

PUERCO RIVER

**BEFORE THE
ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION**

**IN THE MATTER OF THE
NAVIGABILITY OF THE
PUERCO RIVER (RIO PUERCO)
FROM THE NEW MEXICO BORDER
TO ITS CONFLUENCE WITH THE
LITTLE COLORADO RIVER,
APACHE AND NAVAJO
COUNTIES, ARIZONA**

No.: 05-008-NAV

**REPORT, FINDINGS AND DETERMINATION
REGARDING THE NAVIGABILITY OF THE PUERCO RIVER
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Pursuant to Title 37, Chapter 7, Arizona Revised Statutes, the Arizona Navigable Stream Adjudication Commission ("Commission") has undertaken to receive, compile, review and consider relevant historical and scientific data and information, documents and other evidence regarding the issue of whether the Puerco River from the New Mexico border to its confluence with the Little Colorado River was navigable or nonnavigable for title purposes as of February 14, 1912. Proper and legal public notice was given in accordance with law and hearings were held at which all parties were afforded the opportunity to present evidence, as well as their views, on this issue. The Commission having considered all of the historical and scientific data and information, documents and other evidence, including the oral and written presentations made by persons appearing at the public 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 in the White Mountain Independent published in Show Low, Navajo County, Arizona on March 8, March 15 and March 22, 2005, and in the White Mountain Independent published in St. Johns, Apache County, Arizona on March 8, March 15 and March 22, 2005 of its intent to receive, compile, review, consider and study all relevant, historical and scientific data and information, documents and other evidence regarding the issue of navigability or nonnavigability of the Puerco River (Rio Puerco) from the New Mexico border to its confluence with the Little Colorado River in Apache and Navajo Counties, Arizona. Copies of the Notices of Intent to Study, Receive, Review and Consider Evidence on the issue of navigability of the Puerco River in Apache and Navajo Counties, Arizona, are attached hereto as Exhibit "A."

After collecting and documenting all reasonably available evidence received pursuant to the Notices of Intent to receive, compile, review, consider and study evidence, the Commission scheduled public hearings to receive additional evidence and testimony regarding the navigability or nonnavigability of the Puerco River. Public notice of these hearings was given by legal advertising for the Navajo County hearing on March 22, 2005 in the White Mountain Independent published in Show Low, Navajo County, Arizona, on March 23, 2005 in the Holbrook Tribune News published in Holbrook, Navajo County, Arizona, and on March 22, 2005 in the Arizona Republic, a newspaper of general circulation in the State of Arizona, and for the Apache County hearing on March 22 in the White Mountain Independent published in St. Johns, Apache County, Arizona; and on March 22, 2005 in the Arizona Republic, a newspaper of general circulation in the State of Arizona, as required by law 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 Apache County was held on

April 26, 2005 in the City of St. Johns, the county seat of Apache County and for Navajo County on April 25, 2005 in the city of Holbrook, the county seat of Navajo County. These hearings were held in the county seats of each county through which the Puerco River flows to give the greatest opportunity possible for any person interested to appear and provide evidence or testimony on the navigability of the Puerco River in their county and further because the law requires that such hearings be held in the counties in which the water course being studied is located. Attached hereto as Exhibit "B" are copies of the Notices of Public Hearing.

All parties were advised that anyone who desired to appear and give testimony at the public hearing could do so and, in making its findings and determination as to navigability and nonnavigability, the Commission would consider all matters presented to it at the hearing, 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. Following the public hearings held on April 25, 2005 in Navajo County and April 26, 2005 in Apache County, all parties were advised that they could file post-hearing memoranda pursuant to the Commission rules. A post-hearing memorandum was filed by the Salt River Project Agriculture Improvement and Power District and the Salt River Water Users Association.

On July 14, 2005, at a public hearing in Flagstaff, Arizona, after considering all of the evidence and testimony submitted and the post-hearing memorandum filed with the Commission, and the comments and oral argument presented by the parties, and being fully advised in the premises, the Commission, with a unanimous vote, found and determined in accordance with A.R.S. § 37-1128 that the Puerco River from the New Mexico border to its confluence with the Little Colorado River in Apache and Navajo Counties, Arizona, was nonnavigable as of February 14, 1912 and nor was it

susceptible of navigability. A copy of the Notice of Hearing for the hearing held on July 14, 2005 is also attached as a part of Exhibit B. Copies of the agenda and minutes of all of the hearings on April 26, 2005 in St. Johns, Apache County, Arizona, on April 25, in Holbrook, Navajo County, Arizona, and on July 14, 2005 in Flagstaff, Coconino County, Arizona are attached hereto as Exhibit "C."

II. The Puerco River from the New Mexico Border to its Confluence with the Little Colorado River

The Puerco River has its headwaters at the Continental Divide in Cebolla National Forest, east of Gallup, New Mexico and south of Crown Point, New Mexico. The river flows west southwest through an area north of the Zuni Mountains generally paralleling Interstate 40 and the Santa Fe Railroad tracks. It crosses the Arizona-New Mexico border near the settlement of Lupton in Apache County between Sections 28 and 33, Township 23 North, Range 31 East, Gila and Salt River Base and Meridian at approximately latitude 35°21'11" North, longitude 109°2'48" West at the elevation of 6,444 above sea level. From there it flows in a southwesterly direction, first through the Navajo Indian Reservation and then through federal and state land, for a distance of approximately 88 miles passing through Apache County and a portion of Navajo County until it joins the Little Colorado River just east of Holbrook, Arizona at a mean elevation above sea level of 5,114 feet in Section 6, Township 17 North, Range 21 East, Gila and Salt River Base and Meridian at approximately latitude 34°53' North, longitude 110°7' West. The entire Puerco River basin encompasses approximately 3,015 square miles in the southeastern part of the Colorado Plateau in Arizona and New Mexico. Within Arizona, the Puerco River watershed consists of 1,668 square miles of which 1,082 square miles are on the Navajo Indian Reservation and the remaining 586 square miles are non-reservation lands. The area in which the river flows through New Mexico is not covered in this report.

The elevations in the Puerco River watershed basin run from 8,750 feet at the headwaters along the Continental Divide in New Mexico to 5,114 feet at its confluence with the Little Colorado River near Holbrook, Arizona. The Puerco River watershed is bounded by the Dutton Plateau along the Continental Divide to the east, the Zuni Mountains and Manuelito Plateau to the south, and the Chuska Mountains and Defiance Plateau to the north. The major tributary to the Puerco River is the Black River which drains a portion of Arizona and New Mexico and flows generally south in Arizona from the eastern slopes of the Chuska Mountains past Window Rock into the Puerco River between Lupton and Sanders, Arizona. Maps of the Puerco River watershed and the Little Colorado River watershed of which the Puerco River is a part are attached hereto as Exhibit "D." The Puerco River main stream is primarily ephemeral. There are a few stretches of perennial flow within the upper reaches of the Black River or watershed on the Navajo Reservation. The Puerco River is a deeply incised meandering stream with vertical banks as much as 25 feet. A meandering tendency and bank erosion contribute to the already large sediment load carried by the stream. The Puerco River is the main source of sediment to the Little Colorado River at Holbrook. The slope of the Puerco River is 12.5 feet per mile, considerably steeper than the Little Colorado River at the confluence. Aggradation is not occurring on the Puerco River. It only flows during period of high precipitation and storms. Precipitation and vegetative communities are closely related to elevation. The higher elevations have the greatest plant cover, highest rainfall and conversely the least erosion. From the upper to the lower elevations, vegetative communities transition from conifer forests to woodlands, to grasslands to desert scrub. The upper elevations are pines, such as piñon pines, juniper woodlands, upper plains, grasslands and sage, and finally desert grasslands and brush. Much of the upper portions of the Puerco River watershed in

Arizona are covered with sage and grass. The lower elevations are covered with desert brush.

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.¹ 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

¹ Putting the Public Trust Doctrine to Work, David C. Slade, Esq. (Nov. 1990), pp. xvii and 4.

Mesopotamia. This rule evolved through common law in England which established that the king as sovereign owned the beds of commercially navigable waterways in order to protect their accessibility for commerce, fishing and navigation for his subjects. In England, the beds of non-navigable waterways where transportation for commerce was not an issue were owned by the adjacent landowners.

This principle was well established by English common law long before the American Revolution and was a part of the law of the American colonies at the time of the Revolution. Following the American Revolution, the rights, duties and responsibilities of the crown passed to the thirteen new independent states, thus making them the owners of the beds of commercially navigable streams, lakes and other waterways within their boundaries by virtue of their newly established sovereignty. The ownership of trust lands by the thirteen original states was never ceded to the federal government. However, in exchange for the national government's agreeing to pay the debts of the thirteen original states incurred in financing the Revolutionary War, the states ceded to the national government their undeveloped 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.² 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

² 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.

state was getting full value for the interests it was conveying. The Superior Court entered judgment in favor of the defendants and an appeal was taken. In its decision in *Hassell*, the Court of Appeals held that this statute violated the public trust doctrine and the Arizona Constitution and further set forth guidelines under which the state could set up a procedure for determining the navigability of rivers and watercourses in Arizona. In response to this decision, the Legislature established the Arizona Navigable Stream Adjudication Commission and enacted the statutes pertaining to its operation. 1992 Arizona Session Laws, Chapter 297 (1992 Act). The charge given to the Commission by the 1992 Act was to conduct full evidentiary public hearings across the state and to adjudicate the State's claims to ownership of lands in the beds of watercourses. *See generally* former A.R.S. §§ 37-1122 to -1128.

The 1992 Act provided that the Commission would make findings of navigability or non-navigability for each watercourse. *See* former A.R.S. § 37-1128(A). Those findings were based upon the "federal test" of navigability in former A.R.S. § 37-1101(6). The Commission would examine the "public trust values" associated with 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 what watercourses were not navigable as of February 14, 1912.

2. Based only on evidence of navigability or nonnavigability, determine whether 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 88-mile reach of the Puerco River from the New Mexico border to its confluence with the Little Colorado 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 the Puerco River from the New Mexico border to its confluence with the Little Colorado River in Apache and Navajo 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. Fatico*, 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).³

VI. Standard for Determining Navigability

The statutes 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.

³ 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).

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.⁴ In its decision, the Supreme Court stated:

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

77 U.S. at 563.

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

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

⁴ 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).

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 the Puerco River from the New Mexico border to its confluence with the Little Colorado River. Evidence consisting of studies, written documents, newspapers and other historical accounts, pictures and testimony were submitted. There were a number of separate documentary filings, the most comprehensive of which was the Arizona Stream Navigability Study for the Little Colorado River and Puerco River prepared by SFC Engineering Company in association with JE Fuller/Hydrology and Geomorphology, Inc. and SWCA, Inc., Environmental Consultants, under contract with the Arizona State Land Department

dated January 1999 and revised by JE Fuller/Hydrology and Geomorphology, Inc. in June of 2004. Documents were also submitted by David Beran of the Arizona Center for Law in the Public Interest, a report on the Little Colorado River submitted by the State Land Department and SFC Engineering, Inc. and a report on the Little Colorado River from the Eastern Arizona Counties Organization submitted by Martin Moore, Apache County Development, and a letter to the Commission regarding several watercourses by Nancy Orr dated July 11, 2004. The list of evidence and records, together with a summarization is attached as Exhibit "E". Public hearings were held on April 26, 2005, at St. Johns, Arizona, in Apache County, and on April 25, 2005 at Holbrook, Arizona, in Navajo County, for the public to present testimony and evidence on the issue of navigability of the Puerco River. A number of individuals appeared at the hearings in St. Johns and Holbrook and gave testimony. A public hearing was also held on July 14, 2005, in Flagstaff, Arizona, to consider the evidence submitted and the post-hearing memorandum filed. The minutes of these hearings are attached hereto as Exhibit "C."

A. Prehistoric Conditions on the Puerco River Watershed

The Puerco River has a long and rich history as a corridor for trade and travel, although it is not mentioned as being used for commercial trade or commerce by boat and is not considered as a reliable source of water. It lies along the 35th parallel which was one of the main corridors of travel from Santa Fe to California in historical times, and there is archaeological evidence of its being used as a major path for travel among the prehistoric Indian cultures. The Arizona reach of the Puerco River is 88 miles or 142 kilometers long and runs in a southwesterly direction from the point where it crosses the Arizona-New Mexico border near the settlement of Lupton, crossing Apache County and a portion of Navajo County where it ends by flowing into the Little Colorado River just east of Holbrook, Arizona.

Archaeological evidence shows that the Puerco River basin has had extensive human occupation from the earliest paleoindian times (9500 B.C. - 11,500 B.P.).⁵ The numerous archaeological sites and remains in and near the valley of the Puerco River have long attracted the attention of scholars and archaeologists and have provided a great deal of data and research in archaeology. Over 4,000 archaeological sites have been recorded in the Little Colorado and Puerco River valleys and over 200 such sites have been excavated. Approximately 50 projectile points of the Clovis type have been found providing evidence of use of the region in the early paleoindian period when hunters exploited the now extinct megafauna such as woolly mammoths and longhorned bison. During the archaic period (6000 to 500 B.C.) after the extinction of the megafauna, the occupants of the region hunted and gathered more modern species of plants and animals. Maize or corn was first introduced into the region as early as 1500 B.C., which allowed the development of a sedentary settlement system with seasonally occupied dwellings. Pottery was introduced around 500 A.D., which increased the trend toward sedentism and by approximately 700 A.D. most of the population was living in small farming communities that were occupied year round.

The culture in the Puerco River valley was greatly influenced by the traditional Anasazi and the Chaco Canyon Culture as evidenced by pottery type and kivas, including as early as 800 A.D. the construction of great kivas, a semi-subterranean circular structure 50 feet or larger in diameter. Some community buildings called great houses with floor plans and masonry similar to that of the large pueblos of Chaco Canyon have been found. Concentrations of villages have been found in the Puerco River valley in the Petrified Forest, and one of the largest collections of prehistoric ruins

⁵ The paleoindian period is generally recognized to be between 9500 B.C. or 11,500 B.P. (before present) to approximately 6,000 B.C. or 8,000 B.P. The paleoindian period was followed the archaic period (6,000 B.C. to 8,000 B.P.) or 8,000 B.P. to 100 to 200 A.D. when the classical cultures called Anasazi and Mogollon began to develop.

called Homolovi is located near Winslow, Arizona, just to the west of the confluence of the Puerco River and Little Colorado River. Archaeological surveys have recorded some 280 sites in this relatively small area. While the people of the Puerco River valley are closely related to or classified as a part of the Anasazi Culture, some influence from the Mogollon Culture is indicated, which culture lies to the south in the White Mountains area. The Hopi Indian tribe of today considers the Homolovi Ruins to be ancestral Hopi sites. The people of the Puerco River valley were relatively unhealthy and were afflicted with poor nutrition, high infant mortality, and had a low average age at death. Tree ring studies (dendrochronology) indicate that the annual precipitation in the Puerco River valley was relatively stable from 400 A.D. to 800 A.D., but from approximately 830 A.D. to 1200 or 1250 A.D., annual precipitation was highly variable from year to year and from 1276 A.D. for about 25 or 30 years, the area experienced a severe drought.

Archaeologists have established a series of dates following the archaic period relating to recognized development in the Anasazi Culture which commenced between 1 and 200 A.D. The association between the late archaic period and the first manifestations of Anasazi and Mogollon Culture is poorly understood. Most archaeologists agree that the transition occurred some time between 1 A.D. and 200 A.D. It is possible that early Anasazi and Mogollon groups developed from archaic populations through the adoption of agriculture and adaption to a semi-sedentary lifestyle. As pointed out above, maize or corn agriculture was first introduced to the southwest approximately 1500 B.C. as indicated by findings in New Mexico. Radiocarbon datings from ruins in the Petrified Forest indicate the beginning of cultivation of maize in the area some time between 900 B.C. and 100 B.C. Archaeologists generally accept the dating period sequence for the Anasazi Culture

which was established at the Pecos Conference in the 1920's.⁶ It has not been conclusively demonstrated that the Anasazi populations evolved from earlier indigenous groups, but it seems most likely that this is what occurred, together with some infusion of new ideas from other areas such as mesoamerica or central Mexico.

Pottery began to be manufactured and generally used in the latter part of the Basketmaker period (A. D. 500 - 700) as the culture became more sedentary. In the earlier Anasazi period, people lived in pithouses that were partially sunk into the ground, but later constructed surface houses and the pit structures took on ceremonial functions such as the kivas. The Pueblo period is characterized by the construction of above-ground architecture and the production of painted pottery. During the Pueblo II period (A.D. 900 - 1050), large villages were constructed with great houses in the style of Chaco Canyon. Also, great kivas 50 feet or 15 meters in diameter were constructed. A system of satellite photography has identified a road system from Chaco Canyon, one of which runs down the Puerco River into Arizona. Although there was apparent wealth during the Pueblo period, the population, as shown by archaeological studies of graves, was remarkably unhealthy with poor nutrition and low life expectancy. During the Pueblo III period the Chacoan style great houses continued to be used, but pueblos with large central plazas similar to the Pecos Pueblo were also constructed. The Pueblo IV period (A.D. 1300 - 1450) is characterized by large plaza-oriented pueblos, the best examples of which are located in the Petrified Forest National Park near Holbrook, Arizona and the Homolovi ruins. After the severe drought that commenced in 1276 and lasted for 25 years, the Puerco River watershed basin sustained

⁶ The generally accepted dates for each period are as follows: Basketmaker II (A.D. 200 - 500), Basketmaker III (A.D. 500 - 700), Pueblo I (A.D. 700 - 900), Pueblo II (A.D. 900 - 1100), Pueblo III (A.D. 1100 - 1200), Pueblo IV (A.D. 1200 - 1540), and Pueblo V (A.D. 1540 - present). Basketmaker I was left open for anticipated future discoveries of evidence of the early transition between archaic and early Anasazi, but no satisfactory firm documentation has been found.

depopulation. While there is evidence of continued occupation up through the historic period, it was smaller and more concentrated in large pueblos.

The Puerco River watershed basin in Arizona has very few trees and there is no evidence of any prehistoric intentional floating of logs down the river. Logs have been found in the ruins at Homolovi near Winslow, which probably floated down the Little Colorado or Puerco River during floods and were picked up as driftwood and used in the construction of the pueblos at that site. There is little, if any, evidence of prehistoric irrigation on the Puerco River and no evidence whatsoever of use of the Puerco River by the prehistoric cultures for boating or travel on the water. On the other hand, the Puerco River basin was a major corridor or thoroughfare for communication between the Hopi mesas and the Zuni Indian tribe, as well as between the Hopi, Zuni and Rio Grande Pueblos. In prehistoric times, travel was almost exclusively by foot. Prior to the arrival of Coronado in 1540, the American Indians had no horses, mules or draft animals, such as oxen. The trails existing in the Puerco River watershed have continued down into historic times.⁷

B. Historical Development of the Puerco River Watershed

Historical documentation of the Puerco River watershed is extensive and covers over 450 years. The first European exploration of the area took place in 1539 when Friar Marco de Niza and Esteban followed the established trails from southern Arizona as far north as the Zuni region. The next year (1540) Coronado made his famous trek into the southwest establishing his headquarters at the Zuni city of Hawikuh, and later sent explorers across the Puerco River watershed to the Hopi pueblos. The trade routes used between the Hopi and Zuni pueblos were in use and documented as early as the Coronado Expedition. Coronado sent two expeditions from Hawikuh to the Hopi villages, one under Pedro de Tovar who visited several of the Hopi villages, and a

⁷ U.S. on behalf of Zuni Tribe of New Mexico v. Platt, 730 F.Supp. 318 (D.Ariz. 1990).

second under Capt. Cardenas who went on to the Colorado River and first saw the Grand Canyon. Both of these expeditions crossed the Puerco River, although neither of them described it. In 1540-42, the time of the Coronado Expedition, Hopi and Zuni Indians lived in the area. They are probably the descendants of the Anasazi Culture of the Four Corners area and the Mogollon Culture of the White Mountains area. Most archaeologists and anthropologists believe that the Navajo are relatively recent arrivals in the southwest, having migrated into the region after the Coronado Expedition. The Navajos and Apaches speak mutually intelligible dialects of a single language in the Athabascan family of languages. The Hopi language is of the Uto-Aztecan family and is related to the Pima and Papago languages of southern Arizona. The Zuni speak a language that seems unrelated to either Uto-Aztecan or Athabascan. Historical sources indicate that by 1582 Espejo encountered people in northern New Mexico who are believed to be the first arrivals of the Navajo people and who probably migrated into northern New Mexico from the northeast plains area. The numbers of Navajo increased during the 1600's and by 1700 they were a major population in the area. Their kin, the Apaches, settled to the southeast in the mountain and desert areas of New Mexico and Arizona.

In 1582 Antonio de Espejo led an expedition into the southwest following a different route from Coronado in that he came up the Rio Grande. Traveling overland, he followed the Puerco River to the Zuni villages and on to the Hopi Mesas. At Oraibi, one of the oldest Hopi villages, he learned of mines to the south and in April of 1583 led a small expedition south, probably to the west of the Puerco River, and reached the prehistorically worked mines, which were apparently in the vicinity of Jerome, Arizona. Thereafter, he returned to Santa Fe.

No other expeditions were made by the Spaniards into the southwest until 1598 when Don Juan de Onate colonized New Mexico along the upper Rio Grande and

began his own exploration of the southwest. He sent Marcos Farfan de las Godas with a small party to investigate the mines described by Espejo, and they most likely followed the route of the Puerco River valley.

In 1680, the Pueblo Indians revolted and drove the Spaniards out of New Mexico and Arizona as far south as El Paso, Texas. Three attempts were made at reconquering the southwest between 1680 and 1692, but only the third was successful when Don Diego de Vargas in the fall of 1692 reconquered the Pueblos of New Mexico. The Hopi pueblos were never reoccupied by the Spaniards, but one of them, Awatovi, allowed a Spanish mission to be established in its confines and gave assurances of allegiance to de Vargas and New Spain. In the early 1700's the conservative leaders of the Hopi villages under the leadership of Oraibi conducted a surprise attack on Awatovi and killed all of the men and took the women and children, spread them among the other Hopi villages, and burned Awatovi to the ground. Apparently this was done because the Hopis felt that the people of Awatovi were becoming too devoted to Spain and the Catholic Church, abandoning their old ways and religion. In 1716, Governor Martinez led an expedition and camped at the site of Awatovi, and there attempted to negotiate and force the Hopis into submission. After two and a half weeks of attempts at persuasion, threats and even force, he returned to Santa Fe having been unsuccessful. His route followed the Puerco River, at least part of the way, until he turned north to the ruined pueblo of Awatovi. Other early Spanish explorers who traveled along the Puerco River watershed or crossed it were Escalante in 1775, Garces in 1776, and D'Anza in 1780. None of these expeditions recorded the Puerco River as being anything other than an ephemeral or intermittent stream. Most of the accounts ignore it as it was not even considered a good source of water.

In 1821, Mexico won its independence from Spain. The Mexican government sponsored few expeditions into northern Arizona, being more concerned with Santa Fe

and the cities along the Rio Grande basin in New Mexico. Some expeditions against the Navajos were undertaken but with only limited success. Mexico tried to discourage incursions into its territories by citizens of the United States which was rapidly expanding westward, but fur trappers moved into Taos and Santa Fe while they were still a part of Spain and began trapping along the Gila River and its tributaries in the 1820's. In the dry desert southwest the mountainmen trappers generally rode horseback. There is little evidence of their using boats and no evidence at all of boating on the Puerco or Little Colorado Rivers. Normally the trappers' routes began in southern New Mexico, and down the Gila River, but often they would return along the trails of the 35th Parallel, thus leading up the Puerco River watershed area. None of the accounts of the mountainmen during this era refer to any trapping or even flowing water on the Puerco River.

The Mexican-American War culminated in 1848 by the Treaty of Guadalupe Hidalgo with the cession of New Mexico and Arizona north of the Gila River from Mexico to the United States. Following the war in 1848, Colonel Edward Newby led a campaign against the Navajos from northern New Mexico in which he describes the trek down the Puerco River, which is singular only because of his description of the pre-Columbian ruins. In 1849, Colonel John M. Washington led a surveying expedition through the region. He traveled down the Puerco River and may have crossed into Arizona before leaving the Puerco River basin to go north to Canyon de Chelly. He returned by crossing the Chuska Mountains to the north and passed by Chaco Canyon. In 1851, Lorenzo Sitgreaves conducted a survey to determine reasonable routes of travel from Fort Defiance and the Zuni pueblo to the Colorado River and, in particular, Fort Yuma. He certainly crossed the Puerco River basin. Little mention of the flow condition of the Puerco River was made in any of their reports.

In 1853-54, Emil Weeks Whipple surveyed along the 35th Parallel for a railroad route from Fort Smith, Arkansas to Los Angeles, California. In late 1853, he left Zuni, traveling down the Zuni River, camping at Jacob's Well and Navajo Springs, both of which are in the Puerco River watershed basin and are good water sources. The main line of the Santa Fe Railroad generally now follows the route surveyed by Whipple. In his report, he mentions the Little Colorado as having some possibilities for supporting human subsistence but states it is not navigable. The Puerco River is not discussed at all with regard to navigability. Other explorers during the 1850's period were Francis Xavier Aubrey, a Santa Fe trader who made trips across northern Arizona to California, and Edward F. Beale who surveyed a wagon road from the Arkansas River to California, again following generally the Whipple surveyed route. Beale's comments on the Puerco River were that he found no water except in a small pool in a fork of the Puerco coming from the northwest. He stated that the Puerco had few cottonwood trees along its banks and for a short distance on the hillsides there were some scattered cedars, but very little other growth. He stated that the Puerco was nothing but a dry bottom at present but at times after rains it probably runs but like most western rivers, it infiltrates or sinks very soon through the porous soil. Other American explorers of this era were Lt. Joseph Christmas Ives (1857-58), Rose Brown, and the Bailey Wagon Trains, all of which when mentioned reported the Puerco River as being intermittent or ephemeral in flow.

In 1863 Arizona was created as a separate territory from New Mexico, and on December 29 of that year the new officers of the Arizona Territorial Government took their oaths of office at Navajo Springs, which is near the Puerco River just south of Interstate 40, Navajo Exit No. 325, 39 miles east of Holbrook and 14 miles east of the Petrified Forest exit. Governor John M. Goodwin and the rest of the government, accompanied by Gen. James H. Carlton with a military escort, then went on down the

Puerco River past its confluence with the Little Colorado to Sunset Crossing and then headed south across the Verde Valley to establish the new capital. In 1867 and 1868, William Jackson Palmer conducted surveys along the 32nd and 35th Parallels to evaluate these routes for a railroad to the Pacific Ocean. He traveled down the Puerco River in November of 1867 and arrived in California in January of 1868. He described the Puerco River as being dry at that time. In 1870 Gen. George Stoneman, who was military Commander of the Department of Arizona, toured all of the military posts in Arizona. In the northern leg of his tour he camped near the confluence of the Puerco and Little Colorado Rivers before cutting south to visit what later became Fort Apache, and he notes nothing of importance with regard to the Puerco River.

Colonization of the area by settlers of European descent may have begun as early as the 1860's, although the Mormon settlements in the area began approximately a decade later. There is no record of any substantial colonization of the Puerco River basin within Arizona during this time, and there is no record of any diversion of water from the Puerco River for irrigation purposes. In 1870 Solomon Barth was awarded a contract to haul supplies to Camp Apache (later Fort Apache) from the railhead at Dodge City, Kansas. He traveled part way down the Puerco River, but probably turned south away from the river toward the mountains before getting far into Arizona. In the 1860's and 1870's, Mormon colonists sent by Brigham Young from Utah explored the area and established the towns of Joseph City, St. Johns, Springerville, Taylor and Snowflake, and other locations, none of which are in the Puerco River watershed basin.

The Atlantic & Pacific began construction of a railroad across northeastern Arizona in 1881, generally following the 35th Parallel route previously surveyed by Whipple, Beale, and Palmer. The railroad construction reached the present site of Holbrook in September of 1881, and Camp Supply was established at that location from which supplies could be hauled by wagon south to Fort Apache. The railroad generally

paralleled the Puerco River from Gallup, New Mexico, to Holbrook. Cattle and sheep were driven through the area in the 1860's and 1870's and cattle and sheep ranching became a major industry with the arrival of the railroad. To help pay for the railroad, Congress in 1866 granted railroad companies millions of acres of land alongside the routes they built. The Atlantic & Pacific Railroad received odd numbered sections of land for 40 miles on each side of the railroad right-of-way. The railroads thus acquired 14,325,760 acres of land in Arizona. Many of these acres were sold to small cattlemen who set up ranching operations that could use the railroad for shipping their cattle and sheep. In 1884 the Atlantic & Pacific Railroad sold one million acres to the Aztec Land & Cattle Company, which was one of the largest ranches, known as the Hashknife Outfit from its distinctive brand. It ran cattle from Holbrook to Mormon Lake and from the Little Colorado to the Mogollon Rim. It was in operation from 1883 to 1902. The headquarters of the Aztec Land & Cattle Company was on the south side of the Little Colorado River, not far from the confluence with the Puerco River. The 1880's saw overstocking of the range primarily by sheep which reduced the grass and forage and resulted in environmental deterioration. All of the early accounts of the Puerco River are that it is an intermittent or ephemeral stream throughout its length in Arizona in normal times. One writer, Gregory, described it as "an intermittent stream, from its source on the Continental Divide in New Mexico to Holbrook in Arizona it is marked at low water by dry bed interrupted by stretches of stream rarely exceeding a mile in length. I have been informed that during parts of certain years no flowing water is to be found in the Puerco from Gallup westward to its mouth."

Although the Puerco River watershed has been a major transportation corridor, both prehistorically and historically, no one has ever used the river itself for purposes of transportation. The early explorers traveled by foot, horseback and wagon. With the arrival of the railroad in 1881, it became a major mode of transportation and by the time

of statehood, with an improved road system, automobiles and trucks became increasingly important. Roads and trails ran along the Puerco River and crossed the river at a series of fords or crossings. Boats and rafts were used only rarely, and then primarily to cross a flooded stream. No accounts of boating on the Puerco River were found in the literature presented to the Commission.

C. Geology, Geomorphology and Hydrology

The Rio Puerco Basin occupies the central portion of the Colorado Plateau. During the Mesozoic Era, prior to 65 million years ago, this area was essentially a low-lying plain sometimes submerged under the sea and at other times a flood plain crossed by sluggish rivers and on occasion a desert with blowing sand dunes. During this time period, many thousands of feet of sediment accumulated that forms the layers of the various types of sedimentary stone seen in northern Arizona and readily identified in the Grand Canyon. Regional uplift of the entire area, including the Rio Puerco Basin is thought to have occurred during the Laramide Orogeny in the late cretaceous and early tertiary period, 65 million to 75 million years ago. Following this regional uplift, the area experienced downward cutting by the various rivers, alternating with periods of deposition and erosion, as well as modification from the basalt flows of various volcanoes.

The entire basin is at an altitude higher than 5,000 feet, but there are few peaks that exceed 11,000 feet. The horizontal, sedimentary rocks were gently warped during Cenozoic time producing a series of broad uplifts with intervening basins. The plateau is a land of canyons more common here than in other parts of the United States and erosion has produced enumerable escarpments and structural benches. Retreating escarpments are considered the most characteristic feature of much of the Puerco River Basin. Mountains are formed by the intrusion of igneous rock of volcanic origin and

exist within the province, but mountain ranges are lacking, except for the Chuska Mountains on the Navajo Reservation to the north.

In the upper portion of the Rio Puerco in New Mexico along the Continental Divide, high forested plateaus are formed, but except for these high altitudes, the climate is semi-arid to arid.

All of the historical accounts of the Puerco River describe it as a perennial or intermittent stream which flows generally when there is a great deal of precipitation. In 1775 Escalante wrote about the Puerco River as follows: "In an arroyo bed, which is dry most of the time about a mile south of the road, there are three wells of water but it is not very good." In 1858 Beale described the crossing of the Puerco River at the confluence with the Little Colorado as containing six inches of water in depth and about 20 feet in width. Historical studies show that precipitation intensity in northern Arizona increased in about 1880 and lasted until about 1940. From 1942 through 1961, precipitation was distinctively below the long-term median. Tree ring studies of the general area also show significant changes in precipitation over the period for which tree ring studies have been made. When precipitation, and thus river flow, increases significantly there is significant channel degradation through channel cutting and erosion. The tree ring evidence and other records indicate that the decade between 1905 and 1915 was probably one of the wettest in 500 years in central and northern Arizona. The channels were lightly vegetated, wide and sandy, with an abraded pattern. The soil in the Puerco River watershed is mostly impervious, low porosity clays, often with a light sand cover. In general the abundance of the clay soil in the Puerco watershed allows appreciable runoff with little infiltration into the groundwater. A recent study which would probably be similar to the historic view of the Puerco River from 1880 on describes the Puerco River as follows: "Streamflow in the Puerco River is very erratic with almost no flow for several months at a time. Climate and drainage area

characteristics are not conducive to a continuous flow and little or no stream flow occurs, except during and immediately after rain. Floods are usually produced by thunderstorms and have sharp peaks and short durations. Runoff increases rapidly in response to rainfall excess on the tributaries and the river. The Puerco River watershed is also the major producer of summer runoff and sediment in the middle reach of the Little Colorado River."⁸ Very large floods occurred in 1905, 1915 and 1916, which resulted in significant bank cutting and maintenance of wide abraded channels. Around the time of statehood tamarisk was introduced to assist in holding back erosion. The tamarisk would be taken out by large floods, but the citizens living along the river would replant through the 1930's. The downstream slope of the Puerco River is relatively steep which results in high sediment loads and thus a deep alluvial bed. The river slope from the New Mexico border to Chambers is 14.24 feet per mile, from Chambers to Adamana, 11.8 feet mile, and from Adamana to Holbrook, 10 feet per mile. Thus when the river does flow it generally flows rather swiftly. Due to the low population and lack of farming activity, the river flow statistics on the Puerco River are rather meager. There are no surface irrigation diversions on the Puerco River. There is a small 240-acre area of irrigated land near Adamana and Sanders, but the water source is through pumping underground water. As pointed out above, the streamflow information is rather meager and there are no stream gauge data for the Puerco River predating 1912, the year of statehood. Since that time there have been data kept and the average annual flow of the Puerco River at the state boundary between 1914 and 1945 is 21 cubic feet per second ("cfs"). At the Puerco River confluence with the Little Colorado River for the same period of time, the average annual flow was recorded at 81

⁸ Kolbe, T.R., 1991, Fluvial changes of the Little Colorado River, northeast Arizona, and their effect on settlement patterns of Homol'ovi III Pueblo, a P-IV flood-plain hamlet: M.S. Thesis, Northern Arizona University, 130 p.

cfs. The metering station at Adamana gives the following average annual flows for the periods indicated: 1940-49, 64 cfs; 1946-61, 45 cfs; and a median annual flow between 1941 and 1949 of 62 cfs. At the confluence with the Little Colorado, the median annual flow for the period 1927 to 1987 is 64 cfs. As pointed out above, the metering information is rather sketchy, but visual and estimates as to floods indicate that at times the Puerco River has carried a great deal of water during high precipitation periods. The metering station at Adamana reports the Puerco River in 1941 had a flood that reached 22,000 cfs. In 1946 and 1947, respectively, floods were reported at 30,000 cfs. and 22,000 cfs. The 100-year flow rate for the Puerco River at Gallup, New Mexico is estimated at 20,000 cfs. based upon statistical analysis of stream flow and precipitation records. During these flood periods, the Puerco River seems to have contributed larger flood peaks to the Little Colorado River than does the upper Little Colorado River itself.

In summary, the prestatehood condition of the Puerco River was characterized as intermittent or ephemeral and heavily silt laden. It was not considered a reliable water source by early explorers. The median annual flow of the Puerco River at the confluence with the Little Colorado River at Holbrook is estimated at 65 cfs. It is not susceptible to regular use of rafts or even canoes and only meets the minimum federal criteria for canoeing during a two to five-year flood period. The use of keelboats, steamboats and powered barges could not have occurred on the Puerco River due to the shallow shifting water and natural obstructions.

Based upon all of the evidence presented to the Commission, it appears that at the time of statehood the Puerco River was not susceptible to commercial trade and travel, and no evidence of such use has been identified prior to statehood and since then. There is no historical evidence of any profitable commercial enterprise conducted on water using the Puerco River for trade or travel prior to and at the time of statehood. Likewise, there is no historical evidence of flotation of logs downstream for commercial

purposes. The intermittent flow, sandbars and other alluvial deposits in the streambed would be an impediment to navigation. The Puerco River is not listed under the Rivers and Harbors Act of 1899. The customary mode of transportation in the region of the Puerco River was not by boat. Prior to and at the time of statehood, travel was by foot, horseback, muletrain, wagon and stagecoach, and after 1881, by train when the Atlantic & Pacific Railroad reached Holbrook. At the time of statehood and immediately thereafter, trucks and automobiles were also used as the road system was expanded and improved. No evidence was presented as to whether the homesteads or other federal land patents on the Puerco River were covered by the Desert Land Act of 1877.

D. Title Issues on the Navajo Indian Reservation

In the hearings regarding the Little Colorado River, a question was raised as to whether the State of Arizona had any jurisdiction to hold these hearings since a good portion of that river flows through the Navajo Indian Reservation. The same issue would apply to that portion of the Puerco River which flows through the Navajo Reservation and, accordingly, the issue should be dealt with.

The Legislature of Arizona, following the decisions of the Arizona Court of Appeals in *The Center for Law v. Hassell*, 172 Ariz. 356, 837 P.2d 158 (App. 1991), *review denied*, Oct. 6, 1992, and *Defenders of Wildlife v. Hull*, 199 Ariz. 411, 18 P.3d 722 (Ariz. App. 2001), passed the statutes under which the Commission now operates, A.R.S. § 37-1121 to A.R.S. § 37-1132. (2001 Arizona Session Laws, Ch. 166, Sec. 1) The Arizona Navigable Stream Adjudication Commission ("ANSAC") was established by these laws and directed to hold hearings and make a particularized assessment of the public trust claims that the State of Arizona might have to all beds and banks up to the high water mark of streams and watercourses in the State of Arizona. The Commission must find that a watercourse was navigable at statehood in order for the State to have a public trust ownership claim to the beds and the banks of a watercourse. The fact that a

stream flows through an Indian Reservation established before statehood does not in and of itself take away a state's public trust claim. This issue was directly dealt with in the case of *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), which dealt with the ownership of the bed and banks of the Little Big Horn River, which flowed through the Crow Indian Reservation. In that opinion, the Supreme Court stated:

Though the owners of land riparian to nonnavigable streams may own the adjacent riverbed, conveyance by the United States of land riparian to a navigable river carries no interest in the riverbed. *Packer v. Bird*, 137 U.S. 661m 672, 11 S.Ct., 210, 212, 34 L.Ed. 819; *Railroad Co. V. Schurmeir*, 7 Wall. 272, 289, 19 L.Ed. 74; 33 U.S.C. § 10; 43 U.S.C. § 931. Rather, the ownership of land under navigable waters is an incident of sovereignty. *Martin v. Waddell*, 16 Pet. 367, 409-411, 10 L.Ed. 997. As a general principle, the Federal Government holds such lands in trust for future States, to be granted to such States when they enter the Union and assume sovereignty on an "equal footing" with the established States.

Of course, a key point is that for title to the beds and banks of a watercourse to pass to the state under the equal footing doctrine on the day of statehood, the watercourse must be navigable and the Legislature has empowered ANSAC to hold hearings to determine whether or not the watercourses of the state are in fact navigable.

In the *Montana* case, the Supreme Court held that the Little Big Horn River was in fact navigable and thus title did pass to the State of Montana when it became a state on November 8, 1889. The Reservation of Crow Tribe of Indians through which the Little Big Horn River passes was established prior to Montana's statehood and thus the issue was whether the United States which previously held title to all of the land, both riparian and under the rivers and watercourses, had conveyed title to the Crow Indians when it established the Reservation. The Court goes on to state:

It is now established, however, that Congress may sometimes convey lands below the high-water mark of a navigable water, "[and so defeat the title of a new State,] in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the

United States hold the Territory." *Shively v. Bowlby*, 152 U.S. 1, 48, 15 S.Ct. 548, 566, 38 L.3d. 331.

But, because control over the property underlying navigable waters is so strongly identified with the sovereign power of government, *United States v. Oregon*, *supra*, at 14, 55 S.Ct., at 615, it will not be held that the United States has conveyed such land except because of "some international duty or public exigency." *United States v. Holt State Bank*, 270 U.S., at 55, 46 S.Ct., at 199. See also *Shively v. Bowlby*, *supra*, at 48, 14 S.Ct., at 566. A court deciding a question of title to the bed of a navigable water must, therefore, begin with a strong presumption against conveyance by the United States, *United States v. Oregon*, *supra*, at 14, 55 S.Ct., at 615, and must not infer such a conveyance "unless the intention was definitely declared or otherwise made plain," *United States v. Holt State Bank*, *supra*, 270 U.S., at 55, 46 S.Ct., at 199, or was rendered "in clear and especial words," *Martin v. Waddell*, *supra*, at 411, or "unless the claim confirmed in terms embraces the land under the waters of the stream," *Packer v. Bird*, *supra*, at 672, 11 S.Ct., at 212.

The Fort Laramie Treaties of 1851 and 1868, which established the Crow Indian Reservations did not contain wording giving the clear intention of the United States to convey title to the bed of the Little Big Horn River. Likewise, no evidence was presented to the Commission that the Treaties establishing the Navajo Indian Reservation contained any such clear and specific conveyance of title of the beds and banks under navigable rivers.

Accordingly, while the Commission feels it has jurisdiction to consider the issue of navigability of the Little Colorado and Puerco Rivers, even those parts that pass through the Navajo Indian Reservation, in view of the findings and determination made by the Commission that the Rio Puerco and the Little Colorado were not navigable or nor susceptible of navigability as of the date of statehood, February 14, 1912, ANSAC does not have to reach the issues decided in the Montana case as to whether the treaty establishing the Navajo Reservation had such precise and specific wording as to convey such title under navigable waters. Accordingly, since these rivers are not found to be navigable or susceptible to navigability, the State of Arizona has no public trust claim and the beds and the banks are part of reservation land.

VIII. Findings and Determination

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

The Commission also finds that the Puerco River, 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 the Puerco River.

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

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


In view of the foregoing, the Commission, pursuant to A.R.S. § 37-1128A, finds and determines that the Puerco River in Apache and Navajo Counties, Arizona, was not navigable nor susceptible of navigability as of February 14, 1912.

DATED this 17 day of November, 2009.


Earl Eisenhower, Chair


Dolly Echeverria, Vice Chair 11/18/09


James K. Hennes, Member

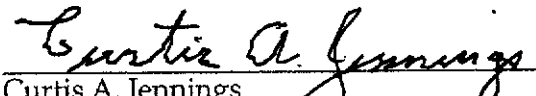

Cecil Miller, Member

Jay Brashear, Member
Deceased September 15, 2007

STAFF MEMBERS:



George Mehnert
Executive Director



Curtis A. Jennings
Legal Counsel to the Commission

EXHIBIT A

State of Arizona)
)
County of Navajo)

ss.

Affidavit of Publication

White Mountain Independent

STATEMENT OF INTENT
For Navajo and Apache Counties
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 Little Colorado River and Puerco River in Navajo County, Arizona; the Little Colorado River and Puerco River in Apache County, Arizona; and all of the small and minor watercourses in each county. There will be a hearing in Holbrook, Arizona regarding Navajo County watercourses and a hearing in St. Johns, Arizona regarding Apache County watercourses. There will be a hearing in each county regarding the Little Colorado River and a hearing in each county regarding the Puerco River. 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 Little Colorado River and Puerco River in both Navajo and Apache Counties. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by April 26, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Navajo County, Arizona and in Apache 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 all small and minor watercourses in Navajo County and in Apache County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by April 26, 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.

The list of small and minor watercourses in Navajo County includes:

Bagnal Wash, Bear Creek, Notkin, Bear Flat Creek, Bear Wash, Bogaquito Wash, Boshito Wash, Bidahochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon, Navajo, Black River, Blair Spring Wash, Blackbird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C J Wash, Canyon Creek, L. Carr, L Wash, Camizo Creek, Castle Creek, Navajo, Chavelon Canyon, Cibecue Creek, Clear Creek, 1, Cobalt Wash, Concho Flat Wash, Cottonwood Wash 1, Navajo, Cottonwood Wash 2, Navajo, Cottonwood Wash 3, Navajo, Cottonwood Wash 4, Navajo, Courtois Creek, Cow Creek, Navajo, Coyote Wash, Coyote Wash 1, Navajo, Cutfoot Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Diggle Wash, Dimmitto Wash, Dimmitto Wash E, Bridson Wash, Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Ellison Creek, Fern Feather Wash, Fish Creek, Firenze Wash, Navajo, Foot Canyon, Forestdale Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, He Wh Yahn Wash, Hay Hollow Draw, Hess Wash, Hog Wash, Humpty Wash, Indian Creek, Jacks Canyon 2, Jacinto Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Kearns Canyon, Laguna Creek, Laroux Wash, Linden Wash, Lihodendron Wash, Little Milky Wash, Long Pine Creek, Lusk Wash, Maria Wash, Modonide Canyon, Mesa Wash, Navajo, Mexican Hollow Wash, Middle Cedar Creek, Moonhook Wash, Mud Creek, Nakai Canyon, Narrow Wash, Nash Creek, Neskahi Wash, North Fork White, Oak Creek, Navajo, Ojo Wash, Orabi Wash, Orabi Wash W/F, Parrish Creek, Petrified Creek, Phoenix Park Wash, Pierce Wash, Pine Creek, Navajo, Pinalis Wash, Pinalis Creek, Pinalis Wash, Fork Creek, Porter Tank Draw, Potlatch Wash, Pueblo Colorado, Rock Creek, Navajo, Rotty Arroyo, Sabite Wash, Sall Creek, Navajo, Scott Wash, Sears Wash, Severnita Draw, Shorto Wash, Show Low Creek, Silver Creek, Navajo, Spring Creek, T. Squaw Wash, Steamboat Wash, Steinhilb Wash, Navajo, Swamp Creek, Turner Wash, Navajo, Tees Tah Wash, The Canal, Thompson Creek, Navajo, Tee Chizzi Wash, Teegi Canyon, Turkey Canyon, Navajo, Turkey Creek 1, Tynde Creek, V. Eighteen Wash, Walnut Creek, Navajo, Washboard Wash, Wepo Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West

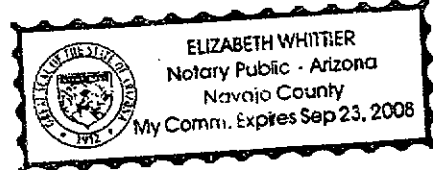
I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at Show Low, County of Navajo, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

March 08, 2005
March 15, 2005
March 22, 2005

White Mountain Independent
Diane R. Janot

Sworn to me this day of

March 23, 2005, A.D. 2005
Elizabeth Whittier
Notary Public



State of Arizona)
County of Apache)

ss.

Affidavit of Publication

White Mountain Independent

STATEMENT OF INTENT For Navajo and Apache Counties 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 Little Colorado River and Puerco River in Navajo County, Arizona, the Little Colorado River and Puerco River in Apache County, Arizona and all of the small and minor watercourses in each county. There will be a hearing in Holbrook, Arizona regarding Navajo County watercourses, and a hearing in St. Johns, Arizona regarding Apache County watercourses. There will be a hearing in each county regarding the Little Colorado River and a hearing in each county regarding the Puerco River. 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 Little Colorado River and Puerco River in both Navajo and Apache Counties. Interested parties are requested to file all documentary and other physical evidence they propose to submit to ANSAC by April 26, 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 planning to hold a watercourse navigability hearing regarding all of the small and minor watercourses in Navajo County, Arizona and in Apache 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 all small and minor watercourses in Navajo County and in Apache County. Interested parties are requested to file all documentary evidence they propose to submit to ANSAC by April 26, 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.

The list of small and minor watercourses in Navajo County includes:

- Bagnal Wash, Bear Creek - Navajo, Bear Flat Creek, Bear Wash, Begashibito Wash, Beshbito Wash, Bidahochi Wash, Big Bonito Creek, Billy Creek, Billy Wash, Black Canyon - Navajo, Black River, Blairs Spring Wash, Bluebird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C I Wash, Canyon Creek 1, Carr L Wash, Carrizo Creek, Castle Creek - Navajo, Chevelon Canyon, Cibecue Creek, Clear Creek 1, Colboth Wash, Concho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Gourduroy Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Cutfoot Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Digger Wash, Dinnebito Wash, Dinnebito Wash E, Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Ellison Creek, Fern Feather Wash, Fish Creek, Firemile Wash - Navajo, Foot Canyon, Forestdale Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Whi Yain Wash, Hay Hollow Draw, Hess Wash, Hog Wash, Humpy Wash, Indian Creek, Jackie Canyon 2, Jaidito Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Keams Canyon, Laguna Creek, Leroux Wash, Linda Wash, Lithodendron Wash, Little Milky Wash, Lone Pine Creek, Lukai Wash, Manda Wash, McDonalds Canyon, Mesa Wash - Navajo, Mexican Hollow Wash, Middle Cedar Creek, Moenkopi Wash, Mud Creek, Nakai Canyon, Narrow Wash, Nash Creek, Neskahi Wash, North Fork White, Oak Creek - Navajo, Ojito Wash, Oraibi Wash, Oraibi Wash W FK, Parish Creek, Peatfield Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Pluto Creek, Polecca Wash, Porter Creek, Porter Tank Draw, Potatoe Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arroyo, Sabito Wash, Salt Creek, Navajo, Scott Wash, Sears Wash, Sevenmile Draw, Shonto Wash, Show Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboard Wash, Stinson Wash - Navajo, Swamp Creek, Tanner Wash - Navajo, Tees Tchi Wash, The Canal, Thomson Creek - Navajo, Tsa Chizi Wash, Tseci Canyon, Turkey Canyon - Navajo, Turkey

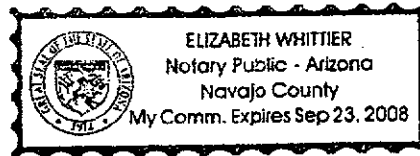
I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at St. Johns, County of Apache, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

- March 08, 2005
- March 15, 2005
- March 22, 2005

White Mountain Independent

Sworn to me this day of

March 23, 2005, A.D. 2005

Notary Public

RECEIVED

FEB 19 2009

JENNINGS, HAUG &

EXHIBIT B

State of Arizona)
)
County of Navajo)

ss.

Affidavit of Publication

White Mountain Independent

NOTICE OF PUBLIC HEARING In Navajo County April 25, 2005 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 watercourses in Navajo County. The hearings will be held in Navajo County on April 25, 2005 beginning at 10:00 a.m. in an order established by the chair in the Navajo County Supervisors' Chambers located at 100 E. Canal Drive (2 miles S. of Holbrook on Hwy. 77 south). The following are presently the only hearings scheduled.

The Little Colorado River and the Puerto River, and all of the small and minor watercourses in Navajo County. The list of small and minor watercourses in Navajo County includes:

Bagnal Wash, Bear Creek - Navajo, Bear Flat Creek, Bear Wash, Begashito Wash, Basquito Wash, Braham Wash, Big Bonito Creek, Big Creek, Big Wash, Black Canyon - Navajo, Black River, Blair Spring Wash, Blackbird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, C.J. Wash, Canyon Creek, Carr Wash, Carizo Creek, Castle Creek - Navajo, Chevelon Canyon, Cibecoe Creek, Clear Creek 1, Coburn Wash, Concho Flat Wash, Cottonwood Wash - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Coulter Creek, Cow Creek

Navajo, Coyote Wash, Coyote Wash 1, Navajo, Outdoor Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Digger Wash, Dinnebito Wash, Dinkie Wash, Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Ellison Creek, Fero's Estero Wash, Fish Creek, Fluvial Wash - Navajo, Bob Canyon, Foreman Creek, Gentry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Wai Yaini Wash, Hay Hollow Draw, Hesse Wash, Hog Wash, Humpy Wash, Indian Creek, Jacks Canyon 2, Jaidito Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Keams Canyon, Laguna Creek, Leroux Wash, Linden Wash, Lindendron Wash, Little Milky Wash, Lono Piro Creek, Luke Wash, Madia Wash, McDonalds Canyon, Mesa Wash - Navajo, Mesquite Hollow Wash, Middle Cedar Creek, Moonrock Wash, Mud Creek, Nelson Canyon, Narrow Wash, Nash Creek, Nestale Wash, North Fork White, Oak Creek - Navajo, Oreo Wash, Oraibi Wash, Oraibi Wash W.F.K., Parish Creek, Painted Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Plate Creek, Potatoes Wash, Porter Creek, Porter Tank Draw, Potatoe Wash, Pueblo Colorado, Pock Creek - Navajo, Rocky Arroyo, Salcho Wash, Salt Creek - Navajo, Scott Wash, Sears Wash, Sevenmile Draw, Eron to Wash, Show Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboat Wash, Sison Wash - Navajo, Swamp Creek, Tarmer Wash - Navajo, Tazeh Wash, The Canal, Thompson Creek - Navajo, Tse Chizai Wash, Tsegi Canyon, Turkey Canyon - Navajo, Turkey Creek 1, Tyende Creek, V. Eighteen Wash, Walnut Creek - Navajo, Washboard Wash, Wepo Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West Turkey Creek, West Twin Wash, Whe-You-De-Sah Wash, White River, Wide Ruin Wash, Wildcat Canyon, Wildhorse Wash, Willow Creek - Navajo, Willow Wash - Navajo, as well as all other named and unnamed small and minor watercourses.

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. 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. Evidence submitted in advance of the hearing will be available for public inspection during regular Commission office hours from 9:00 a.m. to 5:00 p.m., Monday thru Friday, except

I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at Show Low, County of Navajo, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

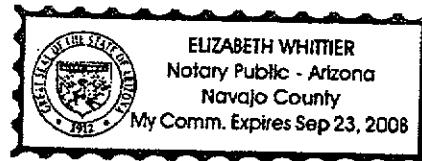
March 22, 2005

White Mountain Independent
Diane R. Janot

Sworn to me this day of

March 23, 2005, A.D. 2005

Elizabeth Whittier
Notary Public



1 county

Affidavit of Publication

State of Arizona,)
)ss.
County of Navajo,)

I, Francie Payne, being duly sworn, depose and say: I am

NOTICE OF PUBLIC HEARING
 In Apache County April 26, 2005
 State of Arizona
 Navigable Stream Adjudication Commission
 Pursuant to A.R.S. § 37-1226 (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 Apache County. The hearings will be held in Apache County on April 26, 2005 beginning at 10:00 a.m. in a room established by the chair in the Apache County Supervisors' Meeting Room located at 75 West Cleveland, St. Johns, Arizona. The following are presently the only hearings scheduled.

The Little Colorado River and the Puerco River, and all of the small and minor watercourses in Apache County.

The list of small and minor watercourses in Apache County includes:

Agua Sal Creek, Alamo Wash, Apache, Arroyo Ditch, Aspen Wash, Apache, Arroyo Creek, Banger Creek, Apache, Balakai Wash, Bar H Creek, Basin Creek, Battleground Creek, Bear Cienega Creek, Beaver Dam Wash, Apache, Becker Creek, Beany Creek, Bent Knee Wash, Benton Creek, Apache, Bebbito Wash, Big Bonito Creek, Big Dam Wash, Big Ditch, Big Hollow Wash, Big Wilderness Wash, Bill Riley Creek, Bis I'Ah Wash, Bitter Water Wash, Black Creek, Black Horse Wash, Black Mountain Wash, Apache, Black River, Black Rock Canyon, Black Soil Wash, Blackhorse Creek, Blackrock Wash, Bluff Cienega Creek, Bog Creek, Boggy Creek, Boiling Over Wash, Bonnyard Creek, Bonito Creek, Brown Creek, Brown Wash, Apache, Buell Wash, Bull Creek, Bull Creek, Apache, Burnt Coin Creek, Burnt Canal Creek, Apache, Burnt Pinon Wash, Burntwater Wash, Burnt Wash, Apache, Butterfly Creek, Campbell Blue Creek, Cape Valley Wash, Canyon Creek, Canyon De Chelly, Canyon Del Muert, Cameron Creek, Carrizo Wash, Cedar Lake Wash, Centerfire Creek, Chambers Draw, Cheney Draw, Chimney Wash, Chino Creek, Chino Wash, Cienega Creek, Cienega Creek 1, Apache, Cienega Creek 2, Apache, Cienega Creek 3, Apache, Cienega Creek 4, Apache, Cold Spring Wash, Apache, Coleman Creek, Collier Creek, Copelin Creek, Coon Creek, Apache, Corn Creek, Cottonwood Wash, Apache, Cove Wash, Coyote Creek 1, Apache, Coyote Creek 2, Apache, Coyote Creek 3, Apache, Coyote Wash, Apache, Crazy Creek, Crooked Creek, Davis Creek, Dead Wash, Deep Creek, Apache, Deer Creek, Apache, Diamond Creek, Dry Creek, Apache, Dry Farm Wash, Dry Wash, East Creek, East Fork Black, East Fork Dry Wash, East Fork Little, East Fork White, Elk Canyon, Erosion Wash, Esc Creek, Fackbox Creek, Fish Creek, Apache, Fish Wash, Fish Creek, Gooseberry Creek, Gothic Creek, Grapevine Creek, Greenwood Wash, Greer Wash, Hall Creek, Hartschable Wash, Hasbittio Creek, Hay Creek, Heifer Branch, Be, Hipbone Creek, Hipbone Wash, Home Creek, Horse Creek, Apache, Horse Mesa Wash, Horseshoe Creek, Hostess Tso Wash, Hughey Creek, Halsey Creek, Hurricane Creek, Jackson Creek, Jado Wash, Jaralosa Draw, Jarvis Wash, Jimson Weed Wash, K. I. Creek, Kinichsee Creek, Ka' Sili Wash, Laguna Creek, Lang Creek, Lee Valley Creek, Lithodendron Wash, Little Bog Creek, Little Bonito Creek, Little Creek, Little Diamond Creek, Little Milky Wash, Lizard Wash, Lower Cienega Creek, Lone Tule Wash, Long Cienega, Lower Lyman Ditch, Lukachukai Creek, Lukachukai Wash, Mainie Creek, McDonald Creek, McVary Ditch, Meadow Wash, Middle Lyman Ditch, Milk Creek, Apache, Milk Creek 1, Apache, Milky Wash, Apache, Milligan Creek, Mineral Creek, Apache, Mineral Ditch, Apache, Moon Creek, Morgan Canyon St, Merisio Creek, Nazini Wash, Nienzle Wash, No Name Creek, North East Fork, North Fork Diamo, North Fork White, Nutrioso Creek, Oak Ridge Wash, Open Draw Creek, Oraibi Wash, Ord Creek, Osé Draw, Pace Creek, Pacheta Creek, Paddy Creek 1, Paddy Creek 2,

General Manager of THE HOLBROOK TRIBUNE-NEWS, a newspaper of general circulation published at Holbrook, County of Navajo and State of Arizona; that the Legal #8595 Notice of Public Hearing in Apache County April 26, 2005

attached hereto, was published in said newspaper, THE HOLBROOK TRIBUNE-NEWS, for 1 issues, and said notice was published in the regular and entire issue of every number of the paper during the period of the time of publication and was published in the newspaper proper and not in a supplement, the first

publication being dated March 23, 2005 and the last publication being dated March 23, 2005.

Publication Dates: 3/23

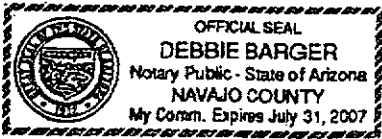
Francie Payne

SUBSCRIBED AND SWORN TO before me this 23rd day of March, 2005.

Debbie Barger

NOTARY PUBLIC

My commission expires July 31, 2007



\$ 2,495.56

In Navajo County April 25, 2005
 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 watercourses in Navajo County. The hearings will be held in Navajo County on April 25, 2005 beginning at 3:00 p.m. in an order established by the chair in the Navajo County Supervisors' Chambers located at 100 E. Carter Drive (2 miles S. of Holbrook on Hwy 77 south). The following are presently the only hearings scheduled.

The Little Colorado River and the Puerco River, and all of the small and major watercourses in Navajo County. The list of small and minor watercourses in Navajo County includes:

Agua Wash, Bear Creek, Navajo, Bear Flat Creek, Bear Wash, Begashbito Wash, Beshbito Wash, Badacho Wash, Big Bonito Creek, Big Creek, Big Wash, Black Canyon - Navajo, Black River, Blairs Spring Wash, Bluebird Canyon, Brookbank Canyon, Brown Creek, Bull Creek, Burnt Corn Creek, Wash Canyon, Creek 1, Carrizo Wash, Carrizo Creek, Castle Creek - Navajo, Chevelon Canyon, Cibola, Clear Creek 1, Colbath Wash, Concho Flat Wash, Cottonwood Wash 1 - Navajo, Cottonwood Wash 2 - Navajo, Cottonwood Wash 3 - Navajo, Cottonwood Wash 4 - Navajo, Courtduroy Creek, Cow Creek - Navajo, Coyote Wash, Coyote Wash 1 - Navajo, Cutfoot Wash, Day School Wash, Day Wash, Decker Wash, Deer Spring Creek, Deer Springs Canyon, Diamond Creek, Digger Wash, Dinnebito Wash, Dinnebito Wash E, Dodson Wash - Navajo, Dry Wash, East Cedar Creek, East Fork White, East Twin Wash, East Washboard Wash, El Capitan Wash, Elison Creek, Fern Feather Wash, Fish Creek, Five Mile Wash - Navajo, Foot Canyon, Fossil Creek, Gantry Creek, Gomez Creek, Gooseberry Creek, Gypsum Creek, Ha Whi Yalin Wash, Hay Hollow Draw, Hess Wash, Hog Wash, Humby Wash, Indian Creek, Jacks Canyon 2, Jadrto Wash, Jim Camp Wash, Joseph City Wash, Jumpoff Canyon, Keams Canyon, Laguna Creek, Leroux Wash, Linden Wash, Lithodendron Wash, Little Milky Wash, Lone Pine Creek, Lokal Wash, Mamba Wash, McKeon's Canyon, Mesa Wash - Navajo, Mexican Hollow Wash, Middle Cedar Creek, Moenkopi Wash, Mud Creek, Nakai Canyon, Narrow Wash, Wash Creek, Needah Wash, North Fork White, Oak Creek - Navajo, Ojoso Wash, Oraibi Wash, Oraibi Wash W. Fork, Parrish Creek, Petrified Creek, Phoenix Park Wash, Pierce Wash, Pine Creek - Navajo, Pinedale Wash, Plute Creek, Polacca Wash, Porter Creek, Porter Tank Draw, Potrze Wash, Pueblo Colorado, Rock Creek - Navajo, Rocky Arroyo, Sabito Wash, Salt Creek - Navajo, Scott Wash, Sear's Wash, Sevenmile Draw, Shonto Wash, Snow Low Creek, Silver Creek - Navajo, Spring Creek 1, Squaw Wash, Steamboat Wash, Sinson Wash - Navajo, Swamp Creek, Tanner Wash - Navajo, Tees Toh Wash, The Canal, Thompson Creek - Navajo, Tse Chizi Wash, Tsopi Canyon, Turkey Canyon - Navajo, Turkey Creek - Navajo, Tyende Creek, V Eighteen Wash, Walnut Creek - Navajo, Washboard Wash, West Wash, West Cedar Creek, West Fork Cotton, West Gypsum Creek, West Turkey Creek, West Twin Wash, White-Yol-ja

Residential Rentals
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THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Diana Chavez, 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 22, 2005

Sworn to before me this
22ND day of
March A.D. 2005


Notary Public

State of Arizona)
County of Apache)

ss.

Affidavit of Publication

White Mountain Independent

TO 200112, Monday, April 25, 2005
925 P.M. Apache County, Arizona

19291 Navigable Stream Adjudication Commission
Pursuant to F.P.S. 37-1126(A), notice is hereby given
that the Navigable Stream Adjudication Commission will
conduct public hearings to receive physical evidence and testimony
concerning the navigability or non-navigability of all
watercourses in Apache County. The hearings will be
held in Apache County on April 25, 2005 beginning at
10:00 a.m. in an order established by the chair in the
Apache County Supervisors Meeting Room located at 75
West Cleveland, St. Johns, Arizona. The following are
presently the public hearings scheduled:

The Little Colorado River and the Fustoni River, and all of
the small and minor watercourses in Apache County.
The list of small and minor watercourses in Apache County
includes:

Agua Sal Creek, Alamo Wash, Apache, Army, Birch,
Aspen Wash, Apache, Auger Creek, Badger Creek, 1,
Apache, Balcon Wash, Bar H Creek, Basin Creek, Battle-
ground Creek, Bear Cienega Creek, Beaver Dam Wash,
Apache, Becker Creek, Benny Creek, Bent Knee Wash,
Benton Creek, Apache, Beahm Wash, Big Bongo Creek,
Big Dam Wash, Big Ditch, Big Hollow Wash, Big Wide-
hoss Wash, Elk Flay Creek, Big H. Ah Wash, Bitter Water
Wash, Black Creek, Black Horse Wash, Black Mountain
Wash, Apache, Black River, Black Rock Canyon, Black
Soil Wash, Blackhorse Creek, Blackrock Wash, Buff
Cienega Creek, Bog Creek, Boggy Creek, Boiling Over
Wash, Boneyard Creek, Bonito Creek, Brown Creek,
Brown Wash, Apache, Bull Wash, Bull Creek, Bull Creek,
Apache, Burn Corn Creek, Burn Corn Creek, Apache,
Burnt Pinon Wash, Burnwater Wash, Burn Wash,
Apache, Butterfly Creek, Campbell Blue Creek, Cane Val-
ley Wash, Canyon Creek 2, Canyon De Chelly, Canyon Del
Muerto, Canyon Creek, Canyon Wash, Cedar Lake Wash,
Centerline Creek, Channing Drive, Channing Drive, Chas-
ney Wash, Chino Creek, Chino Wash, Chino Creek,
Cienega Creek 1 - Apache, Cienega Creek 2 - Apache,
Cienega Creek 3 - Apache, Cienega Creek 4 - Apache,
Cold Spring Wash, Apache, Colman Creek, Color
Creek, Corcho Creek, Coon Creek, Apache, Cory Creek,
Cottonwood Wash, Apache, Cove Wash, Coyote Creek 1
- Apache, Coyote Creek 2 - Apache, Coyote Creek 3 -
Apache, Coyote Wash, Apache, Crazy Creek, Crooked
Creek, Dams Creek, Dead Wash, Deep Creek - Apache,
Deer Creek - Apache, Diamond Creek, Dry Creek,
Apache, Dry Farms Wash, Dry Wash, East Creek, East
Fork Black, East Fork Dry Wash, East Fork Little, East
Fork White, Elk Canyon, Empano Wash, Eke Creek, Firebox
Creek, Fish Creek, Apache, Fish Wash, Flash Creek,
Gooseberry Creek, Gothic Creek, Grapevine Creek,
Greenswood Wash, Green Wash, Hall Creek, Hardscrabble
Wash, Harbison Creek, Hay Creek, Heller Branch, Be,
Hibbone Creek, Hippbone Wash, Home Creek, Horse
Creek, Apache, Horse Mesa Wash, Horseshoe Creek,
Hooten Tso Wash, Hughey Creek, Hussey Creek, Hum-
cane Creek, Jackson Creek, Jandro Wash, Jaralosa Drive,
Jervis Wash, Jimson Wash, Wash, Kila Creek, Kinchee
Creek, Kit St Wash, Laguna Creek, Lard Creek, Lee Val-
ley Creek, Linodendron Wash, Little Bog Creek, Little
Borito Creek, Little Creek, Little Diamond Creek, Little
Milky Wash, Lizard Wash, Lofa Cienega Creek, Lone Tule
Wash, Long Cienega, Lower Lyman Ditch, Luischuel
Creek, Lukachukai Wash, Mame Creek, McDonald Creek,
McNary Ditch, Meadow Wash, Middle Lyman Ditch, Milk
Creek, Apache, Milk Creek 1 - Apache, Milky Wash,
Apache, Milligan Creek, Mineral Creek, Apache, Mineral
Ditch, Apache, Moon Creek, Morgan Canyon, St. Morrison
Creek, Nazini Wash, Nienable Wash, No Name Creek,
North East Fork, North Fork, Darnio, North Fork White,
Nutricos Creek, Oak Ridge Wash, Open Draw Creek,
Oral Wash, Ord Creek, Ord Draw, Peos Creek, Pacheta
Creek, Paddy Creek 1, Paddy Creek 2, Paisano Creek,
Paradise Creek, Peasoup Creek, Perry Creek, Planch
Creek, Pine Springs Wash, Pine Wash, Piney Hill Creek,
Pistol Creek, Apache, Poker Gap Creek, Polacca Wash,
Porcupine Creek, Pueblo Colorado, Puzifer Creek,
Quartzite Wash, Querno Wash, Ramhead Wash, Red
Clay Wash, Red Wash 1, Red Wash 2, Red Water Wash,
Reservation Creek, Riggs Creek, Rock Canyon - Apache,
Rohls Arroyo, Romero Creek, Rosey Creek, Rudd Creek,
Ruin Wash, Sibbo Wash, Sage House Wash, Sand Creek
- Apache, Sarosie Wash, Scattered, Widow, Sepulveda
Creek, Seven Springs Wash, Sharp Creek - Apache,
Sheep Dip Creek, Show Low Creek, Sitting Giant Rd. Stick
Rock, Smith Creek, Snow Stake Creek, Soldier Creek.

I, Diane R. Janot, being first duly sworn, depose and say: I am the agent of the White Mountain Publishing Company, publisher of the White Mountain Independent, a semi-weekly newspaper of general circulation published at St. Johns, County of Apache, Arizona and that the copy hereto attached is a true copy of the advertisement as published in the White Mountain Independent on the following dates:

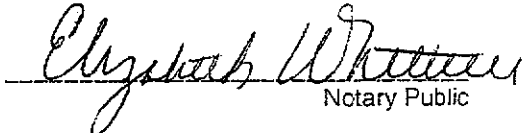
March 22, 2005

White Mountain Independent

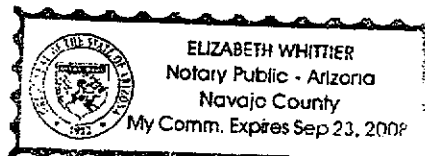


Sworn to me this day of

March 23, 2005, A.D. 2005



Notary Public



2005
 State of Arizona
 Navigable Stream
 Adjudication Commission
 Pursuant to A.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 watercour-
 ses in Apache County. The
 hearings will be held in
 Apache County on April 26,
 2005 beginning at 10:00 a.m.
 in an order established by
 the chair in the Apache County
 Supervisors' Meeting
 Room located at 75 West
 Cleveland, St. Johns, Arizona.
 The following are presented
 as the only hearings sched-
 uled.

The Little Colorado River and
 the Puerco River, and all of
 the small and minor water-
 courses in Apache County.
 The list of small and minor
 watercourses in Apache
 County includes:

Agua Sal Creek, Alamo Wash,
 Apache, Arroyo Ditch, Aspen
 Wash - Apache, Auger Creek,
 Badger Creek 1 - Apache,
 Balakal Wash, Bar H Creek,
 Basin Creek, Battleground
 Creek, Bear Cienega Creek,
 Beaver Dam Wash - Apache,
 Becker Creek, Benny Creek,
 Bent Knee Wash, Benton
 Creek - Apache, Besito
 Wash, Big Bonto Creek, Big
 Dam Wash, Big Ditch, Big Hol-
 low Wash, Big Wilderness
 Wash, Bill Riley Creek, Bill
 Al Wash, Bitter Water Wash,
 Black Creek, Black Horse
 Wash, Black Mountain Wash,
 Apache, Black River, Black
 Rock Canyon, Black Soil
 Wash, Blackhorse Creek,
 Blackrock Wash, Bluff
 Cienega Creek, Bog Creek,
 Boggy Creek, Bolling Creek,
 Wash, Boneyard Creek, Bor-
 to - Creek, Brown Creek,
 Brown Wash - Apache, Bull
 Wash, Bull Creek, Bull Creek,
 Apache, Burnt Corn Creek,
 Burnt Corral Creek - Apache,
 Burnt Prion Wash,
 Burntwater Wash - Burro
 Wash - Apache, Butterfly
 Creek, Campbell Blue Creek,
 Cane Valley Wash, Canyon
 Creek 2, Canyon De Chelly,
 Canyon Del Muerto, Carrizo
 Creek, Carrizo Wash, Cedar
 Lake Wash, Centerline Creek,
 Chambers Draw, Cheney
 Draw, Chimney Wash, Chino
 Creek, Chino Wash, Cienega
 Creek, Cienega Creek 1 -
 Apache, Cienega Creek 2 -
 Apache, Cienega Creek 3 -
 Apache, Cienega Creek 4 -
 Apache, Cold Spring Wash,
 Apache, Coleman Creek,
 Collier Creek, Concho Creek,
 Coon Creek - Apache, Corn
 Creek, Cottonwood Wash -
 Apache, Cove Wash, Coyote
 Creek 1 - Apache, Coyote
 Creek 2 - Apache, Coyote
 Creek 3 - Apache, Coyote
 Wash - Apache, Crazy Creek,
 Crooked Creek, Davis Creek,
 Dead Wash, Deep Creek,
 Apache, Deer Creek,
 Apache, Diamond Creek, Dry
 Creek - Apache, Dry Farms
 Wash, Dry Wash, East Fork
 East Fork Black, East Fork
 Dry Wash, East Fork Little,
 East Fork White, Elk Canyon,
 Black 2, West Fork Little,
 West Gypsum Creek, West
 Turkey Creek, Wheatfields
 Creek, Whiskey Creek, White
 Rock Wash, White Spring
 Wash, Whitewater Arroyo,
 Wide Ruin Wash, Wild Cow
 Wash, Wildcat Creek 1, Wild-
 cat Creek 2, Williams Creek,
 Willow Creek - Apache, Wil-
 low Spring Wash, Woods
 Creek, Yellow Water, Zuni
 River, a - Seg 17 Apache, a -
 Seg 25 Apache, b - Seg 10
 Apache, b - Seg 13 Apache, d -
 Seg 21 Apache, as well as
 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 appro-
 priate 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-
 ber is (602) 542-9214. The
 web site address is
<http://www.azstreamads.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.
 to 5:00 p.m. Monday thru Fri-
 day, except on holidays. The
 commission office is located
 at 1700 West Washington
 Street, Phoenix, Arizona
 85007.

THE ARIZONA REPUBLIC

STATE OF ARIZONA }
 COUNTY OF MARICOPA } SS.

Diana Chavez, 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 22, 2005

Diana Chavez

Sworn to before me this
 22ND day of
 March A.D. 2005



Marilyn Greenwood
 Notary Public

PHOENIX - 480-944-1898
 1-800-541-1898

EXHIBIT C



STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

IANET 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
April 25, 2005, at 3:00 P.M., in Holbrook, 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 April 25, 2005 at 3:00 p.m. in the Navajo County Supervisors' Chambers located at 100 E. Carter Drive (2 miles S. of Holbrook on Hwy 77 South), Holbrook, 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. March 29, Yavapai County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY, 05-006-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.
7. BUDGET AND COMMISSION STATUS UPDATE.
8. HEARINGS UPDATE.
9. CALL FOR PUBLIC COMMENT (comment sheets).
(Pursuant to Attorney General Opinion No. 199-006 [R99-002]. Public Comment: Consideration and discussion of comments and complaints from the public. Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.)
10. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
11. ADJOURNMENT.

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

Dated this 15th day of March, 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

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD
April 26, 2005, at 10:00 A.M., in St. Johns, 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 April 26, 2005 at 10:00 a.m. in the Apache County Supervisors Meeting Room located at 75 W. Cleveland, St. Johns, 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. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY, 05-009-NAV.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.
6. BUDGET AND COMMISSION STATUS UPDATE.
7. HEARINGS UPDATE.
8. 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.)
9. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
10. ADJOURNMENT.

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

Dated this 16th day of March, 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
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GEORGE MEHNERT
Executive Director

MEETING MINUTES

Holbrook, Arizona, April 25, 2005

COMMISSION MEMBERS PRESENT

Earl Eisenhower, Jim Henness, and Cecil Miller.

COMMISSION MEMBERS ABSENT

Jay Brashear, 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 3:01 p.m.

2. ROLL CALL.

See above.

3. APPROVAL OF MINUTES (discussion and action).

A. March 29, 2005, Yavapai County.

Motion by: Cecil Miller Second by: Jim Henness

Motion: To approve the minutes of March 29, 2005.

Vote: All aye.

4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY, 05-006-NAV. Cheryl Doyle of the State Land Department and Engineer Jon Fuller appeared.

5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV. Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #4 applied to all of today's hearings, and Engineer Jon Fuller appeared.

6. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV. Cheryl Doyle of the State Land Department indicated the prepared statement she read

regarding item #4 applied to all of today's hearings, and Engineer Jon Fuller appeared.

7. **BUDGET AND COMMISSION STATUS UPDATE.**

The Director indicated that the Commission's budget status has not changed and that the Commission has transferred \$7,000.00 to the State Land Department to help pay the costs of the Engineers the State Land Department hires on contract and who write reports and testify at Commission hearings.

8. **HEARINGS UPDATE.**

The Chair, the Commissioners and the Director discussed the remaining evidentiary hearings, following those in Navajo and Apache Counties, including those in Coconino County, La Paz County, Mohave County, and Maricopa County. Coconino County: Small and Minor Watercourses and the Little Colorado River. La Paz County: Bill Williams and Santa Maria Rivers. Mohave County: Big Sandy, Bill Williams, Santa Maria, and Virgin Rivers, and Burro Creek. Maricopa County: Small and Minor Watercourses and the Agua Fria, Gila, Hassayampa, Upper Salt, and Verde Rivers.

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.) Quinn Smith who indicated he was a resident of Show Low, Arizona, asked what the Commission does. Chairman Eisenhower briefly explained the hearings process and history of the Commission and Commission Attorney Curtis Jennings included a more detailed historical explanation of the Commission including legal history as well.

10. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.**

The Commission decided it would hold the hearings in Coconino County on July 12, 2005, and would take an overnight trip to Mohave and La Paz

Counties on hold hearings in those counties on August 9 and 10, 2005, respectively.

Commissioner Henness made a motion to go into Executive Session to obtain legal advice.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To go into Executive Session to obtain legal advice.

Vote: All aye.

The Commission entered into Executive Session at approximately 4:22 p.m. and exited Executive Session at approximately 4:30 p.m./

11. ADJOURNMENT.

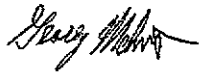
Motion by: Cecil Miller Second by: Jim Henness

Motion: To adjourn.

Vote: All aye.

Meeting adjourned at approximately 4:31 p.m.

Respectfully submitted,



George Mehnert, Director

April 28, 2005



JANET NAPOLITANO
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

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

GEORGE MEHNERT
Executive Director

MEETING MINUTES

St. Johns, Arizona, April 26, 2005

COMMISSION MEMBERS PRESENT

Earl Eisenhower, Jim Hennes, and Cecil Miller.

COMMISSION MEMBERS ABSENT

Jay Brashear, 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 10:03 a.m.

2. ROLL CALL.

See above.

3. ROLL CALL.

- 3. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY, 05-009-NAV.** Cheryl Doyle of the State Land Department read a prepared statement, and Engineer Jon Fuller appeared.

- 4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.**

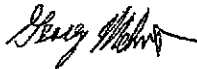
Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #3 applied to all of today's hearings, and Engineer Jon Fuller appeared.

- 5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE PUERCO RIVER, 05-008-NAV.** Cheryl Doyle of the State Land Department indicated the prepared statement she read regarding item #3 applied to all of today's hearings, and Engineer Jon Fuller appeared.

- 6. BUDGET AND COMMISSION STATUS UPDATE.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.

7. **HEARINGS UPDATE.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.
8. **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.)
9. **FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.** No comments were made except that the matter had been discussed at the meeting of April 25, 2005.
10. **ADJOURNMENT.**
Motion by: Jim Henness Second by: Cecil Miller
Motion: To adjourn.
Vote: All aye.
Meeting adjourned at approximately 10:29 a.m.

Respectfully submitted,



George Mehnert, Director
April 28, 2005



JANET NAPOLITANO
Governor

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION

1700 West Washington, Room 304, Phoenix, Arizona 85007

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

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GEORGE MEHNERT
Executive Director

AGENDA AND NOTICE OF A PUBLIC HEARING TO BE HELD

July 14, 2005, at 10:00 a.m., in Flagstaff, 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 on July 14, 2005 at 10:00 a.m. in the Coconino County Supervisors Meeting Room located at 219 East Cherry Street, Flagstaff, 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. April 25, 2005, Navajo County.
 - B. April 25, 2005, Navajo County Executive Session.
 - C. April 26, 2005, Apache County.
4. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV.
5. HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.
6. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY (DISCUSSION AND ACTION).
7. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY (DISCUSSION AND ACTION).
8. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY (DISCUSSION AND ACTION).
9. NAVIGABILITY DETERMINATION OF THE PUERCO RIVER (DISCUSSION AND ACTION).
10. 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.)
11. FUTURE AGENDA ITEMS AND ESTABLISHMENT OF FUTURE HEARINGS AND OTHER MEETINGS.
12. ADJOURNMENT.

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

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



JANET NAPOLITANO
Governor

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GEORGE MEHNERT
Executive Director

MEETING MINUTES
Flagstaff, Arizona, July 14, 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 10:06 a.m.

2. **ROLL CALL.**

See above.

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

A. April 25, 2005, Navajo County.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To approve the minutes of April 25, 2005.

Vote: All aye.

B. April 25, 2005, Navajo County Executive Session.

Motion by: Cecil Miller Second by: Jim Henness

Motion: To approve the Executive Session Minutes of April 25, 2005.

Vote: All aye.

C. April 26, 2005, Apache County.

Motion by: Jim Henness Second by: Cecil Miller

Motion: To approve the minutes of April 26, 2005.

Vote: All aye.

4. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE SMALL AND MINOR WATERCOURSES IN COCONINO COUNTY, 05-010-NAV.** Persons who spoke and responded to

questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist for the State Land Department, Jon Fuller. The Chair announced this hearing was closed for the purpose of taking evidence.

5. **HEARING REGARDING THE NAVIGABILITY OR NON-NAVIGABILITY OF THE LITTLE COLORADO RIVER, 05-007-NAV.**

Persons who spoke and responded to questions regarding this matter were Cheryl Doyle representing the State Land Department and Hydrologist for the State Land

Department, Jon Fuller. The Chair announced this hearing was closed for the purpose of taking evidence.

6. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN YAVAPAI COUNTY (DISCUSSION AND ACTION).

Motion by: Jay Brashcar Second by: Jim Henness

Motion: That all of the Small and Minor Watercourses in Yavapai County were non-navigable as of statehood.

Vote: All aye.

7. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN NAVAJO COUNTY (DISCUSSION AND ACTION).

Motion by: Cecil Miller Second by: Jim Henness

Motion: That all of the Small and Minor Watercourses in Navajo County were non-navigable as of statehood.

Vote: All aye.

8. NAVIGABILITY DETERMINATION OF THE SMALL AND MINOR WATERCOURSES IN APACHE COUNTY (DISCUSSION AND ACTION).

Motion by: Jim Henness Second by: Cecil Miller

Motion: That all of the Small and Minor Watercourses in Apache County were non-navigable as of statehood.

Vote: All aye.

9. NAVIGABILITY DETERMINATION OF THE PUERCO RIVER (DISCUSSION AND ACTION).

Motion by: Jim Henness Second by: Jay Brashear

Motion: That Puerco River was non-navigable as of statehood.

Vote: All aye.

10. 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.)

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

The Commissioners, representatives of the State and of the Salt River Project spoke regarding hearing dates. The Chair concluded that likely future hearing dates beyond those scheduled in Mohave and La Paz Counties on August 8, 2005 and August 9, 2005, respectively, will be hearings regarding the navigability of the Agua Fria River, the Hassayampa River and the Maricopa County Small and Minor Watercourses during September 2005. Commissioner Brashear asked about Roosevelt Lake, since it existed at time of statehood. The Chair said Roosevelt Lake will likely be considered during the hearing regarding the Gila County Small and Minor Watercourses. The Chair indicated that hearings will likely be held during October 2005 regarding the navigability of the Upper Salt River and of the Gila County Small and Minor Watercourses. The Chair stated that hearings will likely be held during November 2005, on two consecutive days, regarding the navigability of the Gila River and the Verde River.

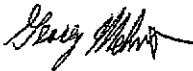
12. ADJOURNMENT.

Motion by: Cecil Miller Second by: Jim Henness

Motion: To adjourn. Vote: All aye.

Meeting adjourned at approximately 11:05 a.m.

Respectfully submitted,



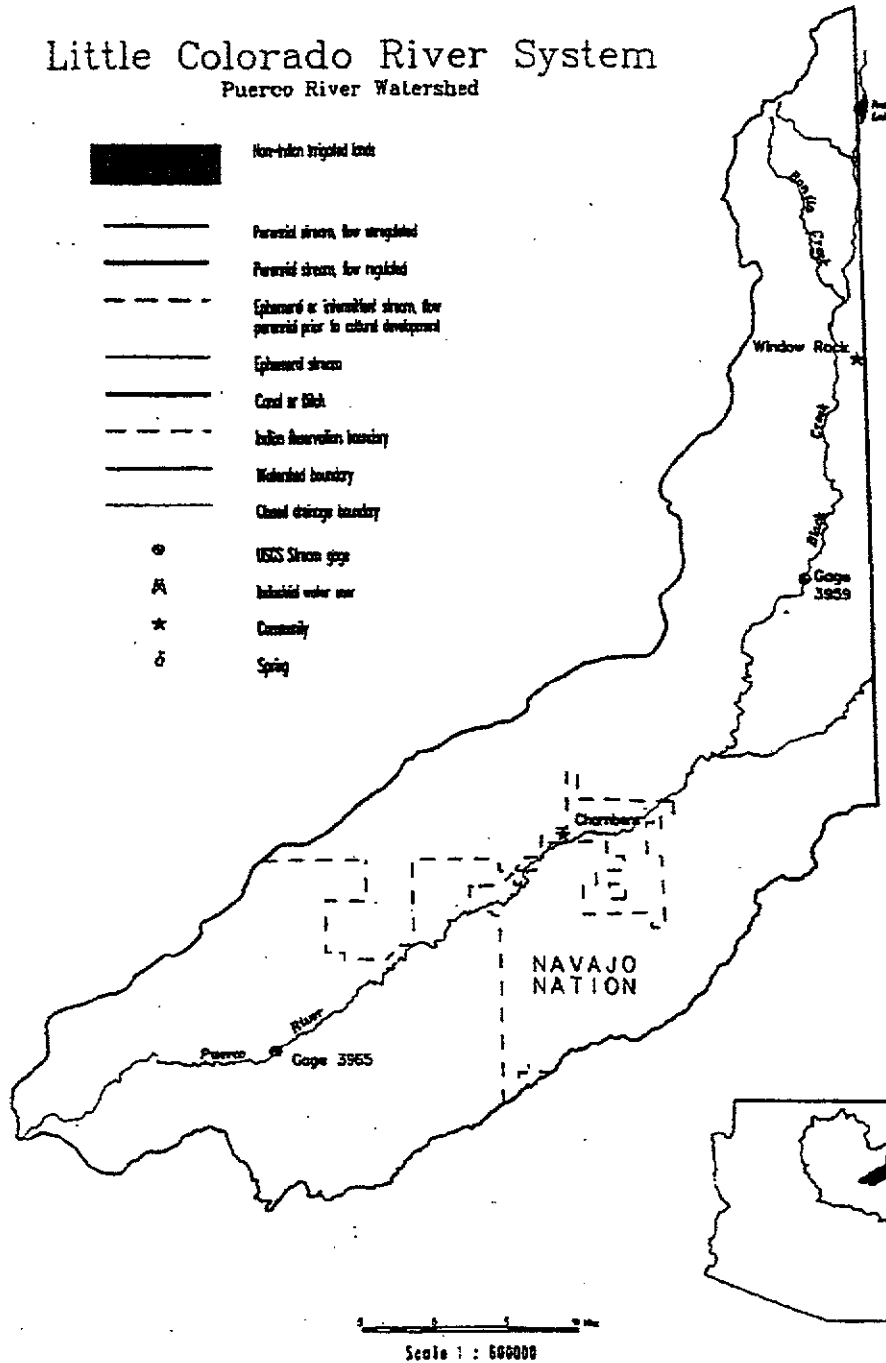
George Mehnert, Director

July 14, 2005

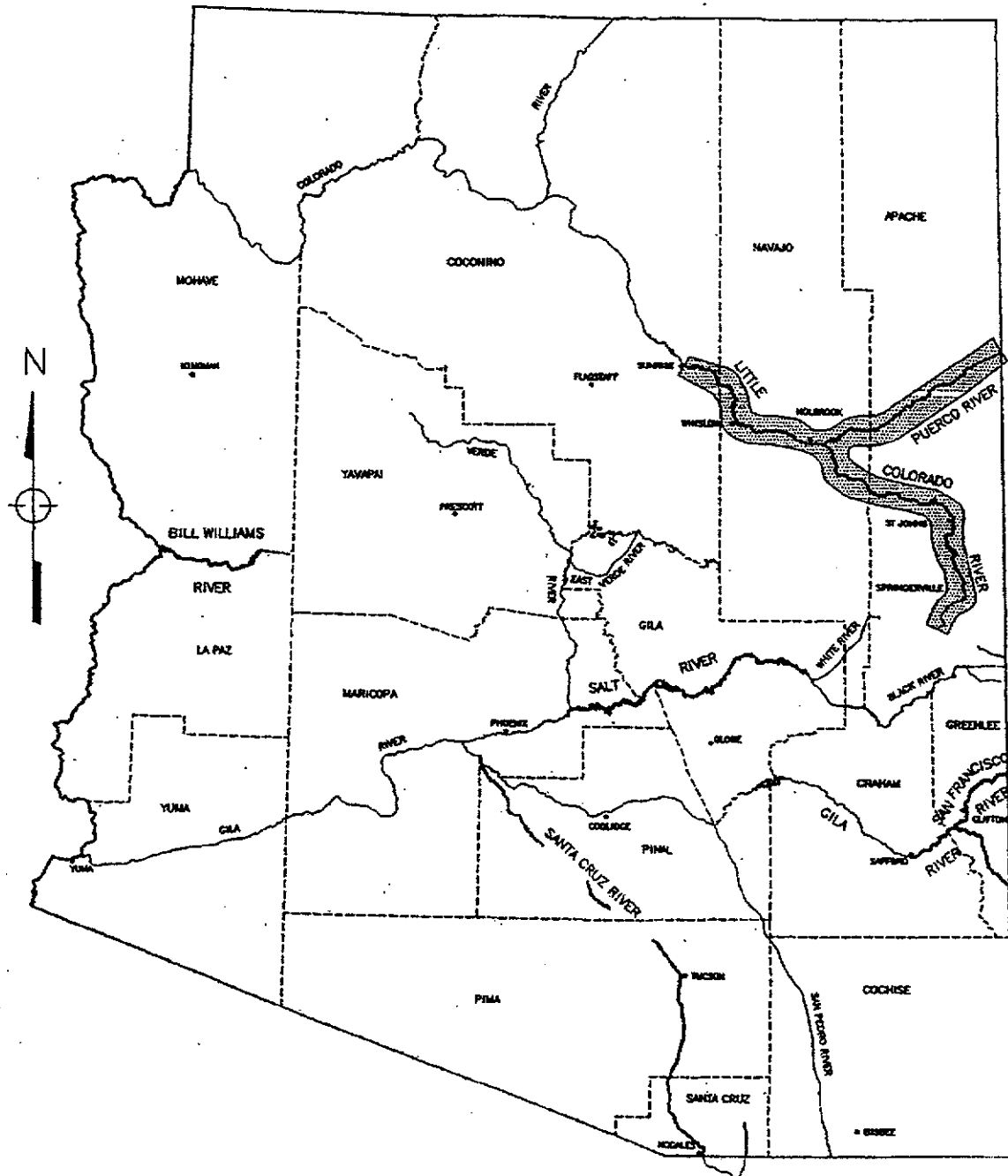
EXHIBIT D

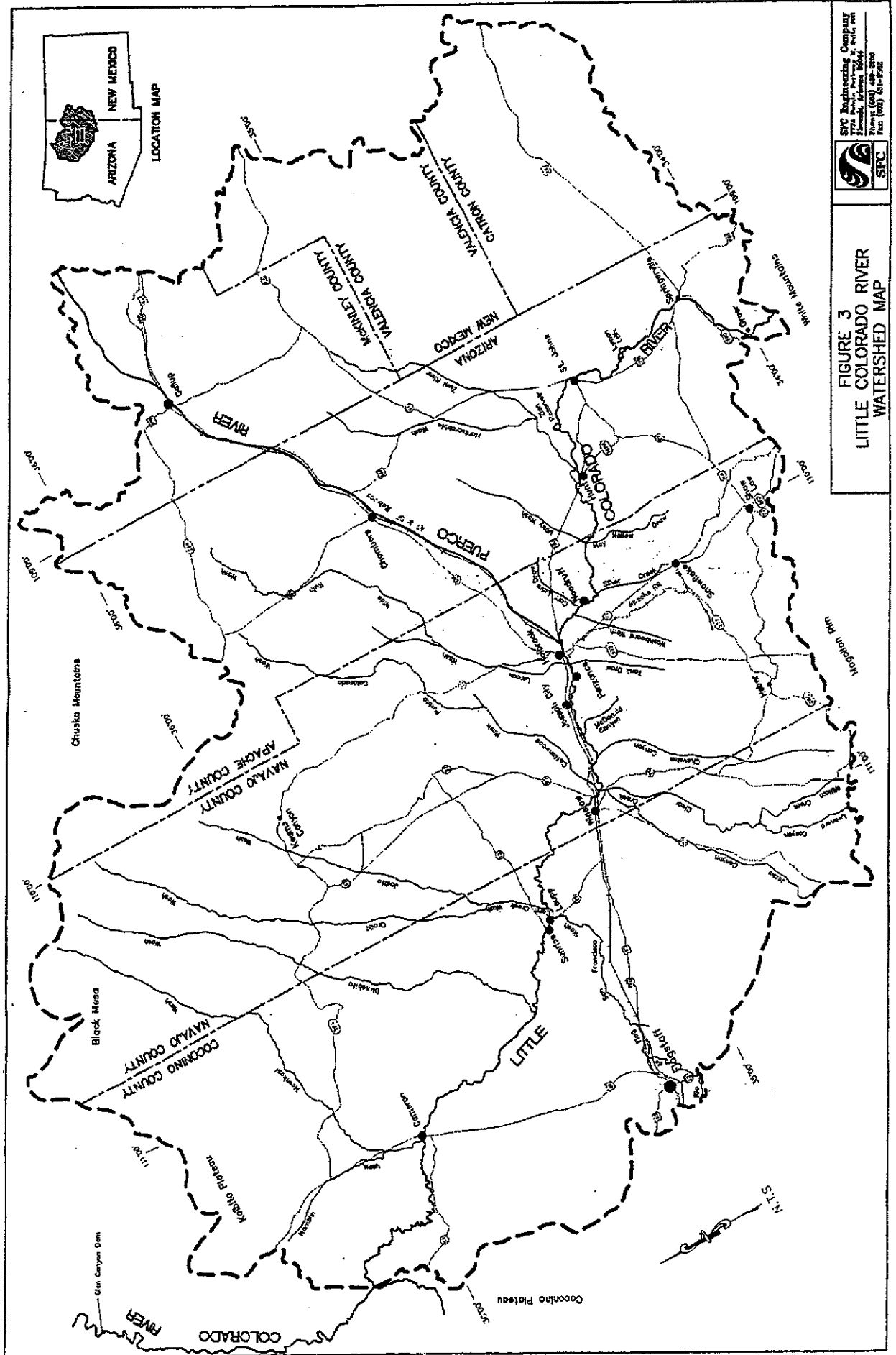
Little Colorado River System

Puerco River Watershed



(Source: ADWR, 1989)





SFC Engineering Company
 2700 N. Central
 Phoenix, Arizona 85016
 Phone (602) 448-2800
 Fax (602) 681-1602



FIGURE 3
 LITTLE COLORADO RIVER
 WATERSHED MAP

EXHIBIT E

Evidence Log

Hearing No. 05-008

Page No.

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Arizona Navigable Stream Adjudication Commission

Puerco River—2 Counties

Hearing Navajo Co. April 25, 2005—Hearing Apache Co. April 26, 2005

Item Number	Received Date	Source to ANSAC	Description	Entry By
1	2/18/97	David Baron ACLPI	Letter from David Baron dated February 18, 1997.	George Mehnert
2	10/14/97	Evidence on hand at AN-SAC	LCR Report from State Land Department and SFC Engineering, etc.	George Mehnert
3	2/18/98	Evidence on hand at AN-SAC	LCR Report from Eastern Arizona Counties Organization, Martin Moore Apache County Development.	George Mehnert
4	January 1999 Revised June 2004	Evidence on hand and revision.	LCR Report from JE Fuller Hydrology.	George Mehnert
5	7/11/04	Nancy Orr	Letter to Commission regarding several water-courses.	George Mehnert