

ARIZONA  
NAVIGABLE STREAM  
ADJUDICATION COMMISSION

FIVE-YEAR REVIEW REPORT

Title 12 Natural Resources  
Chapter 17

December 2015

## INTRODUCTION

The Arizona Navigable Stream Adjudication Commission has two primary purposes; one is to determine the navigability or non-navigability of Arizona watercourses as of the time of statehood, February 14, 1912, and the other is to determine the public trust values of those watercourses that are determined to have been navigable. Having a limited, specific, and temporary mission, the Commission is scheduled to Sunset June 30, 2020, absent any lawsuits that might require continuation beyond that date.

ANSAC has gone through a few different iterations and is presently engaged in conducting river and stream evidentiary navigability hearings regarding five major watercourses. (There were six cases but just a few months ago the Commission consolidated the Upper Salt River and the Lower Salt River into a single case, known as the Salt River). Hearings on these five rivers are what remain of similar hearings regarding twelve additional major rivers and more than 39,039 small and minor watercourses. One of six cases on appeal in the State Court system was returned to ANSAC by the Arizona Court of Appeals in October 2011 for additional work. The other cases on appeal, facing the same legal issues were also returned to ANSAC for additional hearings by agreement of the parties. At the time the single case, the Lower Salt River, was returned to the Commission with the recommendations of the Arizona Court of Appeals, a United States Supreme Court Case, generally known as PPL Montana, had been decided and since some issues in the PPL Montana case apply to the cases returned to ANSAC as a result of the Arizona Court of Appeals decision the Commission also decided to consider the relevant issues involved in the U.S.S.C. PPL Montana case. The rivers returned to ANSAC as a result of the Arizona Court of Appeals decision are the San Pedro, Santa Cruz, Gila, Verde, Lower Salt and Upper Salt (Of course the Lower Salt and Upper Salt are now a single case, the Salt River).

The current round of hearings regarding the five remaining cases is resulting in between eight and sixteen days of hearings for each case and thousands of more pages of evidence than were submitted during earlier rounds of hearings. In the past hearings lasted for only one or two days in any instance. Consequently there are five river cases (San Pedro, Santa Cruz, Gila, Verde, and Salt) that are in various stages of hearing and

navigability determination processes. ANSAC is hoping to complete these hearings during calendar 2016, and the rules governing these hearings are no different than those that have governed the 150+ earlier hearings.

The following rules R12-17-101 through R12-17-110 are the bases under which the Commission operates. There have been no other rules adopted by ANSAC and none are anticipated.

## Rules

R12-17-101. Petition to Modify Priorities

R12-17-102. Computation of Time

R12-17-103. Service of Documents

R12-17-104. Notice of Appearance as a Party

R12-17-105. Evidence

R12-17-106. Hearings

R12-17-107. Hearing Record

R12-17-108. Legal Memoranda

R12-17-109. Hearing to Identify Public Trust Values

R12-17-110. Hearing Log

## TITLE 12. NATURAL RESOURCES

### CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

#### ARTICLE 1. HEARINGS

#### TITLE 12. NATURAL RESOURCES

##### **R12-17-101. Petition to Modify Priorities**

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities listed in A.R.S. § 37-1123(E).

##### **R12-17-102. Computation of Time**

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

##### **R128-17-103. Service of Documents**

When a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.
  - a. Hand delivery with receipt or certificate of delivery,
  - b. Legible facsimile with confirmed receipt,
  - c. Personal service, or
  - d. By regular mail.
2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United States mail, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record.

##### **R12-17-104. Notice of Appearance as a Party**

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing,
2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

##### **R12-17-105. Evidence**

A. Submission of evidence.

1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable

Stream Adjudication Commission, 1700 West Washington, Suite 304, Phoenix, Arizona 85007, on or

before the published hearing date.

2. A person may submit evidence at the hearing for which the evidence is intended.

3. A person is not required to resubmit evidence previously submitted to the Commission before August

9, 2002 that relates to the navigability of a particular watercourse.

4. A person submitting evidence shall submit an original and seven copies of the evidence.

a. The evidence shall, where practical, be printed on one side of 8-1/2 x 11-inch paper.

b. For computer-generated presentations, such as PowerPoint, only paper printouts of the

presentation slides are accepted.

5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and

videotapes are the property of the Commission.

B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's

expense, a copy of any item suitable for copying.

C. Objection to an item of evidence.

1. Any person may object to the admission or exclusion of an item of evidence by making the objection

on the record at the public hearing at which the item of evidence is offered.

2. The Commission shall admit the evidence, decline the evidence, or take the matter under advisement

for later determination.

D. Record keeping. The Commission shall maintain all relevant evidence submitted for each hearing.

### **R12-17-106. Hearings**

A. Evidence.

1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.

2. The Presiding Officer shall announce the time for which evidence is no longer accepted for consideration.

B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.

C. A party may respond and present evidence and arguments on all relevant issues.

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of

unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.

D. The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, to avoid needless consumption of time, and to protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:

1. The order in which a party will testify,
2. The time limit for testimony, if any, and
3. The order and duration a party may question a witness.

E. If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.

F. The Commission shall, as a whole, rule on any motion involving a matter of law or fact.

G. The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission

H. Public participation.

1. The Commission shall provide an opportunity for public comment to any item on the meeting agenda.

2. The Presiding Officer may establish time limits for public comments.

3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing, or willfully refuses to comply with an order of the Presiding Officer.

#### **R12-17-107. Hearing Record**

A. The Presiding Officer shall ensure that a record is created of the proceeding. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceedings. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.

B. A person may obtain a duplicate copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with replacement blank audiotapes. The Commission will not

provide a transcript of the hearing.

C. A person may obtain a copy of a court reporter's transcript by making arrangements directly with the court reporter.

**R12-17-108. Legal Memoranda**

A. Opening legal memoranda.

1. A party may file an opening legal memorandum with the Commission within 30 days, or as

determined by the Presiding Officer, after conclusion of the hearing.

2. The party shall serve a copy of its opening legal memorandum upon all other parties to the hearing and

shall file proof of service with the Commission.

3. Unless allowed by the Commission, an opening legal memorandum may not exceed 25 typewritten

pages.

B. Response memoranda.

1. A party may file a response legal memorandum with the Commission within 20 days, or as determined

by the Presiding Officer, after service of the opening legal memorandum.

2. The party shall serve a copy of its response legal memorandum upon all other parties appearing before

the Commission at the hearing and shall file proof of service with the Commission.

3. Unless allowed by the Commission, a response legal memorandum may not exceed 15 typewritten

pages.

**R12-17-109. Hearing to Identify Public Trust Values**

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall,

within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

**R12-17-110. Hearing Log**

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing

regarding a particular watercourse. The hearing log shall include:

1. The hearing number,
2. The name and date of the hearing,
3. The final determination date,
4. The Commission report date; and
5. The county recording or close date.

# Rules Analysis

Rule

12-17-101

**Petition to Modify Priorities**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for modifying priorities pertaining to holding hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report

There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule

12-17-102

**Computation of Time**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for computing time for filing various legal documents including post hearing legal memorandums. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

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10. Status of the completion of action indicated in the previous five-year-review report

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11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule                                      12-17-103                                      **Service of Documents**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for service of documents to the Commission. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

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11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule

12-17-104

**Notice of Appearance as a Party**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for appearing at hearings as a party to the proceedings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report

There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule	12-17-105	Evidence
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1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for receiving and handling evidence. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

There is no business competitiveness regarding these rules.

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There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule	12-17-106	<b>Hearings</b>
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1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures determining the conduct of hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

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There is no economic, small business or consumer impact related to this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule	12-17-107	<b>Hearing Record</b>
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1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for creating a hearing record. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule

12-17-108

**Legal Memoranda**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for parties filing legal memoranda. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule

12-17-109

**Hearing to Identify Public Trust Values**

1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for holding public trust value hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

Rule	12-17-110	<b>Hearing Log</b>
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1. Authorization of the rule by existing statute

This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide instructions for maintaining a Hearing Log of all Cases considered by the Commission. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

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The rule is clear, concise, and understandable.

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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action

The Commission does not plan to amend the rule until a substantive issue arises.

**Arizona Navigable Stream Adjudication Commission  
Rules Matrix**

RULE NUMBER	RULE TITLE	PROPOSED RULE ACTION		
		No Change	Amend	Repeal

12-17-101	Petition to Modify Priorities	X		
12-17-102	Computation of Time	X		
12-17-103	Service of Documents	X		
12-17-104	Notice of Appearance as a Party	X		
12-17-105	Evidence	X		
12-17-106	Hearings	X		
12-17-107	Hearing Record	X		
12-17-108	Legal Memoranda	X		
12-17-109	Hearing to Identify Public Trust Values	X		
12-17-110	Hearing Log	X		

### **Commission Members**

Wade Noble, Chair  
Jim Henness, Vice Chair  
Jim Horton, Member  
Bill Allen, Member  
Commission Member, Vacant

## **Staff Members**

George Mehnert, Director  
Matthew Rojas, Legal Counsel  
(Legal Counsel Must be Outside)  
Vacant, Research Analyst

## **Commission Address**

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