

BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

IN THE MATTER OF THE
NAVIGABILITY OF BURRO CREEK
FROM ITS HEADWATERS TO
ITS CONFLUENCE WITH THE
BIG SANDY RIVER, YAVAPAI AND
MOHAVE COUNTIES, ARIZONA

No.: 05-003-NAV

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REGARDING THE NAVIGABILITY OF BURRO CREEK
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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 Burro Creek from its headwaters to its confluence with the Big Sandy 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 hearings 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 Burro Creek from its headwaters on the western slope of Ferguson Ridge on the Luis Marie Baca Float No. 5 land grant¹ in Yavapai County through the counties of Yavapai and Mohave to its confluence with the Big Sandy River in Mohave County. The notice was published on February 10, February 17 and February 24, 2005 in the Prescott Courier published in Prescott, Yavapai County, Arizona; and on June 17, June 24 and July 1, 2005 in the Kingman Daily Miner published in Kingman, Mohave County, Arizona. Copies of the Notices of Intent to receive, compile, review, study and consider evidence on the issue of navigability of Burro Creek in Yavapai and Mohave Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonably 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 Burro Creek in Yavapai and Mohave Counties. Public notice of these hearings was given by legal advertising for the Yavapai County hearing on March 4, 2005 in the Prescott Courier published in Prescott, Yavapai County, Arizona; on February 25, 2005 in the Arizona Republic, a newspaper of general circulation in Arizona; 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

¹ In American land law, particularly in the western states, a Float is a certificate authorizing the entry by the holder of a certain quantity of land not yet specifically selected or located. Black's Law Dictionary, 5th ed. 1979.

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 for Yavapai County was held on March 29, 2005, in the City of Prescott, the county seat of Yavapai County and for Mohave County on August 8, 2005, in the City of Kingman, the county seat of Mohave County. These hearings were held in the county seats of each county through which Burro Creek flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of Burro Creek 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 hearing.

All parties were advised that anyone who desired to appear and give testimony at a public hearing could do so and, in making its findings and determination as to navigability and nonnavigability of Burro Creek from its headwaters to its confluence with the Big Sandy 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 Burro Creek held on August 8, 2005 in Kingman, Arizona, all parties were advised that they could file post-hearing memoranda pursuant to the Commission Rules. Two post-hearing memoranda were filed by the parties, including Salt River Project Agricultural Improvement and Power District and Salt River Valley Water User's Association, and Phelps Dodge Corporation, now known as Freeport-McMoRan Copper & Gold, Inc. Attached as Exhibit "C" is a list of the post-hearing memoranda filed by the 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 Burro Creek from its headwaters in Yavapai County to its confluence with the Big Sandy River in Mohave County, Arizona, was nonnavigable as of February 14, 1912 nor was it susceptible of navigability. A copy of the notice for the hearing held on October 20, 2005 at Phoenix, Arizona, is attached as a part of Exhibit "B." Copies of the agenda and minutes of all of the hearings held on March 29, 2005 in Prescott, Yavapai County, Arizona; on August 8, 2005 in Kingman, Mohave County, Arizona and on October 20, 2005 in Phoenix, Maricopa County, Arizona, are attached hereto as Exhibit "D."

II. BURRO CREEK FROM ITS HEADWATERS TO ITS CONFLUENCE WITH THE BIG SANDY RIVER

Burro Creek is a tributary of the Big Sandy River, which together with the Santa Maria River are tributaries of the Bill Williams River. In point of fact, the confluence of the Big Sandy River and the Santa Maria River form the beginning of the Bill Williams River, which then travels 35 miles until it flows into the Colorado River. The four rivers and their minor tributaries constitute a major drainage system known as the Bill Williams River Basin. The terrain through which they flow is very similar and all four (4) could have been studied and treated as a single, complex watercourse. A number of the reports and evidentiary submittals consider 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 Survey dated January 1999 and revised June 2004. However, each river was treated as a separate major watercourse and together they flow through

three different counties of the State (Yavapai, Mohave and LaPaz) and separate hearings were held for each watercourse and so a separate report has been prepared for each river course. When completed, each of the reports will be recorded with the County Recorder in the county or counties through which that river flows. This report deals solely with Burro Creek but does consider evidence submitted on the other three (3) watercourses where appropriate.

As the major tributary of the Big Sandy River, Burro Creek drains a 687 square mile watershed and frequently, depending upon rain patterns, provides more water to the joint river than does the upper Big Sandy River. Its origin is on the western slope of Ferguson Ridge between the Mohan and Santa Maria Mountains on the Luis Maria Baca Float No. 5 land grant in Yavapai County at approximately Latitude $34^{\circ} 55' 00''$ North and Longitude $113^{\circ} 02' 20''$ West in Section 27, Township 18 North, Range 7 West in western Yavapai County. Burro Creek flows in a southwesterly direction south of the Aquarius Mountains through Bozarth Mesa and the rugged terrain of the Poachie Range. It crosses U. S. Highway 93 soon after flowing into Mohave County and turns in a westerly direction and flows into the Big Sandy River approximately 12 miles south of Wikieup at Latitude $34^{\circ} 32' 16''$ North, Longitude $113^{\circ} 34' 17''$ West near the center of Section 24, Township 14 North, Range 12 West, Gila and Salt River Base and Meridian.

For most of its length Burro Creek flows through narrow steep-walled canyons which limit it to a single channel with little space for lateral channel migration. Alluvial reaches that do exist are narrower and much more limited in extent than those of rivers or watercourses flowing in plains or valleys. For most of its length bedrock is near the surface in many places. Near its confluence with the Big Sandy River, the canyons open up into a wider basin with more alluvial deposits than upstream. Burro Creek is 61.2 miles in length and has a watershed drainage area of 687 square miles. The highest elevation on the Burro Creek drainage area is Mt. Hope at 7263 feet above mean sea

level on the Luis Marie Baca Float No. 5 and the lowest point is approximately 1525 feet above mean sea level at its confluence with the Big Sandy River.

Burro Creek is considered a perennial stream in that it usually flows year round. However, some reaches run dry during periods of extreme drought. Even during the driest intervals, a string of discontinuous pools of standing water are found in its bed. Tributaries of Burro Creek that are perennial include Francis Creek, Boulder Creek, and Pine Creek. A number of ephemeral washes, creeks and watercourses flow into Burro Creek, including Conger Creek, Wilder Creek, Black Canyon, and a number of unnamed watercourses. The climate within the Burro Creek watershed area varies significantly with elevation. Annual precipitation is 15 to 20 inches in the mountainous high elevation areas and drops to as low as 5 to 6 inches near its mouth where it runs into the Big Sandy River. Likewise the vegetation varies substantially within the watershed basin depending upon the altitude. Piñon and juniper woodlands are found at the higher mountain levels, and cacti and riparian species are found in the lower elevations. A map of the Burro Creek watershed area is attached hereto as Exhibit "E."

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 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.² 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

² Putting the Public Trust Doctrine to Work, David C. Slade, Esq. (Nov. 1990), pp. xvii and 4.

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 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.³ 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.

³ 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.

§ 37-1101(6). The Commission would examine the “public trust values” associated with 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 61.2 mile reach of Burro Creek from its headwaters to its confluence with the Big Sandy River. 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 navigability of Burro Creek in Yavapai and Mohave 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 (8th 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 (5th 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. Gatico*, 458 U.S. 388, 403-06 (E.D. N.Y. 1978), *aff'd* 603

F.2d 1053 (2nd 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).⁴

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.⁵ 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

⁴ 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 bedlands. 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 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. *Hassell*, 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 (8th 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).

⁵ 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 S.Ct. 1775, 29 L.Ed.2 279 (1971) and *United States v. Oregon*, 295 U.S. 1, 55 S.Ct. 610, 70 L.Ed.2 1263 (1935).

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 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 Burro Creek 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 and nonnavigability of Burro Creek from its headwaters to its confluence with the Big Sandy 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 were the Preliminary and Final Arizona Stream Navigability Study prepared by J E Fuller Hydrology & Geomorphology, Inc. in association with SWCA, Inc. Environmental Consultants, and the Arizona Geological Survey dated January 1999 and revised and updated in June 2004 by J E Fuller Hydrology & Geomorphology, Inc. submitted by the Arizona State Land Department. Also submitted and considered was the Small and Minor Watercourse Criteria Report and the report on the Three County Pilot Study; and a study entitled "The Application of the Public Trust Doctrine to the Gila River – Santa Maria River, Western Arizona" submitted by the Arizona Center for Law in the Public Interest. Documents were also submitted by David Barron of the Arizona Center for Law in the Public Interest. The list of evidence and records, together with a summarization is attached as Exhibit "F". A public hearing was held on March 29, 2005, at Prescott, Arizona, in Yavapai County, and on August 8, 2005 at Kingman, Arizona in Mohave County, for the public to

present testimony and evidence on the issue of navigability of Burro Creek. A number of individuals appeared at the hearings in both Prescott and Kingman 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 Burro Creek Watershed

Fewer archaeological studies have been undertaken in west central Arizona, and specifically the Burro Creek watershed, than any other portion of the southwest. Evidence of paleoindian occupation in this area is very sparse and consisted only of surface finds of lithic tools.⁶ A clovis projectile point was found in the Arizona Strip area to the north, and another was found by a rancher in the Aquarius Mountains to the west of Burro Creek. No paleoindian sites have been excavated, although there are no doubt sites that have not been located. A number of archaic period sites have been located which indicate that during the later archaic period since 2000 B.C., an increasing number of hunters and gatherers seem to have occupied the Burro Creek basin area. Although there appears to be virtually no evidence of occupation during the early or middle archaic phases between 7500 B.C. and 2000 B.C., it is possible that such sites may exist but have not been discovered.

The formative period begins with the transition from the hunting-gathering economy of the archaic period to agriculture, villages and ceramics. It came later by about 700 years to the area of the Burro Creek basin than other places in Arizona. With the introduction of pottery and maize to this region about A.D. 700, two defined and identifiable archaeological farming cultures were developed. The first was the Prescott Culture with its small pueblos and crudely painted pottery, which was centered around

⁶ 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.

Prescott and appears to be a derivative of the contemporaneous Anasazi, Cohonina, and Sinagua archaeological cultures of the Colorado Plateau. This culture survived between A.D. 900 to A.D. 1300 and then disappeared. Evidence of its villages are especially located in the Aquarius Mountains west of Burro Creek and some along the Creek itself. In the canyons through which Burro Creek flows, some cliff dwellings belonging to this culture have been found. Archaeologists do not know which modern native American tribe or tribes may be descended from this group. The other culture, known as the Patayan Culture, is evidenced between A.D. 500 and A.D. 1500, and originated along the lower Colorado River and spread eastward into the deserts of western Arizona and north along the Colorado River. The Patayan Culture developed into the Cerbat archaeological culture of the modern Pai tribes (Hualapai, Havasupai, and Yavapai). It was characterized by seasonally occupied rancherias, unpainted pottery, and expedient farming practices.

From about A.D. 1300 to A.D. 1500, there was a period of tremendous cultural change and upheaval in the southwest, with many of the old cultures such as Hohokam, Mogollon, Sinagua and Anasazi abandoning vast areas and occupying other smaller areas. The Prescott Culture declined and disappeared during this period, its members probably being absorbed by the Cerbat group or migrant cultures from the north and west. In the area to the north of that under consideration, a numic-speaking peoples, who became known as the Paiute began migrating into this area after A.D. 1300. The southern Paiute, the Chemehuevi and the Ute, are classified as numic speakers, the northernmost branch of the Uto-Aztecan linguistic family. All of the present tribes in northwestern Arizona, southwestern Utah and southern Nevada are in some way descended from them. The Cerbat Culture and its descendants were dominant on the Colorado River south of Kingman and the deserts of west central

Arizona. The Hualapai Culture was probably the most predominant group in the Burro Creek watershed area from this period until the 1850's.

There is some evidence of farming along the Burro Creek watershed during the formative period, probably by Prescott cultural groups who built small villages and cliff dwellings up to 1300 when this culture disappeared. It is possible that the Cerbat (Patayan) cultural groups used the same area as the Prescott Culture for farming during their seasonal migrations. There is no evidence of any significant irrigation systems having been built. There is also no evidence that any of the prehistoric Indians utilized Burro Creek for transportation, either by canoe or raft, nor is there any evidence that they utilized it on any regular basis for flotation of logs.

B. Historic Exploration of the Burro Creek Watershed

Although Spanish exploration of the southwest began in 1540 with the Coronado Expedition, no Europeans traveled in the area of the Burro Creek watershed until 1604 when Juan Mateo de Oñate, Governor of Spanish New Mexico, came into the area. It seems clear that he traveled along the Bill Williams River corridor on his way to California, but what tributaries or streams he used to reach it is uncertain. It may have been that he was the first European to travel down a portion of the corridors of the Big Sandy or Santa Maria Rivers, and he may have crossed the lower portion of Burro Creek. He traveled on foot, horse or mule and his party made no attempt to float down any of the streams he crossed to reach the Colorado River. At this time and later there were two villages of Hualapai Indians living on the upper reaches of the Big Sandy River, and Oñate may have encountered them, but as far as we know there were no permanent settlements of Indians at this time in the rugged areas of the upper Burro Creek watershed. In 1744, Father Jacobo Sedelmayr traveled up the Colorado River to the mouth of the Bill Williams River which he called Rio Azul. He followed the Bill Williams River corridor upstream some distance and may have traveled a short

distance along the Big Sandy or Santa Maria Rivers. It is also possible but unlikely that he traveled any distance along Burro Creek. In 1776, Father Francisco Garces of the Yuma Mission journeyed up the Colorado River to the vicinity of present day Kingman and then east to the Hopi Villages. On his return he probably crossed the Big Sandy River and may have traveled along it for a short distance. The journals of these explorers make little mention of the flow or vegetation in and around the rivers they crossed.

In 1821 Mexico won its independence from Spain, and sovereignty of the area with which we are concerned passed to Mexico. The Mexican government sponsored few expeditions into western Arizona and actually attempted to discourage incursions into its territories by citizens of the United States. Notwithstanding this policy, fur trappers and mountain men began exploring the southwest as early as the 1820's. These mountain men generally rode horseback and did not normally use boats for their fur trapping activities. These fur trappers were familiar with the Bill Williams River and possibly the Big Sandy and Santa Maria Rivers as well. It is possible that these mountain men trapped beaver and other game on Burro Creek, despite its isolation and rugged terrain, but left no record of their visits. William Sherley ("Old Bill") Williams certainly visited the river to which he gave his name on at least two occasions. He was with the party of Joseph Reddford Walker, together with Joe Meek and several others, who traveled up the Bill Williams River corridor, and probably the Big Sandy, past the mouth of Burro Creek in order to reach the Hopi Villages. Another mountain man, Antoine Leroux left a written record of having met Bill Williams on the Bill Williams River in 1837 while he was trapping for beaver. The record does not indicate whether he came down along the Big Sandy, Burro Creek or Santa Maria River to reach the point where he met Leroux. Other fur trappers and mountain men may well have passed

over or traveled up or down along these watercourses, including Burro Creek, but left no written record of their travels.

One outcome of the Mexican Period (1821-1848) was the establishment of a land grant on Burro Creek known as the Luis Maria Baca Float No. 5. This land grant contains approximately 100,000 acres, and issues regarding the legal status of title by navigability of the bed and banks of Burro Creek in this land grant will be discussed later in this report.

The war with Mexico of 1846-48 ended with the Treaty of Guadalupe Hidalgo whereby the United States acquired all of the Mexican territory in the southwestern United States north of the Gila River, including California. During the war a number of military expeditions traveled to California, but there is no record of any of them traveling in the Bill Williams River watershed, including its tributaries such as Burro Creek, to cross the Colorado River into California.

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 Leroux crossed the Big Sandy River and traveled along the Bill Williams River. That same year Joseph Reddford Walker also traveled along a portion of the Big Sandy River. In 1854 the Whipple Expedition traveled all the way down the corridors of the Big Sandy River and the Bill Williams River and mapped both of these streams. Other American expeditions led by Edward F. Beale in 1857 and William Jackson Palmer in 1867 followed the same routes. Another individual who traveled in this area and crossed the headwaters of the Big Sandy at various times and followed it part way to the south was François Xavier Aubrey who was a Santa Fe trader and made these trips in 1853 and 1854. There is little evidence, if any, that these explorers crossed or traveled along Burro Creek due to its isolation and the rugged

terrain through which it flows. In 1867 and 1968, William Jackson Palmer conducted surveys along the 32nd and 35th parallels for railroad routes to California. He avoided the area between these parallels with which we are concerned because of the rough terrain. The areas he surveyed have become the major transcontinental travel routes and the area with which we are concerned, except for U. S. Highway 93, still remains relatively isolated.

The mountains through which the Big Sandy River, Burro Creek and Bill Williams River flow were too difficult for a permanent road to California, and the Beale Road to the north of the Big Sandy basin along the 35th parallel surveyed by Palmer became established as the most direct transcontinental route to California through northern Arizona. The Santa Fe Railroad and Interstate 40 follow generally along this route today. A review of all of the early travelers in this area indicates that while the Big Sandy valley and Bill Williams River valley were corridors of traffic for at least part of their distance, and when flowing were a source of water for travelers, all travel was accomplished by foot, horseback and wagon, and no one tried to float or navigate either these rivers or Burro Creek.

C. Settlement and Development of the Burro Creek Area

In 1861, silver was discovered in El Dorado Canyon on the west side of the Colorado River and miners began to explore the area of the Bill Williams River basin and its tributaries. Aubrey City, a river landing, was established at the mouth of the Bill Williams River. It was named for Francois Xavier Aubrey, a Santa Fe trader. 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

Centennial Mine and Burro Mine in the Greenwood Mining District on lower Burro Creek were established. While the mines were located in the hills away from the creek, mills were constructed along the watercourse to process the ore, and small communities grew up around them. These communities included Greenwood or Greenwood City, and Richmond on lower Burro Creek. Other communities were established along the Big Sandy and Santa Maria Rivers. Supplies were brought up the Colorado by boat to Aubrey City and from there they were hauled by mule wagons to the various mills and towns. The mines and mills began to decline in the late 1800's, when Greenwood became a ghost town and was replaced by Signal which also was abandoned in the 1880's as the mines closed, but a mine for the production of manganese was started in the Artillery Peak Mining District west of the Big Sandy River and Burro Creek in 1914. It continued to operate through 1955.

At about the same time that mines and mining communities were established in this area, farmers began to practice irrigation agriculture in the area, but mostly on the upper Big Sandy River. Some farms were established on Burro Creek, particularly in the lower reach where the canyons opened into the Big Sandy plain. Ranches were also established along Burro Creek. The Cornwell Ranch was established in 1875. Another early ranching family was Kayser for whom the Kayser Wash is named. In 1906, John Neal moved his farm from the Big Sandy River to Burro Creek because of the severe floods along the Big Sandy. He developed a large ditch over three miles in length to carry water from Burro Creek to his orchards, fields and for domestic use. Early day ranchers and farmers built their dams where the water rose to the surface and dug ditches to their farmland and homes. Most of the ranches and farms were 160-acre homesteads. Fields were established near the creek where crops could be grown and cattle pastured. Cattle were also run on the slopes of the hills running up from the basin on public land. The people kept saddle horses, work horses, beef cattle, milk

cows, hogs, chickens and stands of bees. The crops grown were mainly alfalfa, grain, corn and wheat, but some people had gardens with vegetables, squash, Irish potatoes, sweet potatoes, watermelons and other types of melons. There were also some orchards of apricots, apples, peaches, pears and plums. These farmers and ranchers were largely self-sufficient and did most of their shopping in Greenwood City, and later Signal, as well as an occasional trip to Kingman. A series of post offices was established at concentrations of farms and ranches in the area. The occasional large floods would wash out fields and gardens and discouraged the farmers and ranchers. The community of Greenwood completely washed away during the mid-1880's and was replaced by the community of Signal on the west side of the Big Sandy River. Large floods that occurred approximately every six to seven years finally resulted in most of the families moving out of the area.

During the mining boom of the 1860's and 1870's and the later farming and ranching era, numerous secondary roads were constructed in the area. The people traveled by foot, horseback, and mule drawn wagons in this area, and there is no evidence of any commercial navigation being attempted on Burro Creek due to the rough mountainous country it traverses in its upper reaches and its intermittent and undependable flow. No accounts of boating on Burro Creek were found. In 1898, a stage line was established between Hackberry and Signal on the Big Sandy River, and in 1905 the Arizona and California Railroad was completed to the south from Parker to Phoenix. In 1910, the Arizona and Swansee Railroad was completed from the Arizona and California Railroad to Swansee, which was on the south side of the Bill Williams River. There are no railroads running through the Burro Creek watershed, and the only major roadway is U. S. Highway 93 which runs from Wickenburg to Kingman and crosses Burro Creek about 12 miles southeast of Wikieup.

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, including Burro Creek, 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 Burro Creek is located is rugged, mountainous country between the Basin and Range 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 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.

Burro Creek itself flows through relatively deep canyons and is confined to a great extent by bedrock until it widens out just before it flows into the Big Sandy River approximately 12 miles south of Wikieup. There were few areas for farming along Burro Creek due to its topography. The climate of Burro Creek is semi-arid to arid with temperature and precipitation varying substantially with the altitude. Pinion, juniper woodlands are found near its headwaters and cacti and riparian species are found near its confluence with the Big Sandy. Precipitation along Burro Creek falls mainly in the summer (monsoon) and the winter rainy season. Summer rains occur during July and August 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, Burro Creek contains water that flows year round or is relegated to discontinuous pools during the dry portions of the year. There is no record of stream gauge stations on the Big Sandy River or Burro Creek 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 in the Burro Creek and other streams of the Bill Williams River Basin and the documentation of floods 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 of 92,500 cfs was 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 Burro Creek, the largest recorded discharges have been 47,400 cfs on February 14, 1980 and 55,300 cfs on February 8, 1993. The record low flow year for Burro Creek was 1987, which had a peak discharge for the year of 565 cfs on March 5, 1987. In addition to the reports of fields, orchards, and even homes established on Burro Creek 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 Burro Creek 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.

Burro Creek is considered to be a perennial stream but is dry in certain areas during certain seasons. Its low flow discharge is generally less than 10 cfs, although when floods occur they are quite dramatic in comparison. From 1860 to 1930, water was drawn from Burro Creek for use in mining operations, ranching and irrigation, as well as for domestic purposes. There is no evidence that anyone has ever attempted to use Burro Creek for commercial navigation or flotation of logs. There is little recent evidence since 1900 of any significant fish in the creek and no evidence of a commercial fishing industry. Burro Creek 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 Burro Creek watershed

included foot, horseback, mule drawn wagons and later, as the road net improved, automobile and truck.

E. Title to Lands Covered by Mexican Land Grants

In the course of a hearing before the Commission on the Santa Cruz River in Southern Arizona, the owners of Rio Rico Properties, Inc., by and through their attorneys, filed a memorandum with the Commission claiming that the Commission and the State of Arizona had no jurisdiction to consider the navigability of that portion of the Santa Cruz River encompassed within their property. Rio Rico Properties, Inc. is the successor in interest to the heirs of Luis Maria Cabeza de Baca, who acquired a land grant from the Mexican government in 1821 known as the "Las Vegas Grandes" near Las Vegas, New Mexico. The Treaty of Guadalupe Hidalgo ending the Mexican-American War required the United States to honor the property claims of Mexican citizens living in the area ceded to the United States. Since the Baca Grant was in conflict with another grant, Congress passed an Act in June of 1860 (12 Stat. 71, c. 167) allowing the heirs of Cabeza de Baca to select an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies not exceeding five in number. In 1863, as two of the five parcels, the Baca heirs selected the tract known as Baca Float No. 3, which is the area encompassed by the property now owned by Rio Rico Properties, Inc. and the tract known as Baca Float No. 5 in Yavapai County in which the headwaters of Burro Creek are located. Although not specifically raised at the hearings involving Burro Creek, since the headwaters of Burro Creek are found on the Baca Float No. 5 and flow through that land grant, it is appropriate to deal with this issue in this report.

The owners and holders of Baca Float No. 3, near Nogales, claimed to hold their title by Act of Congress from the original Las Vegas land grant, which was made in 1821 prior to the Treaty of Guadalupe Hidalgo relating to land north of the Gila River

and the Gadsden Purchase relating to land south of the Gila River to the present boundary with Mexico. The position of the holders of what was formerly Mexican Land Grant land is that the original Mexican Land Grant being made prior to the Treaty of Guadalupe Hidalgo (9 U.S. Stat. 922, Feb. 2, 1848) ending the war between the United States and Mexico, and the treaty formalizing the Gadsden Purchase (10 U.S. Stat. 1031, Dec. 30, 1853) whereby the United States acquired from Mexico the area both north and south of the Gila River above the current boundary of the United States and Mexico, both provided that the United States would honor property rights and titles in land held by Mexican citizens prior to the date of the treaty and the purchase. Because there was no title restriction under the Mexican Land Grants and Mexican law apparently did not recognize the Public Trust Doctrine as we know it (whereby the title to land under tidal waters and the beds of navigable rivers and the banks thereof was held by the sovereign for the benefit of all the people), it was their position that their title to the bed of the Santa Cruz River and its banks where it flowed through Baca Float No. 3 should be absolute and not subject to the Public Trust Doctrine. In support of their position, they cite City and County of San Pedro v. Le Roy, 138 U.S. 656, 11 S.Ct. 364, 34 L.Ed. 1096 (1891); Knight v. United Land Association, 142 U.S. 161, 12 S.Ct. 258, 35 L.Ed. 974 (1891); Shaw v. Kellogg, 170 U.S. 312, 18 S.Ct. 632, 42 L.Ed. 1050 (1898); United States v. Coronado Beach Co., 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 735 (1921). If the position of the owners of Rio Rico is correct, and further that Burro Creek is navigable, it would appear that the same situation of title and ownership would prevail in the case of Burro Creek where it flows through Baca Float No. 5.

Based on the foregoing authority, it appears that this position may have considerable merit. However, in view of our finding in this report that Burro Creek is not navigable nor susceptible of navigability, we need not make a specific finding as to jurisdiction or application of the Public Trust Doctrine.

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 Burro Creek, and based on all of the historical and scientific data and information, documents, and other evidence produced, finds that Burro Creek 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 Burro Creek, while considered to be a perennial stream, has an almost insignificant flow during the dry seasons of the year. As of February 14, 1912 and currently, it flows/flowed primarily in direct response to precipitation and snow melt.

The Commission also finds that there is no evidence of any historical or modern commercial boating having occurred on Burro Creek.

The Commission also finds that there is no evidence of any commercial fishing having occurred on Burro Creek.

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 Burro Creek in Yavapai and Mohave Counties, Arizona, was not navigable as of February 14, 1912 nor susceptible of navigability.

DATED this 20th day of April, 2010.

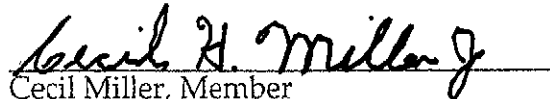


Earl Eisenhower, Chair

Dolly Echeverria, Vice Chair



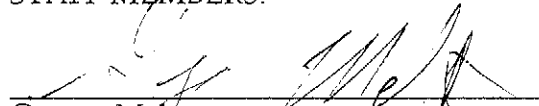
James Henness, Member



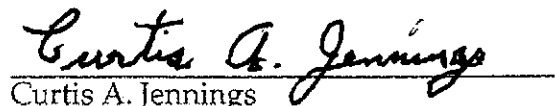
Cecil Miller, Member

Jay Brashear, Member
Deceased September 15, 2007

STAFF MEMBERS:



George Mehnert
Executive Director



Curtis A. Jennings
Legal Counsel to the Commission

1945-0

EXHIBIT A

Prescott Newspapers

Legal Department
 P.O. Box 312
 Prescott, AZ 86302
 (928)445-3333

Acknowledgement of Classified Advertising

Date: 02/07/05

Customer No: 1297

Ansac
 George Mehnert
 1700 West Washington, Ste 304
 Phoenix AZ 85007

Your current balance owing is: \$ 574.88

Your current credit balance is: \$ 0.00

<u>Ad #</u>	<u>Words</u>	<u>Charge</u>	<u>Paid</u>	<u>Owing</u>
4208	1407	\$574.88	\$0.00	\$574.88

Ad Text or Copy

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 Agua Fria River, Burro Creek, the Hassayampa River, the Santa Maria River, and the Verde River in Yavapai County, Arizona. 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 Agua Fria River, Burro Creek, the Hassayampa River, the Santa Maria River, and the Verde River.

Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by March 29, 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.

Pursuant to A.R.S. §37-1101, et. seq., the Arizona Navigable Stream Adjudication Commission (ANSAC) is also planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Yavapai County, Arizona. Notice is hereby given, pursuant to A.R.S. §37-11

<u>Publication</u>	<u>Issues</u>	<u>Starts</u>	<u>Ends</u>
Courier Chino Valley Prescott Val	3	02/10/05	02/24/05
		02/10/05	
		02/17/05	
		02/24/05	

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**

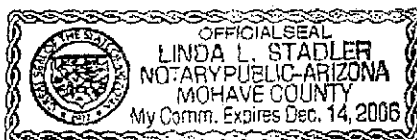
Has, to the personal knowledge of affiant, been published in the news-
paper aforesaid, according to law, from the **17 day of June, 2005**
to the **1st day of July, 2005**, inclusive without change, interruption or
omission, amounting in **3** insertions, made on the following dates:
06/17, 06/24, 07/01,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

SEE ATTACHED

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 water-course 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.
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@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.

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@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

EXHIBIT B

SEE ATTACHED

Arizona Navigable Stream Adjudication
Commission Advertising Correction:
NOTICE OF PUBLIC HEARING

State of Arizona Navigable Stream Adjudication
Commission Pursuant to A.R.S. § 37-1128 (A),
notice is hereby given that the Navigable
Stream Adjudication Commission will hold pub-
lic hearings to receive physical evidence and
testimony relating to the navigability or non-navigability
of all watercourses in Yavapai County.
The hearings will be held in Yavapai County on
March 29, 2005 beginning at 12:00 p.m. in an
order established by the chair in the Yavapai
County Supervisors' Conference Room, located
at 1015 Fair Street, Prescott, Arizona 86305.
The following are presently the only hearings
scheduled: The Agua Fria River, Burro Creek,
the Hassayampa River, the Santa Maria River,
the Verde River, and all of the small and minor
watercourses in Yavapai County.

1TC PUB March 4, 2005 ad 4491

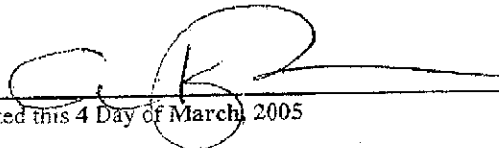
AFFIDAVIT OF PUBLICATION

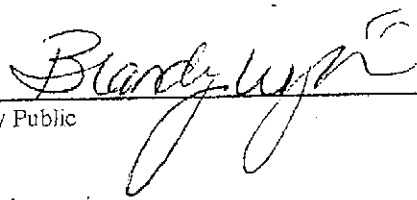
STATE OF ARIZONA)
County of Yavapai) ss.

I, Aileen A. Kemper, being first duly sworn on her oath says:
That she is the Legal Clerk of PRESCOTT NEWSPAPERS, INC., an
Arizona corporation, which owns and publishes the **COURIER**, a Daily
Newspaper published in the City of Prescott, County of Yavapai that the
notice attached hereto, namely,

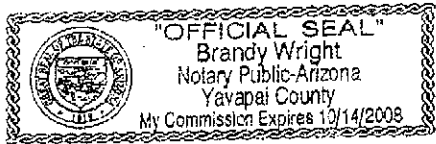
**ANSAC
NOTICE OF PUBLIC HEARING
ADVERTISING CORRECTION**

has, to the personal knowledge of affidavit, been published in the news
paper aforesaid, according to law, on 4 day of March, 2005 to 4 day of
March, 2005 both inclusive without change, interruption or omission,
amounting in all 1 insertions, made on the following dates:
March 4, 2005

By: 
Dated this 4 Day of March, 2005

By: 
Notary Public

My commission expires:



**Arizona Navigable Stream Adjudication
Commission advertising Correction:**

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 pub-
lic hearings to receive physical evidence and
testimony relating to the navigability or non-nav-
igability of all watercourses in Yavapai County.
The hearings will be held in Yavapai County on
March 29, 2005 beginning at 12:00 p.m. in an
order established by the chair in the Yavapai
County Supervisors' Conference Room located
at 1015 Fair Street, Prescott, Arizona 86305.
The following are presently the only hearings
scheduled. The Agua Fria River, Burro Creek,
the Hassayampa River, the Santa Maria River,
the Verde River, and all of the small and minor
watercourses in Yavapai County.

1TC PUB March 4, 2005 ad 4401

THE ARIZONA REPUBLIC

SEE ATTACHED

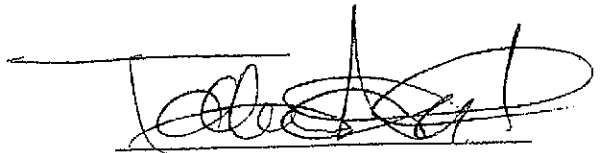
STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

NOTICE OF PUBLIC HEARING
The State of Arizona
Department of Transportation
Application Commission
Pursuant to A.R.S. § 37-126
A public hearing is hereby given
that the Navigable Stream
Adjudication Commission
will hold public hearings to
receive physical evidence
and testimony relating to the
navigability of all water courses
in Yavapai County, Arizona
beginning on March 29,
2005 beginning at 9:00 AM in
the office of the Yavapai
County Superior Court
Courtroom located at 1015
Fair Street, Prescott, Arizona
8630. The following are pres-
ently the only hearings
held in the State of Arizona:
The Aqueduct River, Billie
Creek, the Hassayampa Riv-
er, the Santa Maria River, the
Verde River, and all of the
small and minor water courses
in Yavapai County.
05181 March 4, 2005

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.

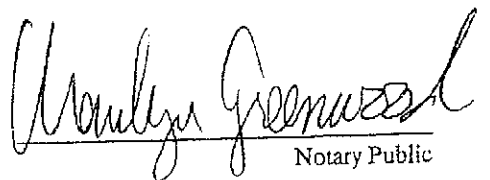
The Arizona Republic

March 4, 2005



Sworn to before me this
4TH day of
March 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 all watercours-
es in Yavapai County. The
hearings will be held in
Yavapai County on March 29,
2005 beginning at 12:00 p.m.
in an order established by
the chair in the Yavapai
County Supervisors Confer-
ence Room located at 1015
Fair Street, Prescott, Arizona
86305. The following are pres-
ently the only hearings
scheduled:
The Agua Fria River, Burro
Creek, the Hassayampa Riv-
er, the Santa Maria River, the
Verde River, and all of the
small and minor watercours-
es in Yavapai County.
05121 March 4, 2005

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 all watercours-
es in Yavapai County. The
hearings will be held in
Yavapai County on March 29,
2005 beginning at 12:00 p.m.
in an order established by
the chair in the Yavapai
County Supervisors' Confer-
ence Room located at 1015
Fair Street, Prescott, Arizona
86305. The following are
presently the only hearings
scheduled.

- The Agua Fria River, Burro
Creek, the Hassayampa Riv-
er, the Santa Maria River, the
Verde River, and all of the
small and minor watercours-
es in Gila County, including
but not limited to:
Adobe Creek - Yavapai, Alkali
Wash, Aly Wash, Amazon
Wash, Antelope Creek 1 -
Yavapai, Antelope Creek 2 -
Yavapai, Apache Wash -
Yavapai, Apache Creek -
Yavapai, Arastro Creek 1 -
Yavapai, Arastro Creek 2 -
Yavapai, Ash Creek 1 -
Yavapai, Ash Creek 2 -
Yavapai, Ash Creek 3 -
Yavapai, Ash Fork Draw -
Yavapai, Ash Spring Creek,
Aspen Wash - Yavapai, Badger
Spring Wash, Bannock
Creek, Bany Creek
Yavapai, Bear Canyon, Bear
Creek - Yavapai, Bear
Creek 2 - Yavapai, Bear
Creek 3 - Yavapai, Beaver
Creek - Yavapai, Big Burn
Creek, Big Chino Wash, Big
Ship Wash, Big Arp Creek,
Bishop Creek, Bitter Creek 1 -
Yavapai, Bitter Creek 2 -
Yavapai, Black Butte Wash,
Black Canyon Creek, Black
Canyon Wash - Yavapai,
Black Hill Wash, Blackwater
Creek, Blind Creek, Blind In-
dian Creek, Blowout Creek,
Blue Tank Wash - Yavapai,
Board Creek, Bottleneck
Wash - Yavapai, Boulder
Creek 1 - Yavapai, Boulder
Creek 2 - Yavapai, Bridle
Creek, Brushy Creek -
Yavapai, Brushy Prom, Brus-
hy Wash, Buckbed Wash,
Buckhorn Creek - Yavapai,
Bull Run Creek, Bull Spring
Wash, Bullard Wash, Bumble
Bee Creek, Burnt Wash,
Butte Creek - Yavapai, Butte
Wash, Buzzard Roost Creek,
Buzzard Roost Wash, Cabin
Wash, Calamity Wash, Castle
Creek - Yavapai, Cave Creek
- Maricopa, Cedar Creek -
Yavapai, Cedar Creek 1, Cel-
lar Springs C, Centennial
Wash, Chaparral Gulch
Chasin Creek, Cherry Creek
1, Cherry Creek 2, Chino
Wash, Cienega Creek -
Yavapai, Cimarron Creek,
Clipper Wash, Coffee Creek,
Cold Water Creek, Conger
Creek, Contreras Wash -
Yavapai, Cooper Wash,
Cooperopolis Creek, Copper
Basin Wash, Copper Creek 1 -
Yavapai, Copper Creek 2 -
Yavapai, Copper Creek 3 -
Yavapai, Cottonwood Can-
yon, Cottonwood Creek 1 -
Yavapai, Cottonwood Creek
2 - Yavapai, Cottonwood
Creek 3 - Yavapai, Cow Creek
1 - Yavapai, Cow Creek 2 -
Yavapai, Cowboy Wash, Coy-
ote Spring, Coyote Wash,
Yavapai, Crazy Basin Creek,
Cypress Creek, Date Creek,
Daveport Wash, Dead Mexi-
can Creek, Deadman Creek,
Devil Dog Canyon, Pillion
Wash, Dry Beaver Creek, Dry
Creek 1 - Yavapai, Dry Creek
2 - Yavapai, Dry Wash 1 -
Yavapai, Dry Wash 2 -
Yavapai, Dugan Wash, East
Antelope Creek, East Branch
Squa, East Fork Castle,
Eastwood Creek, Eddie
Wash, Eightmile Creek, Finch
Wash, Fort Rock Creek, Fos-
sil Creek, Francis Creek,
French Creek - Yavapai,
Gaddis Wash, Gap Creek,
Government Spring, Grandpa
Wash, Granite Creek, Grape-
vine Creek - Yavapai, Graver
stone Wash, Great Hill Wash, Gr-
idstone Wash, Groom Creek,
Hackberry Creek - Yavapai,
Hackberry Wash - Yavapai,
Hemlin Wash, Hell Canyon,
Hellsapoppin Creek, Hite
Creek, Hit Wash, Hog Creek,
Horse Creek 1 - Yavapai,
Horse Creek 2 - Yavapai,
Horse Wash, Houston Creek -
Yavapai, Humbig Creek,
Humphrey Wash, Indian
Creek - Yavapai, Indian
Creek 2 - Yavapai, Indian
Springs Creek, _____

- Yavapai, Meeth Wash,
Mescal Creek - Yavapai, Mid-
dle Fork Squa, Middle Red
Creek, Middleton Creek,
Midgewater Creek, Milk
Creek - Yavapai, Miller Creek
1, Miller Creek 2, Miller Wash
- Yavapai, Mineral Creek -
Yavapai, Mineral Creek -
Yavapai, Mineral Creek -
Yavapai, Mineral Creek -
Yavapai, Mineral Wash,
Mockingbird Wash, Model
Creek, Monarch Wash,
Moonville Creek, Morgan
City Wash, Mount Hope
Wash, Mountain Spring, Mud
Spring, Mud Tank,
Wash, Muddy Creek, Munds
Draw, Niagara Creek, North
Fork Blind, North Fork Cella,
North Fork Dato, North Fork
North Fork, Squaw, North
Fork, Walnut, North Ring
Creek, North Red Creek,
O'Brien Wash, Oak Creek,
Oak Creek - Yavapai, Oak
Wash, Orofino Wash,
Osborne Spring Wash, Page
Wash, Partridge Creek, Peo-
ples Creek, Pigeon Creek -
Yavapai, Pine Creek 2 -
Yavapai, Pine Creek 3 -
Yavapai, Pineveta Wash,
Placitas Creek, Polson
Creek, Poplar Creek, Poplar
Wash, Professor Creek, Quail
Spring Wash - Yavapai,
Quartz Lead Wash, Race-
track Canyon, Railroad Draw,
Rarick Canyon, Rattlesnake
Creek, Rattlesnake Wash,
Red Creek, Ritter Creek,
Rock Creek - Yavapai, Round
Valley Wash, Russell Wash,
Ryland Creek, Safford Wash,
Wash, Salt Creek - Yavapai,
San Domingo Wash, Sapu-
Creek, Sheep Creek, Sheep
Creek - Yavapai, Sherman
Wash, Sherman Wash, Silver
Creek - Yavapai, Skull Valley
Wash, Slate Creek, Slate
Creek - Yavapai, Slim Jim
Creek, Smith Canyon, Soap
Canyon, Yavapai, Soda
Springs Creek, Soldier Wash,
Sols Wash, Sour Water Wash -
Yavapai, South Fork, Callia,
South Fork Date, South Fork
Deacon, South Fork, South
Fork, South Fork, South Fork
Santa, South Fork Spring,
South Fork Walker, South
Prong Syc, Spence Creek,
Spencer Creek, Spotted Creek
1 - Yavapai, Spring Creek 2 -
Yavapai, Spring Wash,
Squaw Creek 1 - Yavapai,
Squaw Creek 2 - Yavapai,
Stinson, Stinson Wash,
Stringland Wash, Stringtown
Wash, Sycamore Creek 1 -
Yavapai, Sycamore Creek 2 -
Yavapai, Sycamore Creek 3 -
Yavapai, Tangle Creek, Tank
Creek 1 - Yavapai, Tank
Creek 2 - Yavapai, Tiger
Creek, Tonto
Wash, Tower Creek, Towers
Creek, Trilby Wash, Trout
Creek, Truxton Wash, Tub
Spring Wash, Tule Creek -
Yavapai, Turkey Canyon,
Yavapai, Turkey Creek 1 -
Yavapai, Turkey Creek 2 -
Yavapai, Turkey Creek 3 -
Yavapai, Turquoise Creek,
Tussock Spring C, Valley
Wash, Wagon Tire Wash,
Walker Creek - Yavapai, Wal-
nut Creek - Yavapai, Water-
man Creek, Weaver Creek,
West Clear Creek, Wet Bea-
ver Creek, Wet Bottom
Creek, Whipsaw Creek,
White Spring Wash,
Yavapai, Wildon Creek, Wild-
er Creek, Williamson Valle,
Willow Creek 1 - Yavapai,
Wolf Creek, Wolf Creek 2 -
Yavapai, Wood Canyon
Stream 1 - Yavapai, Wood
Canyon Stream 2 - Yavapai,
Woolsey Wash - Yavapai,
Yarber Wash, Yarnell Creek,
Yellow Jacket Creek 1 - Seg 15
8 La Paz, Yavapai, h - Seg 16
Yavapai, f - Seg 18 Yavapai, h
- Seg 61 Yavapai, h - Seg 62
Yavapai.
and all other named and un-
named small and minor
watercours-
Interested parties may submit
evidence to the commission
office prior to the hearing
and/or during the approxi-
mate public hearing. The com-
mission will conduct its hear-
ings informally without ad-
herence to judicial rules of
procedure or evidence. An
unbound original plus seven
bound copies of documenta-
ry evidence is to be submit-
ted. ANSAC offices are located
at 1700 West Washington,
Room 304, Phoenix, AZ
85007. The telephone num-
ber is (602) 542-9214. The
web site address is
http://www.azstreamsdocs.
com. The e-mail address is
streams@minspring.com.
Evidence submitted in ad-
vance of the hearing will be
available for public inspec-
tion during regular Commis-
sion office hours of 8:00 a.m.

AFFIDAVIT OF PUBLICATION

SEE ATTACHED

THE ARIZONA REPUBLIC

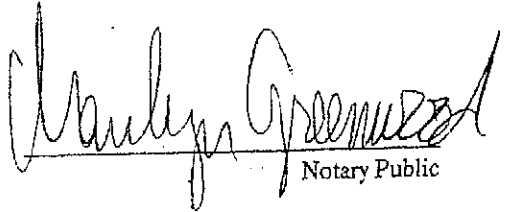
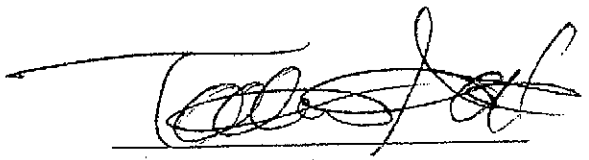
STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

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

February 25, 2005

Sworn to before me this
25th day of
February 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 all watercours-
es in Yavapai County. The
hearings will be held in
Yavapai County on March 29,
2005 beginning at 12:00 p.m.
in an order established by
the chair in the Yavapai
County Supervisors' Confer-
ence Room located at 1015
Fair Street, Prescott, Arizona
86305. The following are
presently the only hearings
scheduled.

The Agua Fria River, Burro
Creek, the Hassayampa Riv-
er, the Santa Maria River, the
Verde River, and all of the
small and minor watercours-
es in Gila County, including
but not limited to:

Adobe Creek - Yavapai, Alkali
Wash, Ally Wash, Amazon
Wash, Antelope Creek 1 -
Yavapai, Antelope Creek 2 -
Yavapai, Antelope Wash -
Yavapai, Apache Creek -
Yavapai, Arrastre Creek 1 -
Yavapai, Arrastre Creek 2 -
Yavapai, Ash Creek 1 -
Yavapai, Ash Creek 2 -
Yavapai, Ash Creek 3 -
Yavapai, Ash Fork Draw -
Yavapai, Ash Spring Creek,
Aspen Wash - Yavapai, Badg-
er Spring Wash, Bannon
Creek, Barity Creek -
Yavapai, Bear Canyon, Bear
Creek 1 - Yavapai, Bear
Creek 2 - Yavapai, Bear
Creek 3 - Yavapai, Beaver
Creek - Yavapai, Big Bug
Creek, Big Chino Wash, Big
Shipp Wash, Bill Arp Creek,
Bishop Creek, Bitter Creek 1
- Yavapai, Bitter Creek 2 -
Yavapai, Black Butte Wash,
Black Canyon Creek, Black
Canyon Wash - Yavapai,
Black Hill Wash, Blackwater
Creek, Bland Creek, Blind In-
dian Creek, Blowout Creek,
Blue Tank Wash - Yavapai,
Board Creek, Bottleneck

Yavapai, Meath Wash,
Mescal Creek - Yavapai, Mid-
dle Fork Squa, Middle Red
Creek, Middleton Creek,
Middlewater Creek, Milk
Creek - Yavapai, Miller Creek
1, Miller Creek 2, Miller Wash
- Yavapai, Mineral Creek 1 -
Yavapai, Mineral Creek 2 -
Yavapai, Minnehaha Creek,
Mint Wash, Mitchell Wash,
Mockingbird Wash, Model
Creek, Monarch Wash,
Moonville Creek, Morgan
City Wash, Mount Hope
Wash, Mountain Spring, Mud
Spring Creek, Mud Tank
Wash, Muddy Creek, Munds
Draw, Niagara Creek, North
Fork Blind, North Fork Cella,
North Fork Date, North Fork
Deadm, North Fork Rock,
North Fork Squaw, North
Fork Walnut, North Pine
Creek, North Red Creek,
O'Brien Wash, Oak Creek,
Oak Creek - Yavapai, Oak
Wash, Orofino Wash,
Osborne Spring Wash, Page
Wash, Partridge Creek, Peo-
ples Creek, Pigeon Creek -
Yavapai, Pine Creek 1 -
Yavapai, Pine Creek 2 -
Yavapai, Pine Creek 3 -
Yavapai, Pineveta Wash,
Placeritas Creek, Poison
Creek, Poland Creek, Poplar
Wash, Professor Creek, Quail
Spring Wash - Yavapai,
Quartz Lead Wash, Race-
track Wash, Railroad Draw,
Rarick Canyon, Rattlesnake
Canyon, Rattlesnake Wash,
Red Creek, Ritter Creek,
Rock Creek - Yavapai, Round
Valley Wash, Russell Wash,
Ryland Creek, Sally May
Wash, Salt Creek - Yavapai,
San Domingo Wash, Sand
Creek, Sheep Creek, Sheep
Creek - Yavapai, Sheppard
Wash, Sherman Wash, Silver
Creek - Yavapai, Skull Valley
Wash, Slate Creek, Slate
Creek - Yavapai, Slim Jim
Creek, Smith Canyon, Soap
Creek - Yavapai, Soda
Springs Creek, Soldier Wash,
Soils Wash, Sour Water Wash
- Yavapai, South Fork Cella,
South Fork Date, South Fork
Deadm, South Fork Mud S,
South Fork Rock, South Fork
Santa, South Fork Spring,
South Fork Walnut, South

Wash - Yavapai, Boulder
 Creek 1 - Yavapai, Boulder
 Creek 2 - Yavapai, Bridle
 Creek, Brushy Creek -
 Yavapai, Brushy Prong, Bru-
 shy Wash, Buckbed Wash,
 Buckhorn Creek - Yavapai,
 Bull Run Creek, Bull Spring
 Wash, Bullard Wash, Bumble
 Bee Creek, Burnt Wash,
 Butte Creek - Yavapai, Butte
 Wash, Buzzard Roost Creek,
 Buzzard Roost Wash, Cabin
 Wash, Calamity Wash, Castle
 Creek - Yavapai, Cave Creek
 - Maricopa, Cedar Creek -
 Yavapai, Cedar Creek 1, Cel-
 lar Springs C, Centennial
 Wash, Chaparral Gulch,
 Chasm Creek, Cherry Creek
 1, Cherry Creek 2, Chino
 Wash, Cienega Creek -
 Yavapai, Cimarron Creek,
 Clipper Wash, Coffee Creek,
 Cold Water Creek, Conger
 Creek, Contreras Wash -
 Yavapai, Cooper Wash,
 Cooperopolis Creek, Copper
 Basin Wash, Copper Creek 1
 - Yavapai, Copper Creek 2 -
 Yavapai, Copper Creek 3 -
 Yavapai, Cottonwood Can-
 yon, Cottonwood Creek 1 -
 Yavapai, Cottonwood Creek
 2 - Yavapai, Cottonwood
 Creek 3 - Yavapai, Cow Creek
 1 - Yavapai, Cow Creek 2 -
 Yavapai, Cowboy Wash, Coy-
 ote Spring, Coyote Wash -
 Yavapai, Crazy Basin Creek,
 Cypress Creek, Date Creek,
 Davenport Wash, Dead Mexi-
 can Creek, Deadman Creek,
 Devil Dog Canyon, Dillon
 Wash, Dry Beaver Creek, Dry
 Creek 1 - Yavapai, Dry Creek
 2 - Yavapai, Dry Wash 1 -
 Yavapai, Dry Wash 2 -
 Yavapai, Dugan Wash, East
 Antelope Creek, East Branch
 Squa, East Fork Castle,
 Eastwood Creek, Eddie
 Wash, Eightmile Creek, Finch
 Wash, Fort Rock Creek, Fos-
 sil Creek, Francis Creek,
 French Creek - Yavapai,
 Gaddis Wash, Gap Creek,
 Government Spring, Grandpa
 Wash, Granite Creek, Grape-
 vine Creek - Yavapai, Graver
 Wash, Grief Hill Wash, Grind-
 stone Wash, Groom Creek,
 Hackberry Creek - Yavapai,
 Hackberry Wash - Yavapai,
 Hamlin Wash, Hell Canyon,
 Hellzapoppin Creek, Hide
 Prong Syca, Spence Creek,
 Spencer Creek, Spring Creek
 1 - Yavapai, Spring Creek 2 -
 Yavapai, Spring Wash,
 Squaw Creek 1 - Yavapai,
 Squaw Creek 2 - Yavapai,
 Stinson Wash - Yavapai,
 Strickland Wash, Stringtown
 Wash, Sycamore Creek 1,
 Sycamore Creek 1 - Yavapai,
 Sycamore Creek 2 - Yavapai,
 Sycamore Creek 3 - Yavapai,
 Tangle Creek, Tank Creek 1 -
 Yavapai, Tank Creek 2 -
 Yavapai, Tiger Creek, Tonto
 Wash, Towel Creek, Towers
 Creek, Trilby Wash, Trout
 Creek, Truxton Wash, Tub
 Spring Wash, Tule Creek -
 Yavapai, Turkey Canyon -
 Yavapai, Turkey Creek 1 -
 Yavapai, Turkey Creek 2 -
 Yavapai, Turkey Creek 3 -
 Yavapai, Tuscumbia Creek,
 Tussock Spring C, Valley
 Wash, Wagon Tire Wash,
 Walker Creek - Yavapai, Wal-
 nut Creek - Yavapai, Water-
 man Creek, Weaver Creek,
 West Clear Creek, Wet Bear-
 ver Creek, Wet Bottom
 Creek, Whipsaw Creek,
 White Spring Wash -
 Yavapai, Wickiup Creek, Wild-
 er Creek, Williamson Valle,
 Willow Creek 1 - Yavapai,
 Wolf Creek, Wolf Creek -
 Yavapai, Wood Canyon
 Stream 1 - Yavapai, Wood
 Canyon Stream 2 - Yavapai,
 Woolsey Wash - Yavapai,
 Yarber Wash, Yarnell Creek,
 Yellow Jacket Creek, a - Seg
 8 La Paz/Yavapai, b - Seg 15
 Yavapai, f - Seg 56 Yavapai, h
 - Seg 61 Yavapai, h - Seg 62
 Yavapai,
 and all other named and un-
 named small and minor
 watercourses. 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. An
 unbound original plus seven
 bound copies of documenta-
 ry evidence is to be submit-
 ted. ANSAC offices are locat-
 ed at 1700 West Washington,
 Room 304, Phoenix, AZ
 85007. The telephone num-

Creek, Hitt Wash, Hop Creek,
Horse Creek 1 - Yavapai,
Horse Creek 2 - Yavapai,
Horse Wash, Houston Creek -
Yavapai, Humbug Creek,
Humphrey Wash, Indian
Creek 1 - Yavapai, Indian
Creek 2 - Yavapai, Indian
Springs Creek, Indian
ber is (602) 542-9214. The
web site address is
<http://www.azstreambeds.com>.
The e-mail address is
streams@mindspring.com.
Evidence submitted in ad-
vance of the hearing will be
available for public inspec-
tion during regular Commis-
sion office hours of 8:00 a.m.

**NOTICE OF PUBLIC HEARING
STATE OF ARIZONA**

Navigable Stream Adjudication Commission
Pursuant to A.R.S. § 37-1128 (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 all watercourses in Yavapai County. The hearings will be held in Yavapai County on March 29, 2005 beginning at 12:00 p.m. in an order established by the chair in the Yavapai County Supervisors' Conference Room located at 1015 Fair Street, Prescott, Arizona 86305. The following are presently the only hearings scheduled.

The Agua Fria River, Burro Creek, the Hesperompe River, the Santa Maria River, the Verde River, and all of the small and minor watercourses in Gila County, including but not limited to: Adoba Creek - Yavapai, Adoba Wash, Ahy Wash, Amazon Wash, Antelope Creek 1 - Yavapai, Antelope Creek 2 - Yavapai, Antelope Wash - Yavapai, Apache Creek - Yavapai, Arizata Creek 1 - Yavapai, Arizata Creek 2 - Yavapai, Ash Creek 1 - Yavapai, Ash Creek 2 - Yavapai, Ash Creek 3 - Yavapai, Ash Fork Draw - Yavapai, Ash Spring Creek, Aspen Wash - Yavapai, Badger Spring Wash, Beacon Creek, Banty Creek - Yavapai, Bear Canyon, Bear Creek 1 - Yavapai, Bear Creek 2 - Yavapai, Bear Creek 3 - Yavapai, Beaver Creek - Yavapai, Big Bug Creek, Big Chino Wash, Big Shipp Wash, Big Arp Creek, Bishop Creek, Bitter Creek 1 - Yavapai, Bitter Creek 2 - Yavapai, Black Butte Wash, Black Canyon Creek, Black Canyon Wash - Yavapai, Black Hill Wash, Blackwater Creek, Black Creek, Blind Indian Creek, Blowout Creek, Blue Tank Wash - Yavapai, Board Creek, Bottleneck Wash - Yavapai, Boulder Creek 1 - Yavapai, Boulder Creek 2 - Yavapai, Bridle Creek, Brushy Creek - Yavapai, Brushy Prong, Brushy Wash, Buckhead Wash, Buckhorn Creek - Yavapai, Bull Run Creek, Bull Spring Wash, Bullard Wash, Burnetts Bee Creek, Burnt Wash, Butte Creek - Yavapai, Butte Wash, Buzzard Root Creek, Buzzard Root Wash, Cabin Wash, Calamity Wash, Castle Creek - Yavapai, Cave Creek - Maricopa, Cedar Creek - Yavapai, Cedar Creek 1, Cedar Springs C, Centennial Wash, Chapparral Gulch, Chasm Creek, Cherry Creek 1, Cherry Creek 2, Chino Wash, Chinoza Creek - Yavapai, Chinoza Creek, Copper Wash, Coffee Creek, Cold Water Creek, Conger Creek, Contreras Wash - Yavapai, Cooper Wash, Coopersville Creek, Copper Basin Wash, Copper Creek 1 - Yavapai, Copper Creek 2 - Yavapai, Copper Creek 3 - Yavapai, Cottonwood Canyon, Cottonwood Creek 1 - Yavapai, Cottonwood Creek 2 - Yavapai, Cottonwood Creek 3 - Yavapai, Cow Creek 1 - Yavapai, Coy Creek 2 - Yavapai, Cowboy Wash, Coyote Spring, Coyote Wash - Yavapai, Crazy Basin Creek, Cypress Creek, Data Creek, Davenport Wash, Dead Mexican Creek, Desdemona Creek, Devil Dog Canyon, Dillon Wash, Dry Beaver Creek, Dry Creek 1 - Yavapai, Dry Creek 2 - Yavapai, Dry Wash 1 - Yavapai, Dry Wash 2 - Yavapai, Dugan Wash, East Antelope Creek, East Branch Squaw, East Fork Centia, Eastpod Creek, Eddie Wash, Elginville Creek, Fincé Wash, Fort Rock Creek, Fossil Creek, Francis Creek, French Creek - Yavapai, Gaddis Wash, Gap Creek, Government Spring, Grandpa Wash, Granite Creek, Grapevine Creek - Yavapai, Gravel Wash, Grif Hill Wash, Grinstone Wash, Green Creek, Hackberry Creek - Yavapai, Hackberry Wash - Yavapai, Hamlin Wash, Hell Canyon, Helzapoppin Creek, Hilda Creek, Hix Wash, Hop Creek, House Creek 1 - Yavapai, House Creek 2 - Yavapai, House Wash, Houston Creek

- Yavapai, Huenbug Creek, Hunsberry Wash, Indian Creek 1 - Yavapai, Indian Creek 2 - Yavapai, Indian Springs Creek, Indian Springs Wash, Iron Spring Wash - Yavapai, Iron Springs Wash, Jacks Canyon 1, Jim Creek, Johnson Creek, Johnson Wash - Yavapai, Kulkand Creek, Lary Creek, Lawler Creek, Lima Creek, Little Ash Creek, Little Buckhorn, Little Chino Wash, Little Copper Creek, Little Cypress Creek, Little Hackberry, Little Lima Creek, Little Shipp Wash, Little Squaw Creek, Little Sycamore 1, Little Sycamore 2, Little Wolf Creek, Loco Creek, Logan Wash, Long Canyon, Lookout Wash, Lynx Creek, M C Canyon, Mahoney Wash, Marzanita Creek - Yavapai, Maricopa Wash, Martin Canyon, Martinez Wash - Yavapai, Mesh Wash, Mesquite Creek - Yavapai, Middle Fork Squaw, Middle Red Creek, Middleton Creek, Middlewater Creek, Milk Creek - Yavapai, Miller Creek 1, Miller Creek 2, Miller Wash - Yavapai, Mineral Creek 1 - Yavapai, Mineral Creek 2 - Yavapai, Minnehaha Creek, Mint Wash, Mitchell Wash, Mockingbird Wash, Model Creek, Monarch Wash, Moonville Creek, Morgan City Wash, Mount Hope Wash, Mountain Spring, Mud Spring Creek, Mud Tank Wash, Muddy Creek, Monks Ditch, Niesgona Creek, North Fork Bend, North Fork Centia, North Fork Data, North Fork Deadman, North Fork Rock, North Fork Squaw, North Fork Wash, North Pine Creek, Oak Creek, Oak Creek, O'Brien Wash, Oak Wash, Oat Creek - Yavapai, Oak Wash, Orofino Wash, Oxbow Spring Wash, Page Wash, Partridge Creek, Peopias Creek, Pigeon Creek - Yavapai, Pine Creek 1 - Yavapai, Pine Creek 2 - Yavapai, Pine Creek 3 - Yavapai, Pinewire Wash, Pincatas Creek, Poison Creek, Poland Creek, Poplar Wash, Professor Creek, Quail Spring Wash - Yavapai, Quartz Lead Wash, Race Creek Wash, Railroad Draw, Rafter Canyon, Rattlesnake Canyon, Rattlesnake Wash, Red Creek, Ritter Creek, Rock Creek - Yavapai, Roland Valley Wash, Russell Wash, Ryland Creek, Saffery Mary Wash, Salt Creek - Yavapai, San Domingo Wash, Sand Creek, Sheep Creek, Sheep Creek - Yavapai, Sheppard Wash, Sherman Wash, Silver Creek - Yavapai, Skull Valley Wash, State Creek, State Creek - Yavapai, Slim Jim Creek, Smith Canyon, Soap Creek - Yavapai, Soda Springs Creek, Soldier Wash, Soda Wash, Sour Water Wash - Yavapai, South Fork Centia, South Fork Data, South Fork Deadman, South Fork Mud S, South Fork Rock, South Fork Santa, South Fork Spring, South Fork Wash, South Prong Syca, Spence Creek, Spencer Creek, Spring Creek 1 - Yavapai, Spring Creek 2 - Yavapai, Spring Creek 3 - Yavapai, Spring Wash, Squaw Creek 1 - Yavapai, Squaw Creek 2 - Yavapai, Station Wash - Yavapai, Strickland Wash, Stirlingtown Wash, Sycamore Creek 1, Sycamore Creek 1 - Yavapai, Sycamore Creek 2 - Yavapai, Sycamore Creek 3 - Yavapai, Tangle Creek, Tank Creek 1 - Yavapai, Tank Creek 2 - Yavapai, Tiger Creek, Tonto Wash, Towel Creek, Towens Creek, Tully Wash, Trona Creek, Truston Wash, Tub Spring Wash, Tule Creek - Yavapai, Turkey Canyon - Yavapai, Turkey Creek 1 - Yavapai, Turkey Creek 2 - Yavapai, Turkey Creek 3 - Yavapai, Tuconubie Creek, Tussock Spring C, Valley Wash, Whiptail

Wing Wash, Walker Creek - Yavapai, Walnut Creek - Yavapai, Westernmost Creek, Weaver Creek, West Clear Creek, West Beaver Creek, West Bottom Creek, Whipple Creek, White Spring Wash - Yavapai, Whittop Creek, Wilder Creek, Williamsen Villa, Willow Creek 1 - Yavapai, Wolf Creek, Wolf Creek - Yavapai, Wood Canyon Stream 1 - Yavapai, Wood Canyon Stream 2 - Yavapai, Woodway Wash - Yavapai, Yerber Wash, Yermal Creek, Yellow Jacket Creek a - Seg 8 La Paz/Yavapai, b - Seg 15 Yavapai, 1 - Seg 55 Yavapai, 11 - Seg 81 Yavapai, 11 - Seg 82 Yavapai, and all other named and unnamed small and minor watercourses.

Interested parties may submit evidence to the commission offices 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. 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) 542-8214. The web site address is <http://www.west-streams.com>. The e-mail address is streams@msdpspring.com.

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) 542-8214.

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) 542-8214 to make their needs known.

George Melner, Executive Director,
February 14, 2005.
17C PUB Feb. 18, 2005 ed 4260

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,

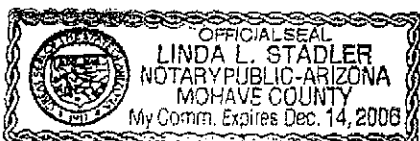
NOTICE OF PUBLIC HEARING
No 2212

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



SEE ATTACHED

(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:

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

SEE ATTACHED

THE ARIZONA REPUBLIC

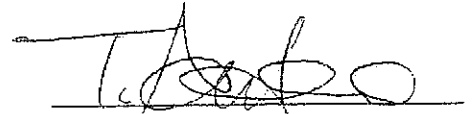
NOTICE OF PUBLIC HEARING
 State of Arizona
 Navigable Stream
 Adjudication Commission
 Pursuant to A.R.S. § 37-1126
 (A), notice is hereby given that the Navigable Stream Adjudication Commission will hold public hearings to receive physical evidence and testimony relating to the navigability or non-navigability 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 or procedure of 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 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 Melnert, Executive Director, July 5, 2005.
 05441-July 8, 2005

STATE OF ARIZONA }
 COUNTY OF MARICOPA } SS.

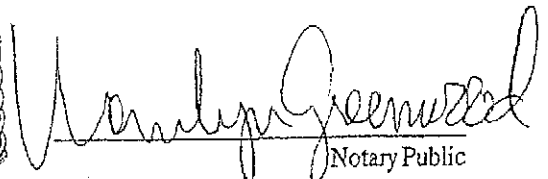
Tabitha Antoniadis, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also 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
 8TH 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 La Paz County. The hearings will be held in La Paz County on August 9, 2005 beginning at 10:00 a.m. in an order established by the chair in the La Paz County Supervisors' Conference Room located at 1108 Joshua Ave, Parker, Arizona. The following are presently the only hearings scheduled:

The Bill Williams River and the Santa Maria 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.

George Mehnert, Executive Director, July 5, 2005.
05442-July 8, 2005



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

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.

Title 2 of the Americans 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). 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 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 6th day of October, 2005. George Mehnert, Director, Navigable Stream Adjudication Commission

EXHIBIT C

Post Hearing Memorandums

Hearing No. 05-003-NAV

Page No.

1

Arizona Navigable Stream Adjudication Commission

**Burro Creek
Mohave and Yavapai Counties**

Entry Number	Date	Entry	Entry By
		Opening Memorandums	
1	09/13/05	Salt River Project's Opening Memorandum.	George Mehnert
2	09/21/05	Phelps Dodge Corporation's Opening Memorandum.	George Mehnert
		Response Memorandums	
		None	

EXHIBIT D



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

E-mail: streamis@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD
March 29 2005, at 12:00 P.M., in Prescott, 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 on March 29, 2005 at 12:00 p.m. in the Yavapai County Supervisors' Conference Room located at 1015 Fair Street, Prescott, 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. January 24, Yuma County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE AGUA FRIA RIVER, 05-002-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF BURRO CREEK, 05-003-NAV.
6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE HASSAYAMPA RIVER, 05-004-NAV.
7. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA MARIA RIVER, 05-005-NAV.
8. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE VERDE RIVER, 04-009-NAV.
9. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY, 05-001-NAV.
10. BUDGET UPDATE
11. ATTORNEY PAY (discussion and action).
12. 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.)
13. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
14. ADJOURNMENT.

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

Dated this 24th day of February, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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: streams@nindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

MEETING MINUTES
Prescott, Arizona, March 29, 2005

COMMISSION MEMBERS PRESENT

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

COMMISSION MEMBERS ABSENT

None

STAFF PRESENT

George Mehnert, and Commission Legal Counsel Curtis Jennings.

1. CALL TO ORDER.

Chair Eisenhower called the meeting to order at approximately 12:23 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. January 24, 2005, Yuma County.

Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To approve the minutes of January 24, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE AGUA FRIA RIVER, 05-002-NAV.

Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist Jon Fuller prepared the reports regarding this matter for the State Land Department, and stated among other things that New River and Skunk Creek had been included in an earlier report as small and minor watercourses in Maricopa County with Skunk Creek flowing into New River and New River flowing into the Agua Fria.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF BURRO CREEK, 05-003-NAV. Cheryl

Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, except for report dates, and the Chair stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions. As a matter of clarification, attorney Curtis Jennings and expert Jon Fuller discussed that the report Mr. Fuller was talking about covered Burro Creek, the Big Sandy River, and the Santa Maria River, all part of a single watershed, and that the Big Sandy River flowed exclusively in Mohave County and not at all in Yavapai County.

6. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE HASSAYAMPA RIVER, 05-004-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions.
7. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SANTA MARIA RIVER, 05-005-NAV.** Chair did item 7 followed by item 6. Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. Phil Blacet, geologist for Phelps Dodge, also spoke and responded to questions.
8. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE VERDE RIVER, 04-009-NAV.** Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse

hearing, and the Chair had previously stated there would be no point in her repeating it. Jon Fuller, who prepared the Verde River Report, was present, but Ottozawa Chatupron of the State Land Department spoke and responded to questions regarding the Verde River Report. Attorney John Ryley representing the Yavapai Apache Nation spoke regarding this matter. Shanti Rosette, representing the State Land Department, also spoke. Dolly Echeverria discussed that she has had a lengthy history in Arizona and she mentioned her view that the Verde is used mainly for fun, for kayaking, etc., but indicated it is too difficult to get in and out of for conducting commercial traffic. Ms. Rosette indicated experts will be available at the final hearing in Maricopa County regarding the Verde and that those experts will present the Land Commissioner's position at that time. Mr. Brashear asked the Chair that additional information be provided to the Commission by those who provide the evidence regarding commercial boating.

9. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY, 05-001-NAV.**

Cheryl Doyle of the State Land Department said that her statement regarding the State Land Department would be the same for each watercourse hearing, and the Chair had previously stated there would be no point in her repeating it. Hydrologist Jon Fuller who prepared the reports regarding this matter for the State Land Department spoke and responded to questions. In response to questions from the Commission Attorney Jon Fuller said that information in the report that may be pertinent to the Commission making a decision relating to Curtis Jennings' questions is that Oak Creek would be considered a boating stream for modern boating year round and that he found no evidence of historical boating around the time of statehood, but there is sufficient flow for low-draft boating and that those are some of the facts present in his report. Commissioner Miller clarified that Jon Fuller was referring to that portion of Oak Creek South of Sedona, and Mr. Fuller indicated he was talking about the area between about Cornville to the confluence with the Verde.

10. **BUDGET UPDATE.** The Director and the Chair indicated that ANSAC's base budget has not changed from its original request and that ANSAC asked the joint House Senate budget committee for an additional \$67,000.00 (should be \$64,000.00), a number provided by the State Land Department, for updates and for experts appearing at hearings. The State Land Department asked for an additional \$1,000,000.00 to complete Commission work. The director also said the State Land Department asked for an additional approximately \$7,000.00 for the April 25 and 26, 2005 hearings; and that this is money to pay for the experts, and is money the Land Department Engineering Section had thought was available for this purpose, but is no longer. Commissioner Henness asked what the \$7,000.00 was for and Ottozawa Chatupron indicated it was for the expert consulting engineers for review of data and appearance at hearings. The Chair explained the process that occurred at the budget hearings. Mr. Ott explained that was never an appropriation to the State Land Department for FY2005 monies to do the Commission's work. Commissioner Brashear pointed out that even if we called these hearings off at this time we will have to again pay the \$9,000.00 we have already paid for advertising when we hold these hearings in the future, and suggested that if there is a way we can do this then we should do it. Attorney Curtis Jennings indicated the appearance of the Commission paying for expert witnesses is not a good thing, and that an alternative is to hold the hearings and listen to whomever shows up. Commissioner Echeverria made the point that very few local citizens appear at our hearings. Mr. Ott pointed out that the reason the Land Department provides expert witnesses at hearings is because that is what the Commissioners want, and that they believe the Land Department has satisfied the statute by providing the reports and that it is not necessary to provide the experts at hearings. Mr. Ott pointed out that he believes the purpose for hearings is for others to present evidence and that all of the evidence the Land Department has is in the reports. Commissioner Henness wanted to make clear with Mr. Ott that the report updates contain information that comports with the court rulings and stated that he is concerned about the expert

witnesses; who retains them, who they represent, who selects them for their pedigrees, etc. Commissioner Henness indicated the process involving the Land Department's expert, particularly with the involvement of the attorney representing the Land Department, is beginning to have an edge to it. He also wanted to clarify that the \$7,000.00 is for the balance of the work for this fiscal year.

Commissioner Brashear discussed the benefit of the information and education provided to the public by the engineers who appear at Commission hearings. The Chair indicated we would check on the availability of funds and will notify the Commissioners individually.

11. ATTORNEY PAY (discussion and action).

Motion by: Jim Henness Second by: Jay Brashear

Motion: To increase the Commission Attorney's hourly rate to \$200.00 per hour. Vote: All aye.

12. 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.)

Attorney Mark McGinnis spoke regarding which watercourses are closed for the taking of evidence today because the closing of the taking of evidence triggers the post hearing memorandum filing clock. The Chair said that only the small and minor watercourses are closed for the taking of evidence.

13. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.

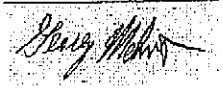
The Chair indicated that Coconino County will be rescheduled for July, 2005 based on Mr. Fuller's unavailability in June. There was discussion of other potential meeting dates for Mohave and Maricopa County.

14. ADJOURNMENT.

Motion by: Jim Henness Second by: Dolly Echeverria

Motion: To adjourn. Vote: All aye.
Meeting adjourned at approximately 1:51 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "George Mehnert", is positioned above a horizontal line. The signature is written in dark ink on a light background.

George Mehnert, Director
March 30, 2005



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

E-mail: streams@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.

A handwritten signature in cursive script, appearing to read "George Mehnert".

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



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: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

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.

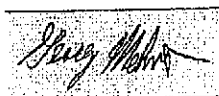
11. ADJOURNMENT.

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



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

E-mail: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

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

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) 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).
September 21, 2005, Maricopa County, Phoenix, Arizona.
4. Hearing regarding the navigability of the Upper Salt River. 04-008-NAV.
5. Hearing regarding the navigability of the small and minor watercourses in Gila County. 04-010-NAV.
6. Adoption of the Commission report regarding the Pima County Small & Minor Watercourses (discussion and action).
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.
9. Commission budget and continuation.
10. ADJOURNMENT.

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

Dated this 19th day of September, 2005. George Mehnert, Director, Navigable Stream Adjudication Commission



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

JANET NAPOLITANO
Governor

E-mail: streams@mindspring.com Web Page: <http://www.nzstreambeds.com>

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.

Title 2 of the Americans 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). 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 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 6th day of October, 2005, George Mehnert, Director, Navigable Stream Adjudication Commission



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: streams@mindspring.com Web Page: <http://www.azstreambeds.com>

GEORGE MEHNERT
Executive Director

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 NAVIGABILILTY 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 [R99-002]. 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.)

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.**

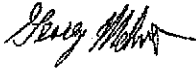
Motion by: Jay Brashear Second by: Dolly Echeverria

Motion: To adjourn.

Vote: All aye.

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

Respectfully submitted,



George Mehnert, Director

October 21, 2005

EXHIBIT E



Figure 1. Major geographic features in west-central Arizona.

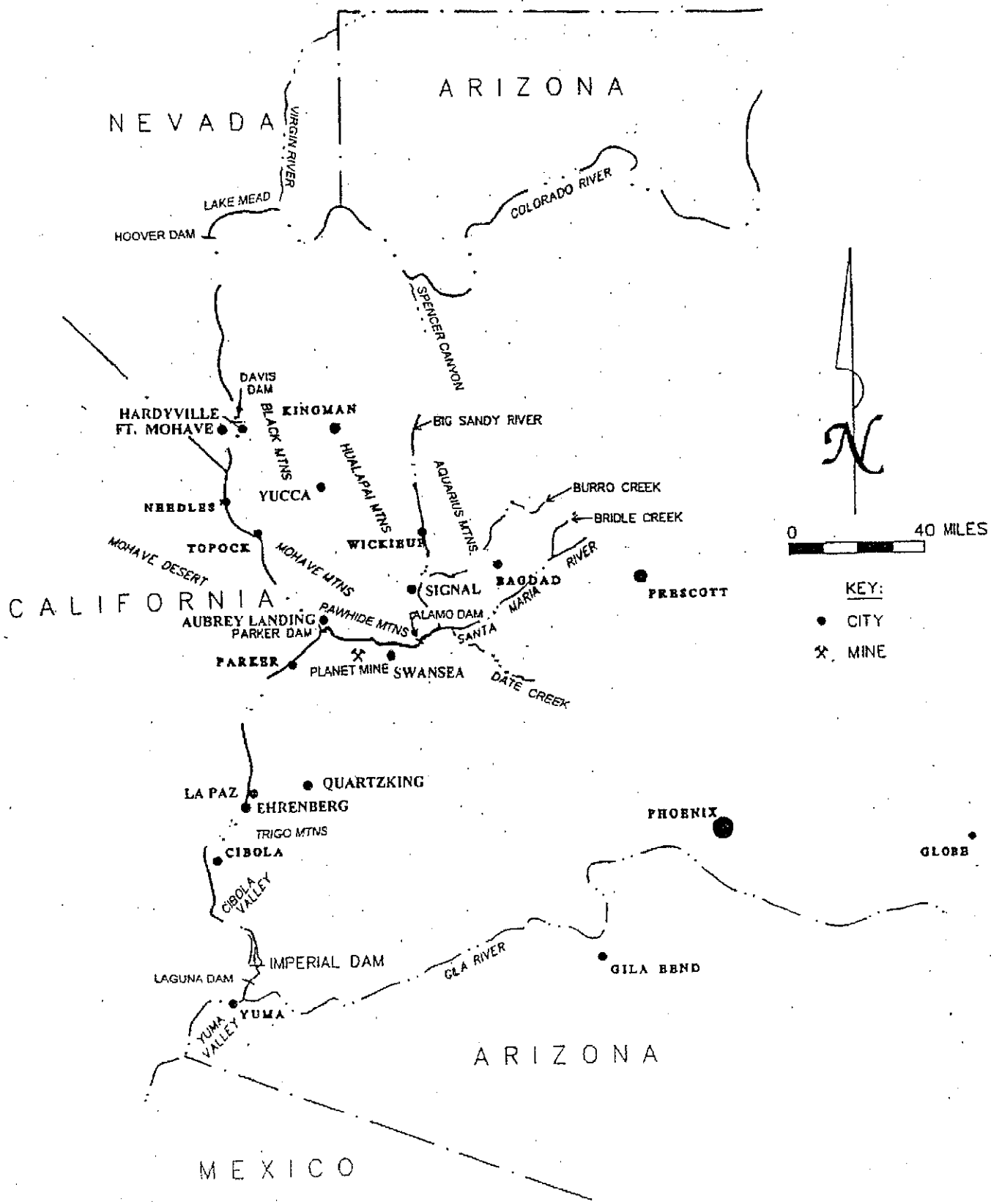


EXHIBIT F

Evidence Log

Hearing No. 05-003-NAV

Page No.

1

Arizona Navigable Stream Adjudication Commission

Burro Creek Mohave and Yavapai Counties

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	2/18/97	Evidence on Hand at ANSAC.	Letter from David Baron dated February 18, 1997.	George Mehnert
2	9/7/98	Evidence on Hand at ANSAC.	Small and Minor Watercourse Criteria Final Report.	George Mehnert
3	9/7/98	Evidence on Hand at ANSAC.	Final Report, 3 County Pilot Study.	George Mehnert
4	1/19/99	State Land Department	Preliminary Report Big Sandy, Burro Creek, & Santa Maria.	George Mehnert
5	2/1/99	State Land Department	Final Report Big Sandy, Burro Creek, & Santa Maria.	George Mehnert
6	3/3/05	State Land Department	Final Report 2004 Update Big Sandy, Burro Creek, & Santa Maria.	George Mehnert