



**NOTICE OF AN ADDENDUM TO THE AGENDA OF
REGULAR MEETING OF THE CLARKDALE TOWN COUNCIL**

**Tuesday, October 14, 2014 6:00 P.M.
Clark Memorial Clubhouse, Men's Lounge**

PURSUANT TO A.R.S. §38-431.02, NOTICE IS HEREBY GIVEN to the members of the Common Council of the Town of Clarkdale and to the general public that the Town of Clarkdale Common Council will hold a Regular Meeting open to the public on **Tuesday, October 14, 2014, at 6:00 p.m.** in the **Clark Memorial Clubhouse, Men's Lounge, 19 N. Ninth Street, Clarkdale, Arizona.** Members of the Clarkdale Common Council will attend either in person or by telephone, video or internet conferencing. Pursuant to A.R.S. §38-431.03, the Council may vote to recess the meeting and move into Executive Session on any item, which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda.

The undersigned hereby certifies that a copy of this notice was duly posted on the Community Development Building bulletin board, located at 890 Main Street, Clarkdale, Arizona on October 9, 2014, at 4:00 p.m.

Kathy Bainbridge
KATHY BAINBRIDGE
CLERK/FINANCE DIRECTOR

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you turn it off at this time to minimize disruption to this meeting.

**ARIZONA NAVIGABLE STREAM ADJUDICATION COMMITTEE (ANSAC) HEARINGS
RELATING TO THE VERDE RIVER – Discussion and consideration of the Town's position with regard to the navigability determination for the Verde River, and authorization for the Mayor to represent the Town's position on this issue at hearings and in other settings.**

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 639-2400 (TTY: 1-800-367-8939) at least 72 hours in advance of the meeting.



Staff Report

Agenda Item: ARIZONA NAVIGABLE STREAM ADJUDICATION COMMITTEE (ANSAC) HEARINGS RELATING TO THE VERDE RIVER – Discussion and consideration of the Town’s position with regard to the navigability determination for the Verde River, and authorization for the Mayor to represent the Town’s position on this issue at hearings and in other settings.

Staff Contact: Gayle Mabery, Town Manager

Council Sponsor: Mayor Von Gausig

Meeting Date: October 14, 2014

Background: Mayor Von Gausig provided the following information on this topic:

The Arizona Navigable Stream Adjudication Committee (ANSAC, <http://www.ansac.az.gov/>) has been working since 2001 to define which streams in Arizona were navigable at the time of statehood in 1912. It expects to complete its investigation by June of 2016.

From the ANSAC Website:

PURPOSE: To help clear more than 100,00 clouded Arizona property titles to the land beneath Arizona's 39,039 rivers and streams. As mentioned earlier, ANSAC's work pertains only to land beneath rivers and streams and not to water issues such as ownership, use, or diversion of water. There are many existing laws and agencies that deal with water ownership and use matters. Only the Colorado River is excluded from the ANSAC process, the bed of which is already owned by the government.

HOW: By gathering evidence, including engineering studies, and holding evidentiary navigability hearings on all of Arizona's 39,039 watercourses and in each of Arizona's 15 counties to determine which watercourses were **navigable** and which were **non-navigable** at time of statehood February 14, 1912.

If a Watercourse was NAVIGABLE at statehood then the bed/the land beneath the watercourse is subject to government ownership. It is subject to being owned by the State.

If a Watercourse was NON-NAVIGABLE at statehood then the bed/the land beneath the watercourse is subject to private ownership by the party whose land it crosses.

EXAMPLE of a streambed owned by the government: If you own a cabin and a piece of property in Northern Arizona, as many citizens do, and a stream that crosses your property is determined to be Navigable then the Government/the State in this instance and not you will own the bed and title to the land beneath the stream, while you will still own the property on either side of the stream. This may be true even if your relatives obtained the property decades ago through the process of Homestead.

ANSAC has been gathering documentation on the navigability of the Verde River for some time, and they are about to begin their public hearings on the Verde's status on October 20th-25th. During these hearings, the Arizona State Attorney General's office will represent the Arizona State Lands Department in a case that proposes that the Verde should be adjudicated to be navigable, and therefore that the streambed belongs to the state of Arizona. They have asked Mayor Von Gausig to testify in that case about the current and past commercial and recreational use of the Verde River and the impact of that use on the local economy and recreating public.

While the primary condition for a determination of navigability is whether the river was used for navigable commerce (usually defined as boat traffic for commerce), there are ways that ANSAC could decide that the Verde is navigable even without strong evidence of boat traffic.

The primary impact of a determination of navigability would be that the State of Arizona would assume ownership and responsibility for the riverbed. This generally means that this land would be removed from the owners' taxes. It also means that the float travel, such as kayaking and canoeing on the river could not be restricted by private property owners along the route.

From the Attorney General's White Paper on Verde Navigability – October 3, 2014

What: The Arizona Navigable Stream Adjudication Commission (ANSAC) was established to determine what Arizona streams are navigable such that the State may claim title to the streambeds.

- Arizona Revised Statutes §§ 37-1101 through 37-1156 are the controlling laws for ANSAC.
- ANSAC's website has more information: <http://www.ansac.az.gov/default.asp>

When and Where: ANSAC will continue hearings to determine the navigable streams in Arizona with the Verde River hearing in Phoenix, AZ, Monday October 20, 2014 through Friday October 24, 2014. The Salt River hearings will be conducted in December 2014, and February 2015. The Gila River hearings took place in Summer of 2014.

- The hearings on the Verde River will take place each day beginning at 9:00 am until 5:00 pm, at 1700 W. Washington, Senate Wing, Senate Hearing Room One; hearings are open to the public.

What's at Stake: If a stream is navigable, title to the riverbed up to the high-water mark is owned by the State.

- If title is owned by the State the riverbed is considered public trust land and therefore the river itself is considered a public waterway.
- If the river is a public waterway, private entities cannot block the public's use of the river's watercourse; access to the river across private property can still be denied.
- Proving the Verde is navigable will solidify title to the riverbed with the State, which will ensure public access and use of the Verde as a public waterway.
- Currently, land ownership can be claimed by private and tribal interests and access can be and in many cases is denied to the public.

How is Navigability Proven:

- Arizona Revised Statutes § 37-1101 states:
 - "Navigable" or "navigable watercourse" means a watercourse that was in existence on February 14, 1912 (statehood), 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.
- Several state and federal court cases exist that clarify terms in the definition of "navigable" including: State v. ANSAC, 224 Ariz. 230 (2010) and PPL Montana LLC v. Montana, 132 S.Ct. 1215 (2012).

Who are the Parties:

- Arguing for Navigability: Arizona State Land Department, represented by the Arizona Attorney General's Office, Natural Resources Section; the Center for Law in the Public Interest.
- Arguing for Non-navigability: Salt River Project (power and water utility); Freeport McMoRan(mining); various Native American Nations

The Mayor is seeking input and direction from the Council on his participation in the ANSAC hearings and other functions of ANSAC, such as written opinions or provision of background materials to ANSAC or others concerned with the case.

As is shown above, two of the larger opponents to a determination of navigability are Freeport-McMoRan Copper and Gold and Salt River Project. Freeport's main objections seem to revolve around preservation of their water rights on the Salt, Gila and Verde, and the fact that it may be possible for the State to extract rents or other fees for use of the river after a positive determination. SRP's objections may be similar to Freeport's.

Recommendation: Staff recommends that the Council authorize Mayor Von Gausig to represent the Town of Clarkdale's position on Verde River navigability during ANSAC hearings and in other forums relating to the case.