-1123. A.R.S. § 37-1123A provides as follows:

A. The commission shall receive, review and consider all relevant historical and other evidence presented to the commission by the state land department and by other persons regarding the navigability or nonnavigability of watercourses in this state as of February 14, 1912, together with associated public trust values, except for evidence with respect to the Colorado river, and, after public hearings conducted pursuant to section 37-1126:

1. Based only on evidence of navigability or nonnavigability, determine which watercourses were not navigable as of February 14, 1912.
2. Based only on evidence of navigability or nonnavigability, determine which watercourses were navigable as of February 14, 1912.
3. In a separate, subsequent proceeding pursuant to section 37-1128, subsection B, consider evidence of public trust values and then identify and make a public report of any public trust values that are now associated with the navigable watercourses.

A.R.S. §§ 37-1128A and B provide as follows:

A. After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming the watercourse was navigable. If the preponderance of the evidence fails to establish that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was nonnavigable.

B. With respect to those watercourses that the commission determines were navigable, the commission shall, in a separate, subsequent proceeding, identify and make a public report of any public trust values associated with the navigable watercourse.

Thus, in compliance with the statutes, the Commission is required to collect evidence, hold hearings, and determine which watercourses in existence on February 14, 1912, were navigable or nonnavigable. This report pertains to the 44 mile

reach of the Bill Williams River from the confluence of the Big Sandy and Santa Maria Rivers in Mohave and La Paz Counties, Arizona, to its confluence with the Colorado River. The Bill Williams River is the boundary between Mohave and La Paz Counties. A.R.S. §§ 11-110 and 11-117. In the hearings to which this report pertains, the Commission considered all of the available historical and scientific data and information, documents and other evidence relating to the issue of the navigability of the Bill Williams River in Mohave and La Paz Counties, Arizona as of February 14, 1912.

Public Trust Values were not considered in these hearings but will be considered in separate, subsequent proceedings if required. A.R.S. §§ 37-1123A3 and 37-1128B. In discussing the use of an administrative body such as the Commission on issues of navigability and public trust values, the Arizona Court of Appeals in its decision in *Hassell* found that State must undertake a "particularized assessment" of its "public trust" claims but expressly recognized that such assessment need not take place in a "full blown judicial" proceeding.

We do not suggest that a full-blown judicial determination of historical navigability and present value must precede the relinquishment of any state claims to a particular parcel of riverbed land. An administrative process might reasonably permit the systematic investigation and evaluation of each of the state's claims. Under the present act, however, we cannot find that the gift clause requirement of equitable and reasonable consideration has been met.

*Id.*, 172 Ariz. at 370, 837 P.2d at 172.

The 2001 *Hull* court, although finding certain defects in specific aspects of the statute then applicable, expressly recognized that a determination of "navigability" was essential to the State having any "public trust" ownership claims to lands in the bed of a particular watercourse:

The concept of navigability is "essentially intertwined" with public trust discussions and "[t]he navigability question often resolves whether any public trust interest exists in the resource at all." Tracy Dickman Zobenica, *The Public Trust Doctrine in Arizona's Streambeds*, 38 Ariz. L. Rev.

1053, 1058 (1996). In practical terms, this means that before a state has a recognized public trust interest in its watercourse bedlands, it first must be determined whether the land was acquired through the equal footing doctrine. However, for bedlands to pass to a state on equal footing grounds, the watercourse overlying the land must have been "navigable" on the day that the state entered the union.

199 Ariz. at 418, 18 P.3d at 729 (also citing *O'Toole*, 154 Ariz. at 45, 739 P.2d at 1362) (emphasis added).

The Legislature and the Court of Appeals in *Hull* have recognized that, unless the watercourse was "navigable" at statehood, the State has no "public trust" ownership claim to lands along that watercourse. Using the language of *Hassell*, if the watercourse was not "navigable," the "validity of the equal footing claims that [the State] relinquishes" is zero. *Hassell*, 172 Ariz. at 371, 837 P.2d at 173. Thus, if there is no claim to relinquish, there is no reason to waste public resources determining (1) the value of any lands the State might own if it had a claim to ownership, (2) "equitable and reasonable considerations" relating to claims it might relinquish without compromising the "public trust," or (3) any conditions the State might want to impose on transfers of its ownership interest. *See id.*

## V. Burden of Proof

The Commission in making its findings and determinations utilized the standard of the preponderance of the evidence as the burden of proof as to whether or not a stream was navigable or nonnavigable. A.R.S. § 37-1128A provides as follows:

After the commission completes the public hearing with respect to a watercourse, the commission shall again review all available evidence and render its determination as to whether the particular watercourse was navigable as of February 14, 1912. If the preponderance of the evidence establishes that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was navigable. If the preponderance of the evidence fails to establish that the watercourse was navigable, the commission shall issue its determination confirming that the watercourse was nonnavigable.

This statute is consistent with the decision of the Arizona courts that have considered the matter. *Hull*, 199 Ariz. at 420, 18 P.3d at 731 ("... a 'preponderance' of



the evidence appears to be the standard used by the courts. *See, e.g., North Dakota v. United States*, 972 F.2d 235-38 (8<sup>th</sup> Cir. 1992)"); *Hassell*, 172 Ariz. at 363, n. 10, 837 P.2d at 165, n. 10 (The question of whether a watercourse is navigable is one of fact. The burden of proof rests on the party asserting navigability . . ."); *O'Toole*, 154 Ariz. at 46, n. 2, 739 P.2d at 1363, n. 2.

The most commonly used legal dictionary contains the following definition of "preponderance of the evidence":

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proven is more probable than not. *Braud v. Kinchen*, La. App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

*Black's Law dictionary*, 1064 (5<sup>th</sup> ed. 1979).

The "preponderance of the evidence" standard is sometimes referred to as requiring "fifty percent plus one" in favor of the party with the burden of proof. One could image a set of scales. If the evidence on each side weighs exactly evenly, the party without the burden of proof must prevail. In order for the party with the burden to prevail, sufficient evidence must exist in order to tip the scales (even slightly) in its favor. *See generally United States v. Fatico*, 458 U.S. 388, 403-06 (E.D. N.Y. 1978), *aff'd* 603 F.2d 1053 (2<sup>nd</sup> Cir. 1979), *cert.denied* 444 U.S. 1073 (1980); *United States v. Schipani*, 289 F.Supp. 43, 56 (E.D.N.Y. 1968), *aff'd*, 414 F.2d 1262 (2d Cir. 1969).<sup>5</sup>

<sup>5</sup> In a recent Memorandum Decision of the Arizona Court of Appeals, the Defenders of Wildlife and others through their representative, Arizona Center for Law in the Public Interest, attacked the constitutionality of the burden of proof for navigability determination by the Commission specified in A.R.S. § 37-1128(A). In that case, the Defenders claimed that the burden of proof specified in the statute conflicts with federal law and should be declared invalid because it is contrary to a presumption favoring sovereign ownership of badlands. In discussing and rejecting *Defenders* position the Court stated: ". . . In support of this argument, Defenders cite to our decision in *Defenders*, see 199 Ariz. At

## VI. Standard for Determining Navigability

The statute defines a navigable watercourse as follows:

“Navigable” or “navigable watercourse” means a watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

A.R.S. § 37-1101(5).

The foregoing statutory definition is taken almost verbatim from the U.S. Supreme Court decision in *The Daniel Ball*, 77 U.S. (10 Wall) 557, 19 L.Ed. 999 (1870), which is considered by most authorities as the best statement of navigability for title purposes.<sup>6</sup> In its decision, the Supreme Court stated:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

77 U.S. at 563.

In a later opinion in *U.S. v. Holt Bank*, 270 U.S. 46 (1926), the Supreme Court stated:

[Waters] which are navigable in fact must be regarded as navigable in law; that they are navigable in fact when they are used, or are susceptible of being used, in their natural and ordinary condition, as highways for

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426, ¶ 54, 18 P.3d at 737, and to *United States v. Oregon*, 295 U.S. 1, 14 (1935). But neither of these decisions held that the burden of proof in a navigability determination must be placed on the party opposing navigability. Moreover, this court has twice stated that the burden of proof rests on the party asserting navigability. *Chassell*, 172 Ariz. At 363 n. 10, 837 P.2d at 165 n. 10; *O'Toole*, 154 Ariz. At 46 n. 2, 739 P.2d at 1363 n. 2. We have also recognized that a 'preponderance' of the evidence appears to be the standard used by the courts" as the burden of proof. *Defenders*, 199 Ariz. At 420, ¶ 23, 18 P.3d at 731 (citing *North Dakota v. United States*, 972 F.2d 235, 237-38 (8<sup>th</sup> Cir. 1992)). *Defenders* have not cited any persuasive authority suggesting that these provisions in § 37-1128(A) are unconstitutional or contrary to federal law. We agree with this court's prior statements and conclude that neither placing the burden of proof on the proponents of navigability nor specifying the burden as a preponderance of the evidence violates the State or Federal Constitutions or conflicts with federal law." *State of Arizona v. Honorable Edward O. Burke* 1 CA-SA 02-0268 and 1 CA-SA 02-0269 (Consolidated); Arizona Court of Appeals, Division One, (Memorandum Decision filed December 23, 2004).

<sup>6</sup> The *Daniel Ball* was actually an admiralty case, but the U.S. Supreme Court adopted its definition of navigability in title and equal footing cases. *Utah v. United States*, 403 U.S. 9, 91 Sect. 1775, 29 L.Ed.2 279 (1971) and *United States v. Oregon*, 295 U.S. 1, 55 Sect. 610, 70 L.Ed.2 1263 (1935).

commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water; and further that navigability does not depend on the particular mode in which such use is or may be had--whether by steamboats, sailing vessels or flatboats--nor on an absence of occasional difficulties in navigation, but on the fact, if it be a fact, that the [water] in its natural and ordinary condition affords a channel for useful commerce.

270 U.S. at 55-56.

The Commission also considered the following definitions contained in A.R.S. § 37-1101 to assist it in determining whether the Bill Williams River was navigable at statehood.

11. "Watercourse" means the main body or a portion or reach of any lake, river, creek, stream, wash, arroyo, channel or other body of water. Watercourse does not include a manmade water conveyance system described in paragraph 4 of this section, except to the extent that the system encompasses lands that were part of a natural watercourse as of February 14, 1912.

5. "Navigable" or "navigable watercourse" means a watercourse that was in existence on February 14, 1912, and at that time was used or was susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

3. "Highway for commerce" means a corridor or conduit within which the exchange of goods, commodities or property or the transportation of persons may be conducted.

2. "Bed" means the land lying between the ordinary high watermarks of a watercourse.

6. "Ordinary high watermark" means the line on the banks of a watercourse established by fluctuations of water and indicated by physical characteristics, such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation or the presence of litter and debris, or by other appropriate means that consider the characteristics of the surrounding areas. Ordinary high watermark does not mean the line reached by unusual floods.

8. "Public trust land" means the portion of the bed of a watercourse that is located in this state and that is determined to have been a navigable watercourse as of February 14, 1912. Public trust land does not include land held by this state pursuant to any other trust.

Thus, the State of Arizona in its current statutes follows the Federal test for determining navigability.

## **VII. Evidence Received and Considered by the Commission**

Pursuant to A.R.S. § 37-1123, and other provisions of Title 37, Chapter 7, Arizona Revised Statutes, the Commission received, compiled, and reviewed evidence and records regarding the navigability or nonnavigability of the Bill Williams River from its beginning at the confluence of the Big Sandy and Santa Maria Rivers to its confluence with the Colorado River. Evidence consisting of studies, written documents, newspapers and other historical accounts, pictures and testimony were submitted. There were a number of separate documentary filings, the most comprehensive of which was the Final Report and Study prepared by J E Fuller/Hydrology and Geomorphology, Inc., in association with SWCA, Inc. Environmental Consultants and the Arizona Geological Survey dated January 1999, and revised and updated by J E Fuller/Hydrology and Geomorphology, Inc. in June of 2004 submitted by the Arizona State Land Department. Documents were also submitted by David Baron, Center for Law in the Public Interest, Timothy Flood of Friends of Arizona Rivers, and a letter by Chuck Kranz. Other reports and studies submitted were the Small & Minor Watercourse Criteria final report and the final report on the three county pilot study for small and minor watercourses. The list of evidence and records, together with a summarization is attached as Exhibit "F". The Commission also considered, where appropriate, evidence submitted in connection with the hearings on Burro Creek, Big Sandy River and Santa Maria River, together with the small and minor watercourse studies for Mohave, La Paz and Yavapai Counties. A public hearing was held on August 8, 2005, at Kingman, Arizona, in Mohave County, and on August 9, 2005, at Parker, Arizona, in La Paz County, for the public to present testimony and evidence on the issue of navigability of the Bill Williams River. A number of individuals appeared at the hearings in Kingman and Parker and gave testimony. A public hearing was also held on October 20, 2005 in Phoenix, Arizona, to consider the evidence submitted and

the post-hearing memoranda filed. The minutes of these hearings are attached hereto as Exhibit "D."

**A. Prehistoric Conditions on the Bill Williams River Watershed**

The archaeology of west central Arizona, and specifically the Bill Williams River Basin, is not nearly as well known as the archaeology of other parts of the state. Few archeological studies have been conducted specifically on the Bill Williams River and even fewer actual excavations have been undertaken. The earliest was a reconnaissance in 1929 by the Gila Pueblo Foundation, a private archeological research center in Globe, Arizona. Its purpose was limited to determine the geographical range of the red on buff pottery, a hallmark of Hohokam culture that was centered around Phoenix and Tucson basins. In the 1930's, Harold Colton and Lyndon Hargrave conducted reconnaissance surveys along the proposed Santa Fe Railroad route through Mohave County for the Museum of Northern Arizona. In the 1940's the San Diego Museum of Man conducted a survey along the Bill Williams River and identified three sites and a long stretch of lithic scatters and trails on river terraces. The most thorough survey in the Bill Williams River area was conducted in connection with the construction of Alamo Dam and Lake prior to 1968. Another extensive survey was performed by the Cypress Bagdad Copper Company from Bagdad, Arizona in connection with its construction of a water pipeline 36 miles long between Bagdad and Wikieup on the Big Sandy River. Other reconnaissance and surveys were made but the field notes were not well kept. Due to the short distance of the reach of the Bill Williams River and absence of detailed surveys, it is necessary to look at the entire Bill Williams River Basin to obtain an idea of the prehistoric conditions of this area of Arizona.

The surveys did show that even though human occupation of the deserts of the southwest can be traced back to the late Plistocene period, 11,000 to 12,000 years ago, evidence of paleoindian occupation in the area of the Bill Williams River Basin is very

sparse and consists only of surface finds of lithic tools.<sup>7</sup> A clovis type projectile point was found in the Arizona Strip area to the north, and another was found by a rancher in the Aquarius Mountains between the Big Sandy River and Burro Creek. No paleoindian sites in this area have been excavated.

A number of archaic period sites have been located which indicate that during the late archaic period since 2000 B.C., an increasing number of hunters and gatherers seem to have occupied the Bill Williams River Basin area, although there is very little evidence of occupation during the early or middle archaic phases. Many of the sites show stone tools and flakes from working of stone tools. In some sites split tree figurines from the archaic tradition have been found. A number of sites surveyed in the Alamo Lake area in connection with the construction of Alamo Dam and the filling of Alamo Reservoir in 1968 have shown camps and work areas of this archaic period. None of the surveys and reconnaissance discussed above disclosed sites earlier than the late archaic.

The archaic period culminated in a transition from the hunting-gathering economy of the later archaic period to the formative period in which agriculture, villages and ceramics began to appear. The formative period occurred in this area about 700 years later than in other places in Arizona. With the introduction of pottery, maize, and the bow and arrow to this region about A.D. 700, two archaeologically defined farming cultures were identified. The first has been denominated by archeologists as the Prescott Culture with its small pueblos and crudely painted pottery and appears to be a derivative of the contemporaneous Anasazi, Cohonina, and Sinagua archaeological cultures of the Colorado Plateau. Many archaeologists postulate that there is a close relationship between the Cohonina and the Prescott cultures. The Prescott Culture survived between A.D. 900 and A.D. 1300 and then disappears from

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<sup>7</sup> The paleoindian period is generally considered to be between 9500 B.C. or 11,500 B.P. (Before Present) to approximately 7500 B.C. when the archaic period is deemed to have commenced.

the archeological record. Evidence of its villages are located especially in the Aquarius Mountains and some along the Santa Maria River. A Prescott-type culture village has been located near the confluence of the Big Sandy and the Santa Maria Rivers at the beginning of the Bill Williams River. Archeologists do not know which modern native American tribe or tribes may be descended from the Prescott Culture.

The other culture tradition denominated by archeologists as the Patayan Culture is thought to have developed out of the archaic tradition somewhere around A.D. 500. This culture originated along the lower Colorado River and spread eastward into the deserts of western Arizona and north along the Colorado River. Due to variability and material, culture among Patayan groups have caused some archeologists to distinguish between upland north and lowland south Patayan or the Cerbat branch north and the Laquish branch south. Sites around Alamo Lake show a combination of influence from both sides of the river, as well as from the Hohokam region to the west. The Cerbat archeological tradition developed into the modern Pai tribes of Arizona (Hualapai, Havasupai, and Yavapai). These groups were characterized by seasonally occupied rancherias, unpainted pottery, and expedient farming practices. The lower Patayan or the Laquish branch developed into the various Yuman-speaking tribes of which Yuma and Maricopa are best known. Pottery appeared around A.D. 700 in both the north and south cultures. Although there was some farming, there was little evidence of diversion of the rivers or true irrigation. In the south, the Yumans supplemented their food by fishing on the river and as was true in most desert cultures, moved frequently from one temporary camp to another based primarily on availability of water.

From about A.D. 1300 to European contact, there was a period of tremendous cultural change and upheaval, including migrations, in the southwest, with many of the old cultures such as Hohokam, Mogollon, Sinagua and Anasazi abandoning vast areas and occupying other smaller areas, presumably with more abundant and more readily available resources such as water. In the Bill Williams River Basin, a numic-speaking

peoples, who became later known as the Paiute, began migrating into this area around A.D. 1300. The southern Paiute, the Chemahuevi and the Ute, are classified as numic speakers, the northernmost branch of the Uto-Aztecan linguistic family. At the present time all of the tribes along the Colorado River are in some way descended from them and the Cerbat culture with which they merged. The Yavapai, a tribe probably descended from the Cerbat culture, occupied territory in the Bill Williams River Basin and to the south and east, and later migrated to the east.

There is some evidence of farming in the Bill Williams River Basin during the formative period, A.D. 700 to 1300, mostly by the Prescott cultural groups who built small villages up to 1300 when this culture disappeared. It is possible that the Cerbat (Patayan) cultural groups used the same area for farming during their seasonal migrations after the area was abandoned by the Prescott cultural group. It is also possible that the Yavapai practiced some dry farming, but research shows they were primarily hunters and gatherers. There is no evidence of any significant irrigation systems having been built in the Bill Williams River Basin. There is also no evidence of the prehistoric Indians utilizing the Bill Williams River for transportation, either by canoe or raft, nor is there any evidence that they utilized it on a regular basis for floatation of logs. The Bill Williams River itself was probably used particularly in low water as a avenue for access between the upper basin and the Colorado River. The deep gorges and canyons precluded permanent camps and living sites, although there were some quarries for jasper, chalcedony and chert along the river, which suggests that that was the primary focus of the prehistoric activity. Archeological research has not documented any use of the Bill Williams River for commercial trade or travel.

#### **B. Early Exploration of the Bill Williams River Watershed**

Spanish exploration of the southwest began in 1540 with the Coronado Expedition which traveled through eastern Arizona. Captain Hernando de Alarcon, in attempting to provide logistic support to the Coronado Expedition, sailed up the



Colorado River as far as the mouth of the Gila River but did not make contact with Coronado. In 1582, Antonio de Espejo, Governor of New Mexico, with a few soldiers, traveled from Santa Fe to Zuni and into Arizona looking for a large deposit of ore about which he had heard from the Indians. He reached an area we think is now Jerome, Arizona and did discover some copper ore deposits. He did not go any further to the west, however.

The first European to explore the Bill Williams River water shed was Juan Mateo de Oñate, Governor of New Mexico. In 1604, Oñate traveled from New Mexico, through Zuni, down the Big Sandy River to the Bill Williams River and followed it to the Colorado River on his way to California. Oñate and his party traveled on foot and they made no attempt to float down the river. The Halchidhoma Indians lived along the Bill Williams and Santa Maria Rivers until 1827 to 1829 when the Mohave tribe forced them to move south to the Gila River to join with the Gila River Maricopas. Most likely Oñate and his expedition encountered these Indians, as well as other tribes such as the Yavapai on their way to the Colorado River. The western Yavapai occupied a portion of the Bill Williams River Basin and gradually worked their way east into Arizona. Other Spanish explorers Father Jacobo Sedelmayr who in 1744 traveled up the Colorado River to the mouth of the Bill Williams River, which he called the Rio Azul. He followed the Bill Williams River upstream some distance and may have gone a short distance up the Santa Maria River. In 1776, Father Francisco Garces of the Yuma Mission journeyed up the Colorado River to the vicinity of the present day Kingman and then went east to the Hopi villages. On his return, he probably crossed the Big Sandy River and possibly the Santa Maria and may have traveled along them and the Bill Williams River for a short distance. Other missionaries who traveled in the area were Marcos Farfán de los Godos in 1595 and Fray Gerónimo de Zárate Salmerón in 1664. The available journals of these explorers indicate that the flow of the Bill Williams River was intermittent and all of them traveled on foot or mule or horseback, except on the

Colorado River. No permanent missions or settlements were established in the Bill Williams River Basin during this period of time.

In 1821, Mexico won its independence from Spain and the sovereignty of the area with which we are concerned passed to the new nation of Mexico. The Mexican government sponsored few expeditions into western Arizona. Although Mexico attempted to discourage incursions into its territories by citizens of the United States, fur trappers and mountain men began exploring the southwest as early as the 1820's. Contrary to their popular image, the mountain men and fur traders generally rode horseback or mules in the southwest and did not normally use boats for trapping activities. There are some reports of the trappers canoeing on the lower Colorado River, however.

American fur trappers were familiar with the Bill Williams River and other streams in the Bill Williams River Basin. Antoine LaRue named the Bill Williams River after a fellow trapper and guide, William Sherley ("Old Bill") Williams, whom LaRue met on the river in 1837. He was with the party of Joseph Redford Walker, together with Joe Meek and several others who traveled up the Bill Williams River and possibly on up the Big Sandy in order to reach the Hopi villages. They may also have explored the mouth and some distance up the Santa Maria River to see if there were trappable game located there. Other fur trappers and mountain men also may well have passed over or traveled up or down along the Bill Williams River but left no written record of their travels.

In 1826, four groups of trappers went down the Gila River from the silver mines near the city now known as Silver City, one of which was led by Bill Williams. One group followed the Gila down to the Colorado and constructed small watercraft which they used to ascend the river until they reached the Mohave Indian villages. Some went as far north as the Virgin River and others turned east and returned to Santa Fe via the Little Colorado and the Zuni pueblos. The actual routes they took are hard to discern

from the records they left. In later years, others made trips down the Gila River from New Mexico to the Colorado and then traveled up the Colorado to the Grand Canyon and back across to New Mexico. In 1837 Antoine LaRue rafted the Colorado from the mouth of the Virgin River, to which he had come from New Mexico, and later reported he met Bill Williams on the river to which his name was given. Bill Williams was born in 1787 in Rutherford County, North Carolina, and his family moved to Missouri where he lived with Osage Indians as a young man. He moved to Santa Fe in 1825 and from 1825 to 1846 trapped throughout the southwest, especially in southern New Mexico and Arizona. Williams was killed by Indians in 1849. He may well have visited the stream that later bore his name on at least two occasions on his trapping expeditions.

The Mexican War of 1846-47 ended with the Treaty of Guadalupe Hidalgo whereby the United States acquired all of the territory in the southwestern United States north of the Gila River, including California. The area south of the Gila River was later purchased from Mexico in 1853, which transaction is known as the Gadsden Purchase and which brought the southern boundary of the United States to its present location. Following the acquisition of this vast territory by the United States, it sent expeditions commanded by young Army engineer officers to explore the newly acquired territory and find good routes for roads and railroads. The Sitgreaves Expedition of 1851 guided by Antoine LaRue cross the Big Sandy River and traveled down the Bill Williams River. Lt. Sitgreaves was surveying a possible railroad route across northern Arizona, which route is now followed by the Santa Fe Railroad. That same year, Joseph Redford Walker also traveled down a portion of the Big Sandy River while exploring a possible railroad route from Albuquerque to San Francisco. Francois Aubrey, a Santa Fe trader, also traveled to California in 1853 and 1854, but followed the Mormon battalion route along the Gila River to the south and a route north of the Big Sandy.

In 1854, the Whipple Expedition was the first American expedition to follow the Bill Williams River to its confluence with the Colorado River and map the same. Another American expedition led by Edward F. Beale in 1857 used camels to see if they would serve as pack animals for the Army in the desert west. He traveled across northern Arizona and established a wagon road that is followed today by the Santa Fe Railroad and Interstate 40. In 1857 and 1858, two expeditions sailed up the Colorado River to see how far upstream it was navigable and to provide information on the Bill Williams River. None of these expeditions tried to float up or down the Bill Williams River and their records indicate that the flow was intermittent and occasionally became lost in the sand where it went underground. Further on, the water would again appear where the canyon walls would narrow and bedrock was apparently closer to the surface. As a result of an expedition by Lt. Joseph Christmas Ives in 1857, the Colorado River was declared navigable up to the mouth of the Virgin River. In describing the Bill Williams River where it entered the Colorado, Lt. Ives called it a "mere brook," although Indians had told him that at times it was much wider and deeper with large floods. In 1867 and 1868, William Jackson Palmer conducted a survey of the 32<sup>nd</sup> and 35<sup>th</sup> parallels north and south of the area with which we are concerned for railroad routes from Kansas to the Pacific Ocean. He also considered a railroad route from Prescott and Chino Valley along the Santa Maria and Bill Williams Rivers to cross the Colorado River.

The best description of the rivers in this area from the period of time was written by Whipple who was surveying the area for railroad routes from Ft. Smith, Arkansas, to Los Angeles. He described the Basin as abounding in antelope, deer, rabbit and partridge which feed on the rich gramma grass and seed it yields. He stated that the rivers were wide in certain places but very shallow. He also stated they would disappear into the sandy bed and then after being dry for a couple miles would again resurface in the channel flowing and fertilizing the banks for a distance and then sink

again into the sand. The mountains through which the rivers flow were too difficult for a permanent road and the Beale Road through the north became established as the most direct transcontinental route to California in that area. The Santa Fe Railroad and Interstate 40 follow generally along this road today.

There is extensive literature on the era of navigation on the Colorado River which lasted from 1852 to 1909. At least 19 steamboats operated on the Colorado River during this period and, in addition, gasoline powered boats, barges, dredges and a sloop operated commercially. Commercial navigation occurred the length of the Colorado River from its mouth to the Virgin River and even extended a short distance up the Gila River, but there is no evidence of any commercial navigation on the Bill Williams River. A review of all the records and accounts of these early travelers indicates that while the Bill Williams River was a corridor for traffic from the Bill Williams River Basin and east to the Colorado River and was a source of water for travelers, all travel was accomplished by foot, horseback, mule or wagon and no one ever tried to float or navigate the Bill Williams River.

### **C. Settlement and Development in the Bill Williams River Basin**

In April 1861, silver was discovered in El Dorado Canyon on the west side of the Colorado River and, in 1862, Pauline Weaver discovered gold at Laguna de la Paz on the east side of the Colorado River near Ehrenberg. These two strikes initiated a prospecting boom throughout the region in 1862, and by the end of 1863 there were more than a dozen mining districts blanketing the area for 30 miles on either side of the Colorado River from Ft. Yuma to El Dorado Canyon. The Williams Fork District, lying just north of La Paz, was organized in 1863, and a number of mines and communities which grew up around them developed on or near the Bill Williams River.

In 1874, Jackson McCracken and "Chloride Jack" Owen discovered rich silver deposits in the Big Sandy River Valley. Within ten years there were three major mining districts in the area – the McCracken Mountain Mining District, Greenwood Mining

District on Burro Creek just east of its confluence with the Big Sandy, and the Eureka Mining District on the Santa Maria, approximately 20 miles east of its confluence with the Big Sandy. The McCracken Mine, Senator Mine and Signal Mine were all located on the Big Sandy River. While the mines were located in the hills away from the river, mills were constructed along the rivers to process the ore, and small communities grew up around them. These communities included Signal or Signal City, which is still recognized but as a ghost town, Greenwood or Greenwood City, New Virginia or Virginia City, Scatterville and Lyonsville. A community was also located at Alamo Crossing at the confluence of the Big Sandy and Santa Maria Rivers.

Aubrey Landing was founded in 1864 at the confluence of the Bill Williams and Colorado Rivers, north of the Bill Williams and on the east side of the Colorado. From Aubrey Landing, whose docks were on the Colorado River, freight teams hauled supplies for mines and camps up the Bill Williams River. Supplies were brought up the Colorado River by boat to Aubrey City and from there they were hauled by mule wagons to various mills and mines. The haul from Aubrey to Signal was 35 miles. The mines and mills began to decline in the late 1800's but a mine for production of manganese was started at Artillery Peak Mining District west of the Big Sandy River in 1914. It continued to operate through 1955. Aubrey Landing also had a steam-powered smelter located on the Bill Williams River. It is not clear whether the water for this mill came from the Colorado River or the Bill Williams River, but the location of the smelter on the Bill Williams suggests that water from the Bill Williams could have been used. The water could have been backed up water from the Colorado River whose high water level ran up the Bill Williams River a short distance. Aubrey Landing continued in use until the 1880's when the mining fever abated. Eagle Landing, located six miles south of the mouth of the Bill Williams River on the Arizona side of the Colorado, was also established about the same time and served the Planet Mine and other mines in the Cienega Mining District. Virginia City was located west of the Big Sandy River and

north of the Bill Williams River right at the confluence of the Big Sandy and the Santa Maria Rivers. Further north was Signal City, and still further north was Greenwood City, both on the banks of the Big Sandy and both mentioned above as ghost towns at this time. To the south of the Bill Williams River, the town of Swansea was established. Mining in this area petered out in the 1890's and very little was being carried on by the time of statehood.

The Eureka Mining District was established in 1880 on the Santa Maria River when John Lawler and B. T. Riggs discovered the Hillside Mine. In 1882, W. J. Pace and J. M. Murphy discovered the Bagdad and Hawkeye Mines on Copper Creek, five miles south of the Hillside Mine. These became the longest used mines within the district and led to the founding of the town of Bagdad, the only real town now located in the Bill Williams River Basin area. Eventually the Eureka Mining District included such mines as Hillside, Bagdad, Copper Queen, Copper King, Old Dick, Penafore, and Black Pearl. Open pit mining began in 1946. Later mines in the Eureka District included the Sultan, Crosby, Home Stake, Big Stick and Weepah. The Sultan and Crosby mines are located north of the Santa Maria River and east of Highway 93. The Big Stick mine is located immediately south of the Santa Maria River, west of Highway 93, and just east of the Arrastra Mountain Wilderness area. The Home Stake, Big Stick and Weepah Mines were in operation at least through 1942. Most of these mines supported small settlements but they did not last long or develop into towns, the exception being the town of Bagdad. A community was located at Alamo Crossing at the confluence of the Big Sandy and Santa Maria Rivers, and a post office was established there in 1899. This community disappeared under the waters of Alamo Lake, when the Alamo Dam was built in 1968.

Only limited agriculture was practiced in historical times on the Bill Williams River. There is a report that a Mr. Murray had a farm on the river in the 1870's of approximately 300 acres and that water was diverted from the Bill Williams River to

irrigate this farm. A 1901 map of irrigated areas in Arizona shows no agriculture on the Bill Williams River, so apparently Murray's farm was abandoned some time prior to the turn of the century. Farms were established on other rivers of the Bill Williams River Basin and farmers began to practice irrigation agriculture primarily on the Big Sandy River, but to a lesser extent to the Santa Maria River.

The General Land Office maps show seven family farms and ranches along the Santa Maria in 1912. These early day ranchers and farmers built diversion dams on the river where the water rose to the surface and then diverted water into ditches to their farmland and homes. Most of the ranches and farms were 160-acre homesteads. Fields were established near the river where crops could be grown and cattle pastured. Cattle were also run on the slopes of the hills running up from the river beds on public land from the Santa Maria River and Big Sandy River. Except for the small alluvial plains, the Bill Williams River walls were far too steep for any kind of pasturing. The people did keep saddle horses, work horses, beef cattle, milk cows, hogs, chickens and stands of bees. Crops consisted mainly of alfalfa, grain, corn and wheat, but some people had gardens with vegetables, squash, Irish potatoes, sweet potatoes, watermelons and other types of melons. These farmers and ranchers along the Santa Maria and Big Sandy were largely self-sufficient and probably also did some prospecting in the hills around the river. Occasional large floods would wash out fields and gardens and discourage the farmers and ranchers. Most of the water rights have now been acquired by the Cyprus Bagdad Mining Company. There is little farming going on at this time along these rivers, although there are ranches still operating in the area.

Despite the use of the Bill Williams River as a route to the Colorado River by native Americans and others, all such travel was on foot, by horseback, mule or wagon. Principal roads and railroads in later years bypassed the Bill Williams River in favor of other routes to the north and south of the river. In 1877, the Southern Pacific Railroad reached Yuma, and there are records of stage service being available to towns in the



area of the Bill Williams River Basin. In 1905, the Arizona and California Railroad was completed from Parker to Phoenix, and in 1910 the Arizona and Swansee Railroad was completed from Parker to Swansee on the south side of the Bill Williams River. A road was established from the confluence of the Big Sandy and Santa Maria Rivers to Date Creek to the east and a road was established from Prescott to Ehrenberg to the south of the Bill Williams River.

It appears that all travel on or near the Bill Williams River has always been by means other than commercial boating on the river. There are no accounts of boating on the Bill Williams River during historical times. All of the dams constructed along or near the Bill Williams River were constructed after statehood. Parker Dam, at the confluence of the Bill Williams River and the Colorado River, was begun in 1927 and completed in 1938. Alamo Dam was constructed in 1968 and 1969. At the present time there is recreational boating and fishing on Alamo Lake. The flood gauging stations along the rivers in the Bill Williams River Basin indicate there have been some very large floods in the past with a high flow of water, especially prior to the construction of Alamo Dam. The dam, which was built for flood control and storage of water, has reduced flooding on the reach of the river below the dam but even prior to construction of the dam, the Bill Williams River was often dry and therefore there is no record of commercial navigation occurring on the Bill Williams River. The Bill Williams River Basin to this date has remained relatively isolated and the only town of any consequence is Bagdad where the Bagdad Cypress mine is located. Paved roads from Bagdad to Hillside (State Route 96) and south to U.S. Highway 93 (State Route 97) are the only first class roads in the area.

#### **D. Geology, Geomorphology and Hydrology**

There are three great physiographic provinces in Arizona – the Colorado River Plateau in the north and east, the Basin and Range Province in the south and west with a transition zone of Central Mountain Province dividing them. The Bill Williams River

Basin is located in the Basin and Range and transition zone geologic provinces of West Central Arizona. The Basin and Range province extends from the Snake River Plain in Idaho south through Southern Arizona and into Mexico. It is characterized by generally north trending mountain ranges, which are separated by basins formed by normal faulting along mountain fronts. In Western and Southern Arizona, basins are deep, well-defined grabens, which tend north to northeast and have fairly regular spacings. The Big Sandy Valley is the most prominent basin in the Bill Williams River Basin and is composed of alluvial basin fill that is very deep. The transition zone in which most of the Bill Williams River Basin is located is rugged, mountainous country in the western part of the Basin and Range Province and between it and the Colorado Plateau. It has geologic and physiographic characteristics that are transitional between the highly deformed Basin and Range Province and the relatively undeformed, fairly high Colorado Plateau in North central and Northeastern Arizona.

The geology of the Bill Williams River Basin reflects the complex history of the Basin and Range Province with several periods of magmatism and overprinting of compressional and extension terraces in the past 80 million years. A period of wide-reaching magmatism and crustal shortening associated with the Laramide Orogeny occurred in the middle to late cretaceous and early tertiary period approximately 60 to 70 million years ago. This same area was extended in the middle tertiary between 10 and 20 million years ago forming major, low-angle normal faults trending east/northeast by west/southwest. During this latter period, some streams changed direction of their flow and the area was subjected to magmatic composition changes with volcanoes and flow of basalt. As the mountains eroded, bajatas and alluvial fans were deposited, particularly in the Big Sandy Valley and sediment was deposited in the drainage streams.

The Bill Williams River itself flows through deep canyons and gorges interrupted with small alluvial planes. The climate is semi-arid to arid with the temperature and

precipitation varying substantially with the altitude. Piñon and juniper woodlands are found in the higher elevations of the basin. Cacti and Sonoran desert species are found in the lower elevations of the basin. Annual precipitation is generally 15 – 20 inches in the mountainous high elevation areas, dropping as low as 6 inches near the mouth of the Bill Williams River. Precipitation mainly in the summer (monsoon) and the winter rainy season. Summer rains occur during July, August and September and are generated by convection in which moisture from the Gulf of Mexico encounters heated mountain terrain causing the air to increase in temperature and rise. The unstable air masses lead to high intensity rain storms of short duration, often accompanied by thunder, lightening and strong winds. The dissipating tropical storms of the cyclonic variety from the Eastern Pacific and Gulf of Alaska occasionally bring heavy precipitation to portions of western Arizona during the fall and winter seasons.

For most of its length, the Bill Williams River contains water that flows intermittently or is relegated to discontinuous pools during the dry portions of the year. One early explorer described the stream as disappearing into the sand and reappearing when the bedrock approaches the surface and then disappearing again in the sand. When it does flow at lower or middle precipitation levels, it is braided and has many sand bars and sand islands in it. Stream gauging records in the Bill Williams River Basin are limited in spatial and temporal scope, but the Bill Williams River has a limited record and interrupted record of 67 years. There is little record of stream gauge stations in the rivers of Bill Williams River Basin prior to 1939. Some gauges that were established at that time for the purpose of documenting flow for Alamo Dam were later discontinued. Accordingly, the flow of the various streams in the Bill Williams River Basin and the documentation of floods prior to that time are mostly visual by persons who observed the events. The magnitude of large floods which we know occurred prior to the gauging stations are estimates. For example, the largest estimated flood, over 200,000 cubic feet per second ("cfs") was reported on the Bill Williams River in

February of 1891. The largest measured flood on the Bill Williams River was 92,500 cfs on February 7, 1937. Other years in which major floods occurred were 1892, 1905, 1906, 1910, 1911, 1915 and 1920. We know that these floods occurred in early years because of the reports of residents, which stated that their farms and ranches were washed away. Also, the floods affected towns such as Greenwood, which was washed away in the 1870's and 1880's. In recent years, since gauges have been installed on Santa Maria River, the largest recorded discharge was on March 1, 1978 with an all time peak flow of 23,100 cfs. Other large floods on the Santa Maria River, which were recorded, were 19,500 cfs on February 20, 1991 and 15,700 cfs on February 8, 1993. In addition to the reports of fields, orchards, and even homes which were washed away during the floods of the late 1800's and early 1900's, tree ring studies and other hydrological indicators show that over all there has been little climatic change from the mid-1850's to the present time, so the condition of the rivers in the Bill Williams River Basin in 1912 may be considered similar to the present day condition. In view of its being dry a good part of the time, but subject to large floods, it is considered an erratic and undependable river in no way suitable for navigation.

The construction of the Alamo Dam significantly altered the flow in the Bill Williams River and being a water storage dam lowered the chance of floods. Prior to the construction of the dam, the mean flow was 92.5 cfs as compared to a post-dam mean flow of 160.2 cfs. However, the average high flow, without getting into the extreme flood stage, was 25,200 cfs pre-dam as opposed to 6,980 cfs after the dam was constructed. Thus, the dam resulted in considerable reduction of a peak discharge. At low flows, the river follows a braided pattern characterized by relatively low sinuosity channels separated by medial bars composed of sand and gravel. During high flows (prior to construction of Alamo Dam), the channel has apparently occupied all of the Late Holocene flood plain, except for some peripheral portions of the wide alluvial valleys. During low flow periods, stream flow in the river is intermittent with surface

flow only typical of narrow canyon reaches and subsurface flow in the wider valley reaches.

Despite its low flow rate, the rivers of the Bill Williams River Basin have been a source of water for use in mining operations and, during the early part of the last century, for ranching, irrigation and domestic use. There is no evidence that anyone has ever attempted to use rivers for commercial navigation or flotation of logs, and there is no evidence of any significant fishing and absolutely no evidence of any commercial fishing industry. The Bill Williams River is not listed in the Rivers and Harbors Act of 1899 (33 U.S.C. § 401-467(3)). The customary mode of transportation in the region was clearly not by boat. In 1912, the alternatives to boat travel in the Bill Williams River Basin included foot, horseback, mule drawn wagons and later, as the roads were improved, automobiles and trucks.

With its relatively low flow, bedrock and steep canyon walls, with occasional floods as indicated above, the Bill Williams River must be classified as erratic and intermittent with occasional large floods and certainly not subject to navigation or susceptible to navigation.

#### **VIII. Findings and Determination**

The Commission conducted a particularized assessment of equal footing claims the State of Arizona might have to the bed and banks, up to the high-water mark, of the Bill Williams River, and based on all of the historical and scientific data and information, documents, and other evidence produced, finds that the Bill Williams River was not used or susceptible to being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water as of February 14, 1912.

The Commission also finds that the Bill Williams River is an intermittent stream, has an almost insignificant flow during the dry seasons of the year with occasional

flooding. As of February 14, 1912 and currently, it flows/flowed primarily in direct response to precipitation.

The Commission also finds that there is no evidence of any historical or modern commercial boating having occurred on the Bill Williams River.

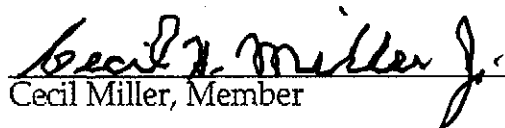
The Commission also finds that there is no evidence of any commercial fishing having occurred on the Bill Williams River.

The Commission further finds that all notices of these hearings and proceedings were properly and timely given.

In view of the foregoing, the Commission, pursuant to A.R.S. § 37-1128A, finds and determines that the Bill Williams River in Mohave and La Paz Counties, Arizona, was not navigable as of February 14, 1912 and not susceptible of navigability.

DATED this 28<sup>th</sup> day of April 2010.

  
\_\_\_\_\_  
Earl Eisenhower, Chair

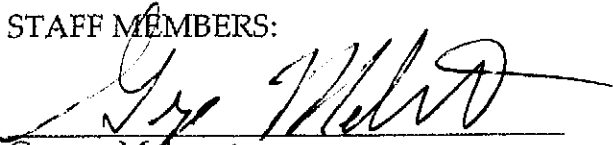
  
\_\_\_\_\_  
Cecil Miller, Member

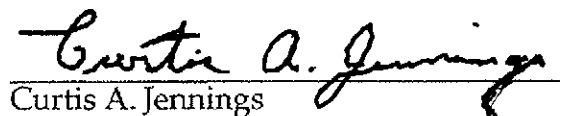
  
\_\_\_\_\_  
James Henness, Member

\_\_\_\_\_  
Dolly Echeverria, Vice Chair  
Deceased July 1, 2010

\_\_\_\_\_  
Jay Brashear, Member  
Deceased September 15, 2007

STAFF MEMBERS:

  
\_\_\_\_\_  
George Mehnert  
Executive Director

  
\_\_\_\_\_  
Curtis A. Jennings  
Legal Counsel to the Commission

# **EXHIBIT A**

AFFIDAVIT OF PUBLICATION

Kingman Daily Miner

3015 Stockton Hill Road, Kingman, AZ 86401

web: www.kingmandailyminer.com · e-mail: legals@kingmandailyminer.com

Phone (928) 753-6397, ext. 242 · Fax (928) 753-5661

"Serving Kingman since 1882"

STATE OF ARIZONA )  
County of Mohave ) ss.

I, **ULLI SCHNEIDER**, being first duly sworn on her oath says:  
That she is the Legals Clerk of **THE KINGMAN DAILY MINER**  
An Arizona corporation, which owns and publishes the Miner,  
a Daily Newspaper published in the City of Kingman, County of Mohave,  
Arizona; that the notice attached hereto, namely,

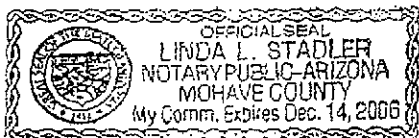
Statement of Intent  
No. 2119

Has, to the personal knowledge of affiant, been published in the news-  
paper aforesaid, according to law, from the **17 day of June, 2005**  
to the **1st day of July, 2005**, inclusive without change, interruption or  
omission, amounting in **3** insertions, made on the following dates:  
**06/17, 06/24, 07/01, 2005**

By: Ulli Schneider  
Legal Clerk, 1st Day of July, 2005

By: Linda L. Stadler  
Notary Public

My commission expires: 12/14/2006



(2119)  
STATEMENT OF INTENT  
State of Arizona  
Navigable Stream Adjudication Commission  
Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the major watercourses in Mohave County. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Big Steady River, Bill Williams River, Burro Creek, Supta Maria River and Virgin River. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by August 9, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.  
An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambods.com>. The e-mail address is [streams@mindspring.com](mailto:streams@mindspring.com). The fax number is (602) 542-9220.  
Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known.  
6/17, 6/24, 7/1/2005  
No. 2119



(2119)

STATEMENT OF INTENT

State of Arizona

Navigable Stream Adjudication Commission  
Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the major watercourses in Mohave County. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Big Sandy River, Bill Williams River, Burro Creek, Santa Maria River and Virgin River. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by August 9, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

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6/17,6/24,7/1/2005

No.2119

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA

COUNTY OF LA PAZ, ss

*Laura Kirsch*

Laura Kirsch

of said county, being duly sworn, deposes and says: that he/she is and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years, and is competent to be a witness on the trial of the above entitled action, and that he/she is not a party to, nor interested in the above entitled matter.

That she is the Advertising Agent for the:

PARKER PIONEER

(published weekly) and which is a weekly newspaper of general circulation, published and circulated in the said County of La Paz, and is published for the dissemination of local news and intelligence of a general character, and has a bona fide subscription list of paying subscribers, and said newspaper has been established and published in the City of Parker, County of La Paz, State of Arizona, for at least one year before the publication of the first insertion of this notice and said newspaper is not devoted to the interests of, or published for the entertainment of any particular class, professions, trade, calling, race or denomination, or any number thereof.

That the:

STATEMENT OF INTENT

NOTICE OF HEARING

AUGUST 9, 2005

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

of which the annexed is a printed copy, was published in said newspaper at least 3 time(s), commencing on the 22<sup>nd</sup> day of June, 2005, and ending on the 6<sup>th</sup> day of July, 2005, all above days inclusive, and in the regular and entire issue of said newspaper proper, and not in a supplement and said notice was published therein on the following dates, to-wit:

June 22, 2005

June 29, 2005

July 6, 2005

Subscribed and sworn to before me the 7<sup>th</sup> day of July, 2005.

*Sandra Logalbo*  
Notary Public in and for the County of La Paz, State of Arizona



SANDRA LOGALBO  
Notary Public - State of Arizona  
MOHAVE COUNTY

My Commission Expires July 24, 2008

STATEMENT OF INTENT  
State of Arizona

Navigable Stream Adjudication Commission.  
Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the major watercourses in La Paz County. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Bill Williams River and the Santa Maria River. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by August 9, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours. An unbound original plus seven bound copies of documentary evidence is to be submitted. ANSAC offices are located at 1700 West Washington, Room 304, Phoenix, AZ 85007. The telephone number is (602) 542-9214. The web site address is <http://www.azstreambeds.com>. The e-mail address is [streams@mindsonline.com](mailto:streams@mindsonline.com). The fax number is (602) 542-9220. Individuals with disabilities who need a reasonable accommodation to communicate evidence to ANSAC, or who require this information in an alternate format may contact the ANSAC office at (602) 542-9214 to make their needs known. Publish June 22, 29, July 6, 2005 8336

STATEMENT OF INTENT

State of Arizona

Navigable Stream Adjudication Commission.

Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is planning to hold watercourse navigability hearings regarding the major watercourses in La Paz County. Notice is hereby given, pursuant to A.R.S. §37-1123 (B), that ANSAC intends to receive, review, and consider evidence regarding the navigability or nonnavigability of the Bill Williams River and the Santa Maria River. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by August 9, 2005. All evidence submitted to ANSAC will be the property of ANSAC and the State of Arizona. Evidence submitted will be available for public inspection at the ANSAC offices during regular office hours.

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Publish June 22, 29; July 6, 2005

8336

# **EXHIBIT B**

**AFFIDAVIT OF PUBLICATION**

**Kingman Daily Miner**

3015 Stockton Hill Road, Kingman, AZ 86401

web: www.kingmandailyminer.com · e-mail: legals@kingmandailyminer.com

Phone (928) 753-6397, ext. 242 · Fax (928) 753-5651

"Serving Kingman since 1882"

STATE OF ARIZONA     )  
County of Mohave     ) ss.

I, **ULLI SCHNEIDER**, being first duly sworn on her oath says:  
That she is the Legals Clerk of **THE KINGMAN DAILY MINER**  
An Arizona corporation, which owns and publishes the Miner,  
a Daily Newspaper published in the City of Kingman, County of Mohave,  
Arizona; that the notice attached hereto, namely,

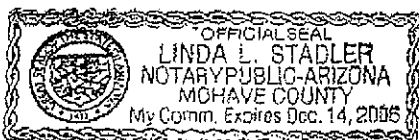
**NOTICE OF PUBLIC HEARING**  
No 2212

Has, to the personal knowledge of affiant, been published in the news-  
paper aforesaid, according to law, from the 7 day of July, 2005, to  
the 7 day of July, 2005, inclusive without change, interruption or  
omission, amounting in 1 insertion, made on the following date:  
**07/07, 2005**

By: Ulli Schneider  
Legal Clerk, 7th Day of July, 2005

By: Linda L. Stadler  
Notary Public

My commission expires: 12/14/2006



(2212)  
**NOTICE OF PUBLIC HEARING**  
State of Arizona  
Navigable Stream Adjudication  
Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or non-navigability of the major watercourses in Mohave County. The hearings will be held in Mohave County on August 8, 2005 beginning at 2:00 p.m. in an order established by the chair in the Mohave County Supervisors' Conference Room located at 809 E. Beale St., Kingman, Arizona. The following are presently the only hearings scheduled.

The Big Sandy River, the Bill Williams River, Burro Creek, the Santa Maria River, and the Virgin River.

Interested parties may submit evidence to the commission office prior to the hearing and/or during the appropriate public hearing. The commission will conduct its hearings informally without adherence to judicial rules of procedure or evidence.

Evidence submitted in advance of the hearing will be available for public inspection during regular Commission office hours of 8:00 a.m. to 5:00 p.m., Monday thru Friday, except on holidays. The commission office is located at 1700 West Washington Street, Room 304, Phoenix, Arizona 85007. Please call first to review evidence at (602) 542-9214.

Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.  
Published: July 7, 2005  
No. 2212

(2212)  
NOTICE OF PUBLIC HEARING  
State of Arizona  
Navigable Stream Adjudication  
Commission

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or non-navigability of the major watercourses in Mohave County. The hearings will be held in Mohave County on August 8, 2005 beginning at 2:00 p.m. in an order established by the chair in the Mohave County Supervisors' Conference Room located at 809 E. Beale St., Kingman, Arizona. The following are presently the only hearings scheduled.

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Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

Published: July 7, 2005  
No. 2212

# THE ARIZONA REPUBLIC

**NOTICE OF PUBLIC HEARING**  
 State of Arizona  
 Navigable Stream  
 Adjudication Commission  
 Pursuant to A.R.S. § 37-1126  
 (4), notice is hereby given  
 that the Navigable Stream  
 Adjudication Commission  
 will hold public hearings to  
 receive physical evidence  
 and testimony relating to the  
 navigability of the non-  
 navigability of the major wa-  
 tercourses in Mohave Coun-  
 ty. The hearings will be held  
 in Mohave County on August  
 8, 2005 beginning at 7:00 a.m.  
 in an order established by  
 the chair in the Mohave Coun-  
 ty Supervisors' Conference  
 Room located at 408 E. Basile  
 St., Kingman, Arizona. The  
 following are presently the  
 only hearings scheduled:  
 The Big Sandy River; the Bill  
 Williams River; Burro Creek;  
 the Santa Maria River; and  
 the Vrohl River.  
 Interested parties may submit  
 evidence to the commission  
 office prior to the hearing  
 and/or during the appropri-  
 ate public hearing. The com-  
 mission will conduct its hear-  
 ings informally without ad-  
 herence to judicial rules of  
 procedure or evidence.  
 Evidence submitted in ad-  
 vance of the hearings will be  
 available for public inspec-  
 tion during regular Commis-  
 sion office hours of 8:30 a.m.  
 to 5:00 p.m. Monday thru Fri-  
 day, except on holidays. The  
 commission office is located  
 at 1700 West Washington  
 Street, Room 303, Phoenix,  
 Arizona 85007. Please call  
 (602) 547-9214.  
 Individuals with disabilities  
 who need a reasonable ac-  
 commodation to communi-  
 cate evidence to the commis-  
 sion, or who require this in-  
 formation in an alternate for-  
 mat may contact the commis-  
 sion office at (602) 542-9214  
 to make their needs known.  
 George Mehner, Executive  
 Director, July 8, 2005.  
 05441 July 8, 2005

STATE OF ARIZONA }  
 COUNTY OF MARICOPA } SS.

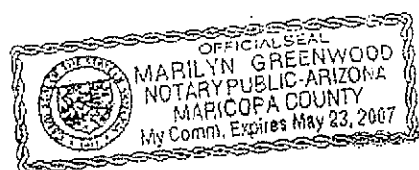
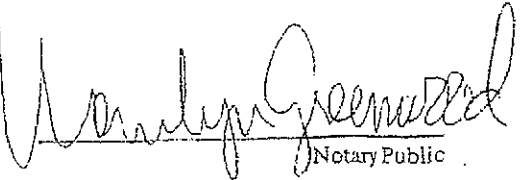
Tabitha Antoniadis, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

July 8, 2005



Sworn to before me this  
 8<sup>th</sup> day of  
 July A.D. 2005

Notary Public

**NOTICE OF PUBLIC HEARING**  
**State of Arizona**  
**Navigable Stream**  
**Adjudication Commission**

Pursuant to A.R.S. § 37-1126 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or non-navigability of the major watercourses in Mohave County. The hearings will be held in Mohave County on August 8, 2005 beginning at 2:00 p.m. in an order established by the chair in the Mohave County Supervisors' Conference Room located at 809 E. Beale St., Kingman, Arizona. The following are presently the only hearings scheduled.

The Big Sandy River, the Bill Williams River, Burro Creek, the Santa Maria River, and the Virgin River.

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Individuals with disabilities who need a reasonable accommodation to communicate evidence to the commission, or who require this information in an alternate format may contact the commission office at (602) 542-9214 to make their needs known.

George Mehnert, Executive Director, July 5, 2005.  
05441-July 8, 2005





JANET NAPOLITANO  
Governor

STATE OF ARIZONA  
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

Phone (602) 542-9214 FAX (602) 542-9220

E-mail: [streamns@mindspring.com](mailto:streamns@mindspring.com) Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT  
Executive Director

---

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD  
August 8, 2005, at 2:00 p.m. in Kingman, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 2:00 p.m. on August 8, 2005 in the Mohave County Supervisors meeting room at 809 East Beal Street, Kingman, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

Title 2 of the American with Disabilities Act (ADA) prohibits the Commission from discriminating on the basis of disability in its public meetings. Individuals with disabilities who need a reasonable accommodation to attend or communicate at the Commission's meeting, or who require this information in alternate format, may contact George Mehnert at (602) 542-9214 to make their needs known. Requests should be made as soon as possible so the Commission will have sufficient time to respond. For those individuals who have a hearing impairment, this Commission can be reached through the Arizona Relay Service at 1-800-367-8939 (TTY) or 1-800-842-4681 (Voice). The agenda for the meeting is as follows:

1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action).  
A. July 14, 2005, Coconino County.
4. Hearing regarding the navigability of the Big Sandy River 05-011-NAV.
5. Hearing regarding the navigability of the Bill Williams River 05-012-NAV.
6. Hearing regarding the navigability of Burro Creek 05-003-NAV.
7. Hearing regarding the navigability of the Santa Maria River 05-005-NAV.
8. Hearing regarding the navigability of the Virgin River 05-013-NAV.
9. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002], Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*
10. Future Agenda Items and Establishment of Future Hearings and other Meetings.
11. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6<sup>th</sup> day of July, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



IANET NAPOLITANO  
Governor

STATE OF ARIZONA  
NAVIGABLE STREAM ADJUDICATION COMMISSION

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GEORGE MEHNERT  
Executive Director

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AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD  
August 9, 2005, at 10:00 a.m. in Parker, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 10:00 a.m. on August 9, 2005 in the La Paz County Supervisors meeting room at 1108 Joshua Avenue, Parker, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER
2. Roll Call.
3. Approval of Minutes (discussion and action).  
A. None.
4. Hearing regarding the navigability of the Bill Williams River 05-012-NAV.
5. Hearing regarding the navigability of the Santa Maria River 05-005-NAV.
6. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002], Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*
7. Future Agenda Items and Establishment of Future Hearings and other Meetings.
8. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6<sup>th</sup> day of July, 2005. George Mehnert, Director, Navigable Stream Adjudication Commission



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GEORGE MEHNERT  
 Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

October 20, 2005, at 9:30 a.m. in Phoenix, Arizona

First Amended Agenda

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on October 20, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of September 21, 2005, Maricopa County.
4. Jurisdiction regarding Roosevelt Lake, including motion entitled "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILITY OF ROOSEVELT LAKE", and all other motions filed relating to this matter in both 04-008-NAV and 04-010-NAV (discussion and action).
5. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.
6. Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV.
7. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
8. Determination of the navigability of the Little Colorado River 05-007-NAV (discussion and action).
9. Determination of the navigability of the Big Sandy River 05-011-NAV (discussion and action).
10. Determination of the navigability of the Bill Williams River 05-012-NAV (discussion and action).
11. Determination of the navigability of Burro Creek 05-003-NAV (discussion and action).
12. Determination of the navigability of the Santa Maria River 05-005-NAV (discussion and action).
13. Determination of the navigability of the Virgin River 05-013-NAV (discussion and action).
14. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision on a later date.)*
15. Future agenda items and establishment of future hearings and other meetings.
16. Commission budget and continuation.
17. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 5<sup>th</sup> day of October, 2005. George Mehnert, Director, Navigable Stream Adjudication Commission

# EXHIBIT C

**Post Hearing Memorandums**

Hearing No. 05-012-NAV

Page No.

1

**Arizona Navigable Stream Adjudication Commission**

**Bill Williams River  
Mohave and La Paz Counties**

Entry Number	Date	Entry	Entry By
		Opening Memorandums	
1	09/13/05	Salt River Project's Opening Memorandum.	George Mehnert
2	09/15/05	Arizona Center for Law in the Public Interest's Opening Memorandum.	George Mehnert
3	09/21/05	Phelps Dodge Corporation's Opening Memorandum.	George Mehnert
		Response Memorandums	
1	10/04/05	Salt River Project's Responsive Memorandum.	George Mehnert
2	10/04/05	Phelps Dodge Corporation's Responsive Memorandum	George Mehnert

# **EXHIBIT D**



JANET NAPOLITANO  
Governor

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GEORGE MEHNERT  
Executive Director

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AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD  
August 8, 2005, at 2:00 p.m. in Kingman, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 2:00 p.m. on August 8, 2005 in the Mohave County Supervisors meeting room at 809 East Beal Street, Kingman, Arizona.

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action).  
A. July 14, 2005, Coconino County.
4. Hearing regarding the navigability of the Big Sandy River 05-011-NAV.
5. Hearing regarding the navigability of the Bill Williams River 05-012-NAV.
6. Hearing regarding the navigability of Burro Creek 05-003-NAV.
7. Hearing regarding the navigability of the Santa Maria River 05-005-NAV.
8. Hearing regarding the navigability of the Virgin River 05-013-NAV.
9. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*
10. Future Agenda Items and Establishment of Future Hearings and other Meetings.
11. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6<sup>th</sup> day of July, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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GEORGE MEHNERT  
Executive Director

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AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD  
August 9, 2005, at 10:00 a.m. in Parker, Arizona

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 10:00 a.m. on August 9, 2005 in the La Paz County Supervisors meeting room at 1108 Joshua Avenue, Parker, Arizona.

Pursuant to A.R.S. §38-431.03(A)(5), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) or for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call
3. Approval of Minutes (discussion and action).
  - A. None.
4. Hearing regarding the navigability of the Bill Williams River 05-012-NAV.
5. Hearing regarding the navigability of the Santa Maria River 05-005-NAV.
6. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002], Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*
7. Future Agenda Items and Establishment of Future Hearings and other Meetings.
8. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6<sup>th</sup> day of July, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission





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GEORGE MEHNERT  
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

October 20, 2005, at 9:30 a.m. in Phoenix, Arizona

First Amended Agenda

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Navigable Stream Adjudication Commission will hold a meeting open to the public at 9:30 a.m. on October 20, 2005 at the La Quinta Inn located at 2510 West Greenway Road, Phoenix, Arizona (Northeast corner of I-17 and West Greenway Road).

Pursuant to A.R.S. §38-431.03(A)(3), the Navigable Stream Adjudication Commission may vote to go into Executive Session for purposes of obtaining legal advice from the Commission's attorney on any matter listed on the agenda, or pursuant to A.R.S. §38-431.03(A) for discussion of records exempt by law from public inspection on any matter listed on the agenda, or for personnel matters listed on the agenda.

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1. CALL TO ORDER.
2. Roll Call.
3. Approval of Minutes (discussion and action). Minutes of September 21, 2005, Maricopa County.
4. Jurisdiction regarding Roosevelt Lake, including motion entitled "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILITY OF ROOSEVELT LAKE", and all other motions filed relating to this matter in both 04-008-NAV and 04-010-NAV (discussion and action).
5. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.
6. Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV.
7. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
8. Determination of the navigability of the Little Colorado River 05-007-NAV (discussion and action).
9. Determination of the navigability of the Big Sandy River 05-011-NAV (discussion and action).
10. Determination of the navigability of the Bill Williams River 05-012-NAV (discussion and action).
11. Determination of the navigability of Burro Creek 05-003-NAV (discussion and action).
12. Determination of the navigability of the Santa Maria River 05-005-NAV (discussion and action).
13. Determination of the navigability of the Virgin River 05-013-NAV (discussion and action).
14. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-007], Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*
15. Future agenda items and establishment of future hearings and other meetings.
16. Commission budget and continuation.
17. ADJOURNMENT.

The chair reserves the right to alter the order of the agenda.

Dated this 6<sup>th</sup> day of October, 2005. George Mehnert, Director, Navigable Stream Adjudication Commission



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GEORGE MEHNERT  
Executive Director

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MEETING MINUTES

Kingman, Arizona August 8, 2005

**COMMISSION MEMBERS PRESENT**

Jay Brashear, Earl Eisenhower, Jim Henness, and Cecil Miller.

**COMMISSION MEMBERS ABSENT**

Dolly Echeverria.

**STAFF PRESENT**

George Mehnert, and Commission Legal Counsel Curtis Jennings.

**1. CALL TO ORDER.**

Chair Eisenhower called the meeting to order at approximately 2:03 p.m.

**2. ROLL CALL.**

See above.

**3. APPROVAL OF MINUTES (discussion and action).**

July 14, 2005, Coconino County.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To approve the minutes of July 14, 2005.

Vote: All aye.

**4. Hearing regarding the navigability of the Big Sandy River 05-011-NAV.**

Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence regarding this watercourse. The Chairman stated the hearing on this matter was completed for the purpose of taking evidence.

**5. Hearing regarding the navigability of the Bill Williams River 05-012-NAV.**

Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence regarding this watercourse. Also, a discussion took place regarding the Bill Williams, Colorado River Confluence and Mr. Fuller indicated the State Land Department was presently establishing boundaries along the Colorado River. Mr. Fuller indicated he would call engineering project manager Pat Deschamps this evening to determine whether she has yet studied the boundaries regarding the Colorado River in the Bill Williams Confluence area, and that he would report back to the commission tomorrow.

**6. Hearing regarding the navigability of Burro Creek 05-003-NAV.**

Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence regarding this watercourse.

**7. Hearing regarding the navigability of the Santa Maria River 05-005-NAV.**

Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence regarding this watercourse. Commissioner Brashear stated that he wanted mention made in the minutes that Mr. Fuller had made comments regarding boating and a potential for commercial boating on the Bill Williams River and its tributaries. The Chairman stated the hearing on this matter was completed for the purpose of taking evidence.

8. **Hearing regarding the navigability of the Virgin River 05-013-NAV.**

Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence regarding this watercourse. The Chairman stated the hearing on this matter was completed for the purpose of taking evidence.

9. **Call for Public Comment (comment sheets).**

*(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*

Assistant Attorney General Lori Hachtel spoke regarding the State Land Department's work relating to the boundaries of the Colorado River and stated that it is not likely information earlier requested by the Commission has been completed, yet by the Land Department concerning the confluence of the Bill Williams River and the Colorado River.

10. **Future Agenda Items and Establishment of Future Hearings and other Meetings.**

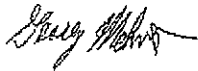
11. **ADJOURNMENT.**

Motion by: Jay Brashear                      Second by: Jim Henness

Motion: To adjourn.      Vote: All aye.

Meeting adjourned at approximately 3:04 p.m.

Respectfully submitted,



George Mehnert, Director

August 10, 2005



JANET NAPOLITANO  
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GEORGE MEHNERT  
Executive Director

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MEETING MINUTES

Parker, Arizona, August 9, 2005

**COMMISSION MEMBERS PRESENT**

Jay Brashear, Earl Eisenhower, Jim Henness, and Cecil Miller.

**COMMISSION MEMBERS ABSENT**

Dolly Echeverria.

**STAFF PRESENT**

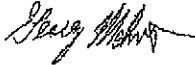
George Mehnert, and Commission Legal Counsel Curtis Jennings.

- 1.
2. **CALL TO ORDER.**  
Chair Eisenhower called the meeting to order at approximately 10:00a.m.
3. **ROLL CALL.**  
See above.
4. **APPROVAL OF MINUTES** (discussion and action).  
None.
5. **Hearing regarding the navigability of the Bill Williams River 05-012-NAV.**  
Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence. Regarding a question from the previous day during a meeting in Kingman, Arizona Jon Fuller said he checked with his engineers and their studies have not yet been completed in the Bill Williams River confluence area and that this area was not a high priority for these studies. The Chairman stated the hearing on this matter was completed for the purpose of taking evidence.
6. **Hearing regarding the navigability of the Santa Maria River 05-005-NAV.**  
Cheryl Doyle and Engineer Jon Fuller representing the State Land Department presented evidence.  
Attorney Bill Staudenmaier representing Phelps Dodge also spoke regarding this watercourse indicating he knew of no reason why the Commission could not go ahead and make its decision of navigability regarding the Bill Williams regardless of the status of the State Land Department's boundary determinations studies. The Chairman stated the hearing on this matter was completed for the purpose of taking evidence.
7. **Call for Public Comment** (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-002], Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not*

*request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*

8. **Future Agenda Items and Establishment of Future Hearings and other Meetings.** September's meeting will be hearings regarding the Agua Fria and Hassayampa Rivers and the meeting will be September 21, 2005. In addition to the Commissioners, attorney Mark McGinnis representing Salt River Project also spoke concerning this agenda item.
9. **ADJOURNMENT.**  
Motion by: Jay Brashear                      Second by: Jim Henness  
Motion: To adjourn.      Vote: All aye.  
Meeting adjourned at approximately 10:42a.m.

Respectfully submitted,



George Mehnert, Director  
August 10, 2005



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GEORGE MEHNERT  
Executive Director

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MEETING MINUTES

Phoenix, Arizona, October 20, 2005

**COMMISSION MEMBERS PRESENT**

Jay Brashear, Dolly Echeverria, Earl Eisenhower, Jim Henness.

**COMMISSION MEMBERS ABSENT**

Cecil Miller was absent, and Commissioner Henness had to leave early at approximately 11:45 a.m.

**STAFF PRESENT**

George Mehnert.

**1. CALL TO ORDER.**

Chair Eisenhower called the meeting to order at approximately 9:36 a.m.

**2. ROLL CALL.**

See Above.

**3. APPROVAL OF MINUTES (discussion and action).**

A. September 21, 2005, Maricopa County

Motion by: Jim Henness Second by: Earl Eisenhower

Motion: To accept minutes as submitted. Vote: All aye.

**4. Jurisdiction regarding Roosevelt Lake, including motion entitled "SALT RIVER PROJECT'S MOTION FOR FINDING OF LACK OF STATUTORY SUBJECT MATTER JURISDICTION TO DETERMINE NAVIGABILITY OF ROOSEVELT LAKE", and all other motions filed**

relating to this matter in both 04-008-NAV and 04-010-NAV (discussion and action). The Office of the Attorney General, on behalf of their client the State Land Department filed a response to the original motion on October 20, 2005. The Chair accepted the Attorney General response, continued the matter to a later meeting, and granted the Salt River Project's Attorney a week to reply to the Attorney General's response to the original motion.

**5. Hearing regarding the navigability of the Upper Salt River, 04-008-NAV.**

Persons who presented evidence or spoke regarding this matter: Jon Fuller, Dennis Gilpin, David Weedman, Stanley Schumm and Douglas Littlefield, Ph.D. Also, attorneys Mark McGinnis and Rebecca Goldberg, Laurie A. Hachtel, John Ryley and Joe Sparks spoke or examined witnesses

6. Hearing regarding the navigability of the small and minor watercourses in Gila County, 04-010-NAV. Persons who presented evidence or spoke regarding this matter: Jon Fuller.
7. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action). The Chair continued this matter to a future meeting.
8. Determination of the navigability of the Little Colorado River 05-007-NAV (discussion and action).  
 Motion by: Jay Brashear                      Second by: Dolly Echeverria  
 Motion: The Little Colorado River was not navigable as of statehood. Vote:  
 All aye.
9. Determination of the navigability of the Big Sandy River 05-011-NAV (discussion and action).  
 Motion by: Dolly Echeverria                      Second by: Jay Brashear  
 Motion: The Big Sandy River was not navigable as of statehood.  
 Vote: All aye.
10. Determination of the navigability of the Bill Williams River 05-012-NAV (discussion and action).  
 Motion by: Jay Brashear                      Second by: Dolly Echeverria  
 Motion: The Bill Williams River was not navigable as of statehood.  
 Vote: All aye.
11. Determination of the navigability of Burro Creek 05-003-NAV (discussion and action).  
 Motion by: Dolly Echeverria                      Second by: Jay Brashear  
 Motion: Burro Creek was not navigable as of statehood.  
 Vote: All aye.
12. Determination of the navigability of the Santa Maria River 05-005-NAV (discussion and action).  
 Motion by: Jay Brashear                      Second by: Dolly Echeverria  
 Motion: The Santa Maria River was not navigable as of statehood.  
 Vote: All aye.
13. Determination of the navigability of the Virgin River 05-013-NAV (discussion and action).  
 Motion by: Jay Brashear                      Second by: Dolly Echeverria  
 Motion: The Virgin River was not navigable as of statehood. Vote:  
 All aye.
14. Call for Public Comment (comment sheets).  
*(Pursuant to Attorney General Opinion No. 199-006 [R99-092]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action*

*taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)*

15. Future agenda items and establishment of future hearings and other meetings.  
16. Commission budget and continuation.

The Director and the Chair commented that the Commission is very weak insofar as budget is concerned and that the Commission will appreciate the support of everyone to continue the Commission for two additional so that it can complete its work.

17. **ADJOURNMENT.**

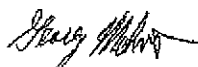
Motion by: Jay Brashear                      Second by: Dolly Echeverria

Motion: To adjourn.

Vote: All aye.

Meeting adjourned at approximately 1:55 p.m..

Respectfully submitted,



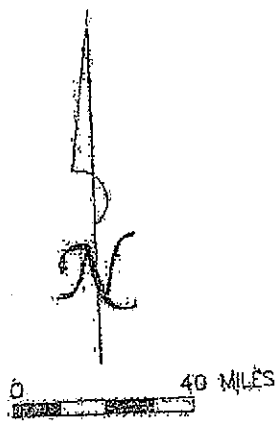
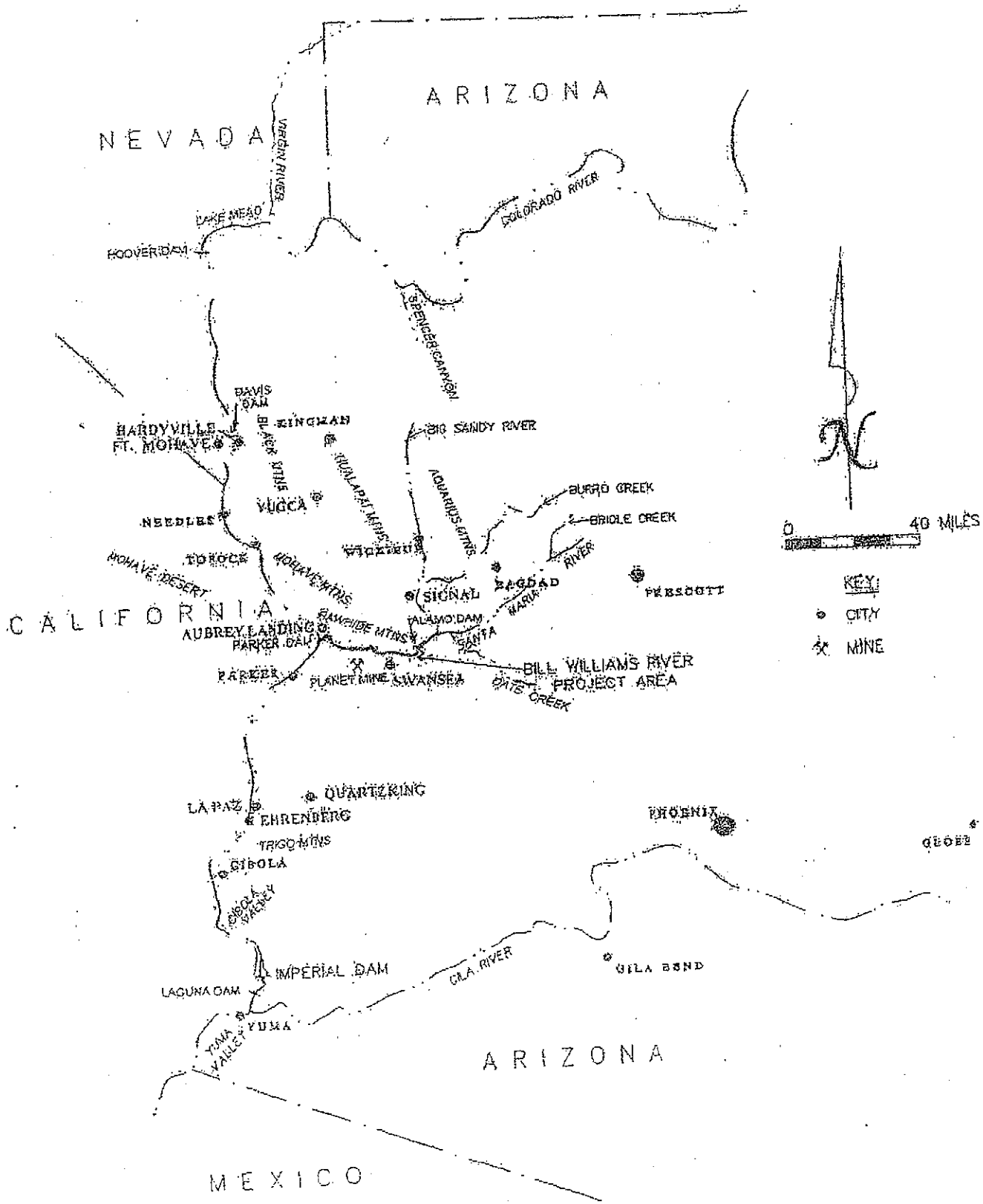
George Mehnert, Director

October 21, 2005

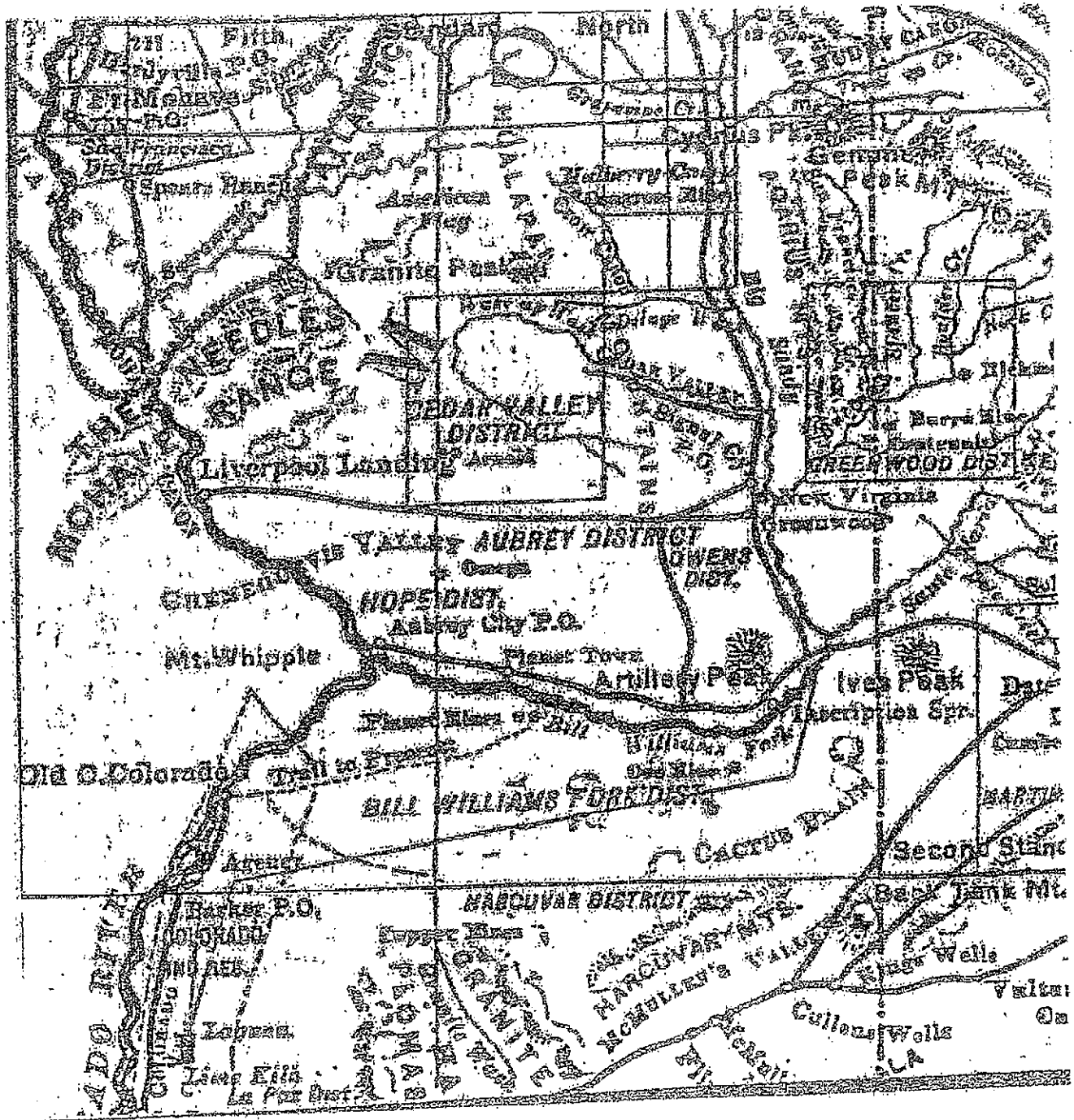


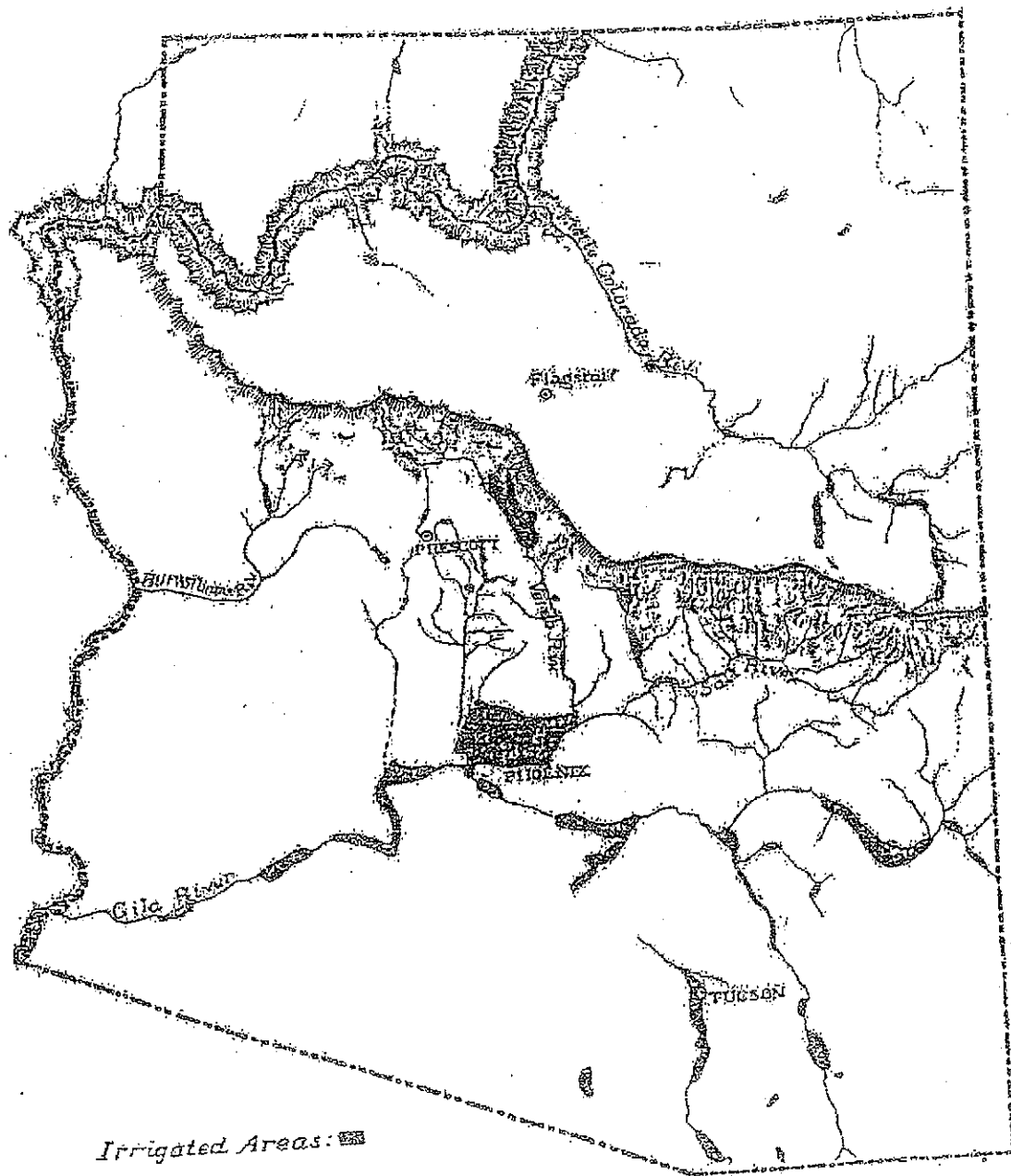
# **EXHIBIT E**





**KEY:**  
 • CITY  
 ✕ MINE





U.S. Census Bureau Bulletin No. 68, July 29, 1901.

Figure 21. Map of irrigated areas in Arizona from Census Bulletin No. 68, July 29, 1901.

# **EXHIBIT F**

# Evidence Log

Hearing No. 05-012-NAV

Page No.

1

## Arizona Navigable Stream Adjudication Commission

Bill Williams River  
Mohave and La Paz Counties

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	2/13/97	Evidence on Hand at AN-SAC.	Letter from David Baron dated February 18, 1997.	George Mehnert
2	8/14/97	Evidence on Hand at AN-SAC.	Friends of Arizona Rivers, Timothy Flood.	George Mehnert
3	9/15/97	Evidence on Hand at ANSAC.	Final Report SFC Engineering, George Sabol, JE Fuller, SWCA Consultants & AZ Geological Survey.	George Mehnert
4	9/7/98	Evidence on Hand at AN-SAC.	Small and Minor Watercourse Criteria Final Report.	George Mehnert
5	9/7/98	Evidence on Hand at AN-SAC.	Final Report, 3 County Pilot Study.	George Mehnert
6	6/7/2004	State Land Dept.	Final Report, Arizona Stream Navigability Study, JE Fuller.	George Mehnert
7	6/15/04	Chuck Kranz	Letter	George Mehnert