

Arizona Navigable Stream Adjudication Commission Program Summary

Program Overview

Created in 1992 as a result of several years of litigation, the Arizona Navigable Stream Adjudication Commission (ANSAC) is a 5-member body whose responsibility is to determine the ownership of the beds of each of Arizona's 39,039 streams and rivers. The commission determines ownership by establishing whether or not the watercourses were navigable at the time of statehood on February 14, 1912. If those waterways were navigable at the time of statehood, the land in their beds is considered State Trust Land to be held in public trust with any related proceeds from the waterbeds deposited into the Riparian Trust Fund, pursuant to A.R.S. § 37-1156. However, if the commission determines the waterways were not navigable at the time of statehood, then the land belongs to the current titleholder.

The state government did not claim or disclaim ownership of any of its watercourses in 1912 when Arizona became a state. In 1985, the Attorney General filed a lawsuit asserting state ownership of the bed of the Verde River and indicated that similar action might be taken regarding the beds of other Arizona watercourses. In 1987, the Legislature responded to the state's lawsuit by passing a statute that disclaimed ownership of all riverbeds in the state with exception of the Colorado, Gila, Verde, and Salt Rivers.

A lawsuit by the Arizona Center for Law in the Public Interest led to a 1991 Arizona Court of Appeals decision that the Legislature's 1987 statute violated the Arizona Constitution and legal precedent set by the United States Supreme Court. Supreme Court precedent held that states were to retain ownership of the beds of streams and rivers that were navigable at the time of statehood and that the land was to be held in public trust and, therefore, could not be conveyed unless such a conveyance promoted a public purpose.

The 1991 ruling led to the 1992 creation by the Legislature of ANSAC (A.R.S. § 37-1121). As an independent agency, ANSAC's charge is to review evidence presented by the State Land Department (SLD) and other parties regarding the navigability of Arizona watercourses as of February 14, 1912. In doing this ANSAC has held hearings, listened to expert testimony and reviewed evidence to determine the navigability of each watercourse considered during the hearing process. The commission later published a report regarding each decision. Upon the publication of these reports, a 180-day appeals period began during which the SLD and other interested parties could seek judicial review of the decisions of the commission.

After nearly a decade of holding hearings and making determinations, an Arizona Court of Appeals ruling in 2002 determined that the commission's criteria for determining navigability were biased and ANSAC began anew. Since that court ruling, ANSAC has held additional hearings and reviewed evidence regarding all of Arizona's 39,039 watercourses, determining all of them to be non-navigable at the time of statehood.

On June 30, 2006, the SLD filed an appeal of ANSAC's decision that the Lower Salt River in Maricopa County was non-navigable at the time of statehood. The SLD stated that it appealed because there was evidence that the Lower Salt River may have been navigable at the time of statehood. The SLD therefore felt it was legally bound to appeal the decision in order to serve as a public trustee for the land.

The case was ruled in favor of ANSAC, upholding the non-navigability of the Lower Salt River. The decision by the Maricopa County Superior Court was further appealed to the Arizona Court of Appeals by the Arizona Center for Law in the Public Interest.

In May 2010, the Arizona Court of Appeals did not issue a ruling, but instead remanded the case to the Maricopa County Superior Court, requiring more work on the period from 1850 to 1900. ANSAC filed a petition to the Arizona Supreme Court to challenge this requirement. The Arizona Supreme Court declined to hear the case. The case was then appealed to the U.S. Supreme Court. The U.S. Supreme Court did not hear the case because it was not filed within the proper timeframe.

Since the initial appeal of the Lower Salt River case, 5 other appeals have been filed by the Arizona Center for Law in the Public Interest regarding the commission's determinations of non-navigability of the Santa Cruz River, San Pedro River, Verde River, Upper Salt River, and Gila River. These 5 cases stayed pending the completion of the Lower Salt River case.

In October 2011, the Maricopa County Superior Court remanded the 4 cases appealed in Maricopa County, including the Lower Salt River case, back to the commission to address issues raised by the May 2010 Arizona Court of Appeals opinion. The 2 cases appealed in Pima County also were returned to the commission to address the same issues.

In February 2012, the United States Supreme Court ruling in *PPL Montana v. Montana* had applicability for Arizona. The ruling required ANSAC to resolve whether individual segments of the affected streambeds were navigable prior to statehood. The commission had previously determined navigability for each streambed as a whole rather than by segments. Following the U.S. Supreme Court decision, the commission adopted a segment-by-segment approach in determining navigability for the 6 remanded cases.

In May 2017, the commission completed hearings for the 5 remanded cases and subsequently adopted its findings for each case (there were previously 6 cases but the Upper Salt River and the Lower Salt River cases were consolidated into a single Salt River case). The commission found all segments of all rivers to be non-navigable and thus subject to private ownership rather than government ownership.

In May 2018, the commission completed all legal proceedings thereby signifying the beginning of the time period for which appeals may be heard. In April 2019, the Arizona Center for Law in the Public Interest filed an appeal with Maricopa County Superior Court regarding the commission's 2018 determination of non-navigability for the Salt River, Gila River, and Verde River. The commission anticipates the last of the filings related to the 2019 appeal will be submitted by August 2020 with oral arguments likely to follow in the fall.

There were no appeals filed regarding the commission's determination of non-navigability for the San Pedro River or the Santa Cruz River. The commission's completed reports from the hearings for these 2 rivers are recorded in the appropriate county recorder's offices. The commission has completed all its work regarding the adjudication and the final determination of non-navigability for the San Pedro River and the Santa Cruz River.

The commission is scheduled to sunset on June 30, 2024 pursuant to Laws 2019, Chapter 26.

Program Funding

ANSAC currently receives its funding from the General Fund and the Arizona Water Banking Fund. The commission is funded at \$333,000 for FY 2021. *Table 1* displays historical funding information for ANSAC since FY 2008.

Table 1

Arizona Navigable Stream Adjudication Commission Funding

	<u>General Fund</u>	<u>Non-General Fund</u>	<u>Total</u>
FY 2021	133,000	200,000 ^{3/}	333,000
FY 2020	129,000	200,000 ^{3/}	329,000
FY 2019	127,400	200,000 ^{3/}	327,400
FY 2018	125,500	200,000 ^{3/}	325,500
FY 2017	124,000	200,000 ^{3/}	324,600
FY 2016	126,600	200,000 ^{3/}	326,600
FY 2015	127,400	200,000 ^{3/}	327,400
FY 2014	197,900	80,000 ^{2/}	277,900
FY 2013	116,100	80,000 ^{2/}	196,100
FY 2012	120,900	80,000 ^{2/}	200,900
FY 2011	122,600	80,000 ^{2/}	202,600
FY 2010	129,300		129,300
FY 2009	139,100		139,100
FY 2008	374,400 ^{1/}		374,400

^{1/} Includes a \$200,000 supplemental appropriation. ANSAC also received General Fund funding for FY 1994 through FY 2007.

^{2/} From the Risk Management Revolving Fund for legal expenses.

^{3/} From the Arizona Water Banking Fund for legal expenses.