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9 **BEFORE THE ARIZONA NAVIGABLE STREAM**
10 **ADJUDICATION COMMISSION**

11 IN THE MATTER OF THE
12 NAVIGABILITY OF THE SALT
13 RIVER FROM GRANITE REEF DAM
14 TO THE GILA RIVER CONFLUENCE,
15 MARICOPA COUNTY, ARIZONA

No. 03-005-NAV (Lower Salt)

No. 03-007-NAV (Gila)

16 IN THE MATTER OF THE
17 NAVIGABILITY OF THE GILA
18 RIVER FROM THE NEW MEXICO
19 BORDER TO THE COLORADO
20 RIVER, GREENELEE, GILA, PINAL,
21 MARICOPA AND YUMA COUNTIES,
22 ARIZONA

**GILA RIVER INDIAN COMMUNITY'S
MEMORANDUM ON THE
NAVIGABILITY OF THE GILA AND
LOWER SALT RIVERS IN THEIR
NATURAL AND ORDINARY
CONDITION AT THE TIME OF
STATEHOOD**

23 Per its last notice, the Commission requested memoranda on the following:

24 The memorandums due September 7, 2012, should address the question of
25 whether any of the six pending water courses – Lower Salt River, Upper
26 Salt River, Gila River, Verde River, San Pedro River, and Santa Cruz River
– were navigable in their “natural and ordinary” condition on February 14,
1912, as required by the Court of Appeals on remand in *Arizona v. Arizona
Navigable Stream Adjudication Commission*, 224 Ariz. 230, 229 P.3d 242
(2010). The analysis provided should be based exclusively on existing
evidence previously admitted in the official record.

In *PPL Montana, LLC v. Montana*, 132 S.Ct. 1215 (2012), the Supreme Court of the
United States held that navigability analyses must be based on factors present at the

1 time of statehood, not before. Specifically, the Court restricted the analysis to the “. .
2 . physical condition [of a river] at statehood.” 132 S.Ct. at 1233. The Community
3 believes that *PPL Montana* overrules or modifies *State v. Arizona Navigable Stream*
4 *Adjudication Commission*, 224 Ariz. 230, 229 P.3d 242 (Ariz. App. 2010) with regard
5 to the relevant inquiry and that, based upon *PPL Montana* the Commission applied
6 the correct standard to the evidence in the record before it.
7

8 Because the issue in these proceedings as initially framed by the Commission
9 was legally correct, the Commission should reaffirm its initial determinations in these
10 matters.
11

12 DATED this 7th day of September 2012.

13 GILA RIVER INDIAN COMMUNITY

14
15 By  _____

16 Thomas L. Murphy
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1 ORIGINAL AND SIX COPIES of the foregoing
2 hand-delivered for filing this 7th day of September 2012 to:

3 Arizona Navigable Stream Adjudication Commission
4 1700 West Washington, Suite B-54
5 Phoenix, Arizona 85007

6 AND A COPY mailed this 7th day of September 2012 to:

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