



**NOTICE OF A REGULAR MEETING OF THE COMMON COUNCIL  
OF THE TOWN OF CLARKDALE**

**Tuesday, October 14, 2014 at 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.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at [www.clarkdale.az.gov](http://www.clarkdale.az.gov) and the Town Clerk's Office.

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 1:00 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.*

**ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR DISCUSSION AND POSSIBLE ACTION, UNLESS OTHERWISE NOTED.**

**1. CALL TO ORDER**

**2. PUBLIC COMMENT** – The Town Council invites the public to provide comments at this time. Members of the Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date. Persons interested in making a comment on a specific agenda item are asked to complete a brief form and submit it to the Town Clerk during the meeting. Each speaker is asked to limit their comments to five minutes.

**3. REPORTS**

**Current Events** – A brief summary of current events. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary.

Mayor's Report  
Vice-Mayor's Report  
Councilmembers' Report  
Town Manager's Report

**Organizational Reports – Reports regarding regional organizations.**

CAT/ VVTPO – Cottonwood Area Transit and the Verde Valley Transportation Planning Organization & other transportation affiliations.

NACOG - Northern Arizona Council of Governments.

NAMWUA - Northern Arizona Municipal Water Users Association.

VRBP – Verde River Basin Partnership.

VVLP – Verde Valley Land Preservation.

WAC/MVWAC - Yavapai County Water Advisory Committee/Middle Verde Water Advisory Committee.

VVREO – Verde Valley Regional Economic Organization.

YCL – A report from the Yavapai College Liaison.

4. **CONSENT AGENDA** - The consent agenda portion of the agenda is a means of expediting routine matters that must be acted on by the Council. All items are approved with one motion. Any items may be removed for discussion at the request of any Council Member.
- A. **Approval of Minutes of the Common Council** - Approval of the minutes of the Regular Meeting held September 9, 2014 and Special Meeting September 23, 2014.
  - B. **Claims** - List of specific expenditures made by the Town during the previous month. September, 2014 check log and PPE dated September 6, 2014 and September 20, 2014.
  - C. **Board and Commission Minutes** – Acknowledgement of receipt of minutes and draft minutes of the previous month’s Board and Commission Meetings.  
Board of Adjustments Notice of Cancellation of meeting September 24, 2014  
Design Review Board minutes of the meeting held September 3, 2014  
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Public Safety Personnel Retirement Board minutes of meeting held September 10, 2014
  - D. **A Resolution of the Clarkdale Town Council to recognize 2014 Cities & Towns Week around the State of Arizona** – approval of Resolution #1486 a resolution recognizing 2014 Cities and Towns Week in Arizona.
  - E. **Change Order for the Intergovernmental Agreement (IGA) between the Town of Clarkdale and the Yavapai County Flood Control District** - Approval of the Change Order for IGA FY 14/15 in an amount not to exceed \$112,828.81 between the Town of Clarkdale and Yavapai County Flood Control District.
  - F. **Purchase of a Police Vehicle** – Approval of the Police Department purchasing a 2015 GM C1500 4x2 Pickup Truck.
  - G. **Rescheduling of the November 11, 2014 (Veteran’s Day) Regular Council Meeting** – approval to reschedule the November 11, 2014 Regular Council Meeting to November 18, 2014.

## **NEW BUSINESS**

- 5. NOTICE OF INTENT TO SET WASTEWATER RATES** – Discussion and consideration of a Notice of Intent to Set Wastewater Rates.
- 6. ENGAGEMENT OF SQUIRE PATTON BOGGS, LEGAL COUNSEL IN SUPPORT OF TOWN OF CLARKDALE WATER PLANNING EFFORTS** – Discussion and consideration regarding retaining Squire Patton Boggs, legal counsel specializing in water law.
- 7. FUTURE AGENDA ITEMS** - Listing of items to be placed on a future council agenda
- 8. ADJOURNMENT**

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.

**Minutes of a Regular Session of the Common Council of the Town of Clarkdale  
Held on Tuesday, October 14, 2014**

A Regular Meeting of the Common Council of the Town of Clarkdale was held on Tuesday, October 14, 2014, at 6:00 P.M. in the Men's Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, Arizona.

**CALL TO ORDER – Meeting was called to order at 66:01 P.M. by Mayor Von Gausig.**

**Town Council:**

Mayor Doug Von Gausig

Councilmember Bill Regner

Vice Mayor Richard Dehnert (absent)

Councilmember Curtiss Bohall

Councilmember Rennie Radoccia

**Town Staff:**

Town Manager Gayle Mabery

Town Clerk/Finance Director Kathy Bainbridge

Community Development/Economic Director Jodie Filardo

Community Services/Human Resources Director Janet Perry

Utilities/Public Works Director Wayne Debrosky

Police Chief Randy Taylor

Deputy Clerk Mary Ellen Dunn

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**Drake Meinke, Clarkdale resident and business owner:**

- **Thanked all those who participated in the Clarktoberfest event. The first annual event was a great success.**
- **The beer kettle is now permanently placed and named the “Clarkdale Beacon”.**
- **He also announced the Chamber Mixer that would be this Thursday at Clarkdale Historical Society and the Copper Museum.**
- **Trip Advisor report: The Copper Art Museum was #34 in the top 50 museums in the United States. The more listings you have in town the higher the higher you are rated on the page.**
- **Home Tour is coming up December 13<sup>th</sup>.**

**REPORTS**

**Current Events** – A brief summary of current events. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary.

Mayor's Report –

- 09/11/2014 – Yavapai County elected officials' semi-annual meeting
- 09/12/2014 – Southwest Wine Center Grand Opening
- 09/16/2014 – String of Pearls working group;
  - Meeting with Clint Chandler from Sen. Flake's office regarding water issues
- 09/17/2014 – Rivers Trails Conservation Association kayak trip;
  - Conference call for Water Resource Management Plan update meeting
- 09/20/2014 – Arizona Forward/SRP Environmental Excellence Awards
- 09/24/2014 – GoTo Webinar: Roadmap for Considering Water for Arizona's Natural Areas
- 09/25/2014 – Met with Robert Glennon, water attorney
- 09/26/2014 – Old Town Center for the Arts Verde River Concert – gave introduction
- 10/01/2014 – Met with Thomas Beauty, Chairman of Yavapai-Apache Tribe re: Oovah's Smoke Shop
- 10/04/2014 – Safety Boating Class (American Canoe Association)
- 10/07/2014 – Arizona Forward Water Committee – Arizona Potable Re-use;
  - Arizona Forward Sustainable Funding Committee;
  - Arizona Forward Issues Committee – strategic planning
- 10/08/2014 – Arizona Forward Issue Committee Leadership Meeting
- 10/09/2014 – Created background report on ANSAC for council
- 10/14/2014 – Arizona Native Plant Society – field trip along the Verde

Councilmember Bohall's Report –

- 09/10/2014 – PSPRS Board Meeting
- 09/24/2014 – VVTPO meeting
- 09/25/2014 – CAT meeting
- 10/09/2014 – SpectrUm Open House

Councilmember Regner's Report –

- 09/12/2014 – Grand Opening of the Southwest Wine Center
- 09/14/2014 – Friends of Southwest Wine Center – Wine in the Woods
- 09/16/2014 – Friends of the Yavapai College Foundation board meeting
- 09/17/2014 – Verde River Institute's Familiarization trip
- 09/26/2014 – Celebrate the River concert
- 10/01/2014 – Yavapai College Foundation Friends fundraising committee meeting;
  - Verde River Watershed Coalition meeting
- 10/03/2014 – Interview with Tim Carter (Verde Valley Advisory Committee/Yavapai College Governing Board)
- 10/04/2014 – Clarktoberfest
- 10/14/2014 – Yavapai College Governing Board meeting

Councilmember Radoccia's Report –

- 10/03/2014 - TAC Board meeting
- Wrote letter on behalf of Clarkdale Historical Society to Freeport McMoRan regarding the demolition of the clubhouse by Peck's Lake (not on behalf of Town)
- Walter Cronkite School of Journalism - two day interview
- Arizona Highways wants to do feature article on Rennie's place and he was able to promote the Town of Clarkdale

Town Manager's Report –

Kicked Drought Strategy Planning Level 1 to Level 2 for the first time this year in July and held there until the end of September and now will continue on Level 1 through the end of October. Expect to return to normal routines effective November 1<sup>st</sup>. This is due, in part, to cooperation from the City of Cottonwood over last week. They made some operational changes to their side of the system, changes to their pressure reducing valves, resulting in an approximate 40% reduction in water use by Cottonwood Ranch subdivision for Clarkdale's portion.

- 10/10/2014 - Posted quiet zone signs along the river with Paul Grasso, Art Durazo and Guss Espolt
- 10/18/2014 – **Second Sustainability in our Backyard** event 8 a.m. – 1 p.m. at Town complex; e-waste opportunity there;
  - Clarkdale Fire District – first Open House from 10 a.m. – 2 p.m.
- 10/22/2014 – Verde River at Clarkdale update public meeting
- 10/31/2014 – Halloween event; costume contest at 5:30; trick or treating 5- 7 p.m. Traffic control and management – manned road blocks on the outskirts (First North and First South)
- 11/18/2014 – only November council meeting: installation of new councilmember Scott Buckley and farewell to Councilmember Radoccia
- Herb Young Jr.'s remains being returned to Prescott for interment in Prescott National Cemetery. Janice Benatz has done some research and found pictures of Herb Jr. Herb Young Sr. served as right hand man for 41 years at Clarkdale Smelter and 9 years at Town of Clarkdale as the first Town Clerk.
- Councilmember Regner shared that Nick Hunsaker (sp) has Herb Young Jr.'s personal yearbook with his name and friends' autographs. Nick had purchased it at the Father's estate sale. Will present that yearbook to Herb Young Jr.'s daughter.

**Organizational Reports – Reports regarding regional organizations.**

CAT/ VVTPO – Cottonwood Area Transit and the Verde Valley Transportation Planning Organization & other transportation affiliations. Councilmember Bohall:

- Minutes are on file with the Town Clerk.

NACOG - Northern Arizona Council of Governments. Vice Mayor Dehnert:

- No report

NAMWUA - Northern Arizona Municipal Water Users Association. Councilmember Radoccia:

- No report

VRBP – Verde River Basin Partnership. Mayor Von Gausig:

- No report

VVLP – Verde Valley Land Preservation. Councilmember Radoccia:

- Eleven attendants at the meeting with the main question being “will group continue”? The importance of having councilmember attendance was discussed. The focus of group is being re-defined with more land preservation issues and not such a broad agenda. Ten square miles of state trust land would be a major topic and how the group could affect future negotiations with City of Cottonwood. Other item that will probably come to Town of Clarkdale council is the waning Walton funding so new funding will be needed.

WAC/MVWAC - Yavapai County Water Advisory Committee/Middle Verde Water Advisory Committee. Mayor Von Gausig:

- No report however did receive a call from Jim Lienhoutz from Southwest Water Center (USGS Chief in Arizona). He asked what we were doing regarding monitoring depths of wells and water stations. The monitoring stations were previously paid for by WAC/USGS and DWR. Since WAC has dissolved there is no one to pay for them; he wants Mayor Von Gausig to come up with ideas of how to achieve this. Gaps in data would not provide complete monitoring and would be disastrous.

VVREO – Verde Valley Regional Economic Organization. Councilmember Regner:

- No report

YCL – A report from the Yavapai College Liaison. Councilmember Regner:

- Yavapai College District Governing Board (DGB) held a regular meeting today. Board members subsequently went to the Yavapai College site in Sedona to meet with community members there celebrating the College remaining in the Sedona facility.
- Southwest Wine & Dine in the Vines will be October 18<sup>th</sup> at 5 p.m. at the Clarkdale campus. Tickets are \$125 each. The Clarkdale Experience basket is filled with donations totaling \$1114.00.

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**Councilmember Regner pulled item E and Councilmember Radoccia pulled item C.**

**Councilmember Bohall moved to accept Consent Agenda items A, B, D, F and G as presented. Councilmember Regner seconded the motion. The motion was passed unanimously.**

Councilmember Radoccia had questions about the Planning Commission minutes that could not be discussed at this meeting.

**Councilmember Radoccia moved to approve Consent Agenda item C. Councilmember Regner seconded the motion and it passed unanimously.**

- E. **Change Order for the Intergovernmental Agreement (IGA) between the Town of Clarkdale and the Yavapai County Flood Control District** - Approval of the Change Order for IGA FY 14/15 in an amount not to exceed \$112,828.81 between the Town of Clarkdale and Yavapai County Flood Control District.

The FY 13/14 IGA provided for a financial contribution from the Yavapai County Flood Control District to the Town of Clarkdale in an amount not to exceed \$81,910.00 in support of the of the Town’s Western Area Drainage Improvement Projects including Foothills Terrace and Old Jerome Highway projects. The Town of Clarkdale completed and billed Yavapai County a total of \$44,081.19 for work completed under the FY 13/14 IGA leaving a balance of \$37,828.81 under that IGA.

On August 4, 2014 the Yavapai County District Board of Directors approved the FY 14/15 IGA with the Town of Clarkdale for the amount of \$112,828.81 with the following breakdown:

Original IGA Contract Sum	\$ 81,910.00
Net Change by Previous Change Orders (+/-)	0.00
IGA Funds Spent to Date (end FY 13/14)	44,081.19
IGA Funds remaining at end of FY 13/14	37,828.81
Contract IGA Sum will be changed by	75,000.00
Contract IGA Sum for FY 2014/15	\$112,828.81

The term of this agreement will be extended to June 30<sup>th</sup>, 2015, and may be renewed for additional one year terms, until the completion of identified drainage improvements.

All design, engineering, bidding, contracts, inspection and project management will be the sole responsibility of the Town of Clarkdale. The Yavapai County Flood Control District's involvement in the project(s) is limited to the financial contribution as approved by the Board of Directors.

Councilmember Regner requested more information from Utilities/Public Works Director Debrosky who provided further information on the other flood control projects that are in the works.

Utilities/Public Works Director Debrosky addressed the Council noting five projects from FY 2013-2014: 1) Revamping of Old Jerome/Minerich culvert (completed July, 2014); 2) Lanny Lane and Lanny Avenue rolled curb and gutter; 3) Lisa Street to 89A roundabout intersection curb and gutter project (not complete – will work with Dollar General Store); 4) First South Street valley gutter completed before June, 2014; 5) work on the cemetery ditches.

In 2012-2013: 1) Broadway Flood and Erosion Mitigation project was completed; 2) school bus entrance drainage structures; 3) First North culvert pipe crossing.

In 2011-2012: 1) Minor flood control projects completed throughout lower Town area; 2) Third North rolled curb and drainage; 3) Deception Wash/Old Jerome Highway low water crossing (re-evaluating that project because of expense so is incomplete).

**Councilmember Regner moved to approve the Change Order Intergovernmental Agreement between the Town of Clarkdale and the Yavapai County Flood Control District for FY 14/15 in an amount not to exceed \$112,828.81 with an effective date of October 14, 2014. Councilmember Radoccia seconded the motion. The motion was approved unanimously.**

## **NEW BUSINESS**

**NOTICE OF INTENT TO SET WASTEWATER RATES** – Discussion and consideration of a Notice of Intent to Set Wastewater Rates.

At Council's direction, the Town Staff requested funding from WIFA for a new wastewater treatment plant and to work with SEC to complete the design of the new WWTP. Felix Construction was selected

as the prime contractor for this project and is working for the Town of Clarkdale under a JOC that Felix Construction had with the City of Peoria.

WIFA is an independent agency of the State of Arizona and is authorized to finance the construction, rehabilitation, and/or improvement of drinking water and wastewater. On July 26, 2011 the Town Council approved debt authorization for the new WWTP in the amount of \$5,500,000 during a Special Council Meeting.

The Clean Waters funding application for the WWTP Project was submitted to WIFA on August 18, 2011. WIFA approved the Clean Waters funding application for \$5,500,000.00 at their September 18, 2011 WIFA Board Meeting and the first draw on the WIFA loan was submitted to WIFA on January 5, 2012. The amount to be financed from WIFA would be \$5,500,000.00 which will represent a rate increase of approximately \$25.00 over a five (5) year period to cover the additional debt.

There were four (4) sewer rate increases of \$5.00 each slated to go into effect over a four year period and a fifth (5<sup>th</sup>) sewer rate increase of \$5.00 which may not be necessary depending on the actual amount of money financed through WIFA along with operation and maintenance costs for the new plant. Council approved three previous \$5.00 monthly sewer rate(s) increases which went into effect with the January 2012, 2013 and 2014 utility billings. Council also approved the use of \$660,000 to pay down the principle on July 1, 2014.

We currently have not closed out the WIFA loan, but expect to do so soon, using about \$5,200,000 of the WIFA funding available. Once we have the loan closed we will be able to run a final amortization schedule and will also have additional experience with operation and maintenance costs of the new WWTP so we can determine final rates.

The Notice of Intent to Impose or Increase Fees or Taxes, as required by A.R.S. 9-499.15, for the fourth (4<sup>th</sup>) slated sewer rate increase was posted on September 9, 2014 in order to comply with providing notice at least sixty days prior to the date the proposed new or increased fee or tax is scheduled to be approved or disapproved at a meeting of the Clarkdale Town Council.

The Notice of Intent to Set Wastewater Rates will satisfy WIFAs initial requirements concerning commitment by the Town of Clarkdale to the repayment of the Clean Waters Loan that the Town has to fund the design and construction of this new WWTP.

The Notice of Intent to Set Wastewater Rates schedules the required public hearing in order to officially consider the wastewater rate increase before Council for discussion and consideration as required by A.R.S. 9-511.01.

September 9, 2014 Post Notice of Intent to Impose or Increase Fees or Taxes  
(60 days prior to action by Council)

October 14, 2014 Council Adopts Notice of Intent to Set Wastewater Rates at a Regular Council meeting.

- October 14, 2014 File report with data supporting the increase of rates with Town Clerk at least 30 days prior to the Public Hearing.
- October 19, 2014 Public Hearing Notice published in newspaper.  
(Not less than 20 days prior to the public hearing.)
- November 18, 2014 Hold Public Hearing & Consider Adoption of Rates by Resolution.  
(Not less than 30 days after adoption of Notice of Intent.)
- December 18, 2014 Rates become effective. (30 days after the adoption of the Resolution or upon specific future date).

Utilities Director Debrosky presented information on this agenda item. Debrosky noted that this rate increase has gone through the strategic planning and budgeting processes for several years.

**Councilmember Bohall moved for the approval of the Notice of Intent to Set Wastewater Rates. Councilmember Regner seconded the motion. The motion was approved unanimously.**

**ENGAGEMENT OF SQUIRE PATTON BOGGS, LEGAL COUNSEL IN SUPPORT OF TOWN OF CLARKDALE WATER PLANNING EFFORTS** – Discussion and consideration regarding retaining Squire Patton Boggs, legal counsel specializing in water law.

Embedded in the Sustainable Clarkdale projects funded by the most recent grant from Walton Family Foundation in 2013 are an array of project concerns relating to water law and water rights. As this area of the law is intricate and complicated, the Town is seeking a legal firm specializing in this topic to assist with navigating the intricacies of the law. Not only are these issues central to evaluating options related to the diversion dam at Brewer's Tunnel and the Verde River @ Clarkdale project, but also there are an array of possibilities related to the Water Resources Management Plan to be vetted.

While these are but two of the projects in need of specialized counsel related to water law, staff anticipates the possibility of more projects arising in the future. In the grant received from the WFF, the funds to hire legal expertise were accommodated. Staff anticipates the possibility of additional water-related issues in the future which could avail of such expertise.

The relationship under consideration is intended to supplement the Town's ongoing efforts to develop sustainable water supplies to support existing and future development in the Town, explore water rights options relative to the use of the Verde River water, engage water experts and interested stakeholders in discussions relating to the sustainable use of water in the Verde River region, and work to develop collaborative measures for the protection of the Verde River.

In particular, Squire Patton Boggs anticipates the majority of work under this engagement will be undertaken by Peter Culp, an expert in Arizona water law and policy. Peter serves on a variety of boards and commissions related to water and natural resource issues and policy matters. He has been repeatedly appointed by Arizona Governors Janet Napolitano and Jan Brewer to the Colorado River Advisory Commission, where he has served since 2004. He also serves on a bi-national commission under the US Department of State, International Boundary and Water Commission, which is continuing to work to develop and implement new bi-national strategies for the management of Colorado River water supplies

in the face of growing water scarcity. His work on this commission has included high-level participation in the development, negotiation and implementation of four new international agreements (Minutes 316, 317, 318 and 319) that have significantly re-shaped the relationship between the US and Mexico with regard to water resource management and ecosystem protection.

The Town will make arrangements for the support of Squire Patton and Boggs on a project-by-project basis. The initial projects for which we have received grant funding for legal support are the Verde River @ Clarkdale and the Water Resource Management Program projects. These projects have a total budget for legal support of \$20,000. Staff anticipates utilizing this firm to provide legal counsel. With such experts guiding the Town's water resources legal approach, Clarkdale will be able to navigate these complex water issues.

Community Development/Economic Director Filardo presented information on this agenda item. She stated that Mr. Culp has been a good resource for the Town and has provided assistance to us at no cost up to this point. As new projects arise over and above the \$20,000 funds allocated, evaluations regarding the costs would be required. She noted that at his discounted rate, Mr. Culp and his firm will be funded for 55 ½ hours of work.

The Brewer's Tunnel portion of the Verde River @ Clarkdale project may have legal work accomplished through Freeport McMoran's attorneys.

Mayor Von Gausig noted that a town the size of Clarkdale being able to retain someone of the caliber of Peter Culp is quite a coup.

Town Manager Mabery noted that a portion of our monthly water bills is set aside for legal fees that could be used if needed.

**Councilmember Radoccia moved to approve the retention of Squire Patton Boggs as the Town's legal counsel specializing in water law. Councilmember Regner seconded the motion. The motion was approved unanimously.**

**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.

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 20<sup>th</sup>-25<sup>th</sup>. 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.

Mayor Von Gausig presented the information on this agenda item.

Discussion followed regarding the possible conflicts in our current negotiations with Freeport-McMoRan on delicate subject of Brewer's Tunnel diversion. One drawback would be the possible alienation of two of our good partners, Freeport and Salt River Project. The benefits of finding the Verde navigable were not readily apparent.

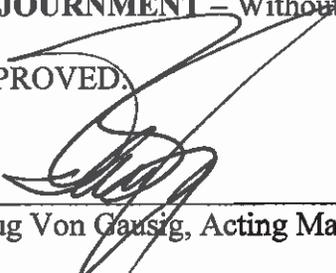
**Council's position and direction to Mayor Von Gausig was to not take a position (pro or con) regarding the navigability issue. No formal action was taken by the Council on this issue.**

FUTURE AGENDA ITEMS - Listing of items to be placed on a future council agenda.

**Councilmember Radoccia noted he would like to 1) discuss whether the Town of Clarkdale should take a position regarding the demolition of the clubhouse by Peck's Lake; and 2) possible consideration of an amendment to the cell tower ordinance.**

ADJOURNMENT – Without objection, Mayor Von Gausig adjourned the meeting at 7:30 P.M.

APPROVED:



\_\_\_\_\_  
Doug Von Gausig, Acting Mayor

ATTESTED/SUBMITTED:



\_\_\_\_\_  
Kathy Bainbridge, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Clarkdale, Arizona held on the 14<sup>th</sup> day of October, 2014. I further certify that meeting was duly called and held and that a quorum was present.

Dated this 19 day of November, 2014.

SEAL



\_\_\_\_\_  
Kathy Bainbridge, Town Clerk