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7
8 **BEFORE THE ARIZONA NAVIGABLE STREAM**
9 **ADJUDICATION COMMISSION**

10 In re Determination of Navigability of
11 the Lower Salt River, from Granite Reef
12 Dam to the Gila River Confluence

No. 03-005-NAV

13 **CEMEX, INC.'S MEMORANDUM**
14 **JOINING SALT RIVER PROJECT'S**
15 **MEMORANDUM REGARDING THE**
16 **UNITED STATES SUPREME**
17 **COURT'S OPINION IN *PPL***
18 ***MONTANA***

19 Pursuant to the Commission's order at its meeting held on February 27, 2012, the Salt
20 River Project Agricultural Improvement and Power District and Salt River Valley Water
21 Users' Association (collectively, "SRP") will submit their memorandum regarding the recent
22 opinion of the United States Supreme Court in the case of *PPL Montana LLC v. Montana*,
23 Supreme Court Case No. 10-218 ("*PPL Montana*").¹ The SRP Memorandum evaluates the
24 United States Supreme Court's decision in *PPL Montana* and the applicability of that decision
25 to the facts of the Lower Salt River case. SRP shared a draft of its Memorandum with
26 CEMEX, Inc. ("CEMEX"). In the interest of saving the Commission's time and effort,
27 CEMEX, by this filing, provides its full support and agreement to the SRP Memorandum.

¹ SRP submitted a copy of the United States Supreme Court's slip opinion with its Notice of Decision in Related Case and Request for Supplemental Briefing filed with the Commission on February 23, 2012.

1 Specifically, CEMEX agrees that the critical component of the *PPL Montana* decision
2 for this Commission's Lower Salt River proceedings is that the Court clearly brought the law
3 regarding navigability for title purposes back to considerations of "navigability in fact" and
4 "commercial reality." *Opinion*, at 11, 24. The United States Supreme Court very clearly
5 confirmed that the test of navigability for title is pragmatic in nature asking: Was the river, as
6 of February 14, 1912, used or susceptible to being used, in its ordinary and natural condition,
7 as a highway for commerce, over which trade and travel were or could have been conducted
8 in the customary mode of trade and travel on water? This reconfirmed the federal test of
9 navigability for title purposes is also the Arizona statutory test in A.R.S. § 37-1101(5).

10 As a result, the Commission can and should find that the Lower Salt River is
11 nonnavigable.

12 DATED this 23rd day of March, 2012.

13 LEWIS AND ROCA LLP.

14
15 By 

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21 ORIGINAL AND SIX COPIES of the foregoing
22 hand-delivered for filing this 23rd day of March,
23 2012 to:

24 Arizona Navigable Stream Adjudication Commission
25 1700 West Washington, Room B-54
26 Phoenix, AZ 85007
27 ...

1 AND COPY mailed this 23rd day of March, 2012 to:

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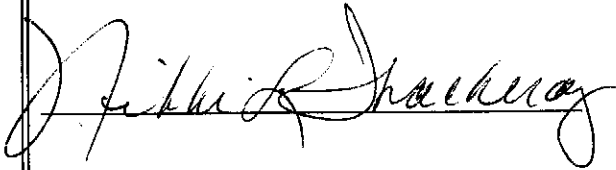
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