

## TITLE 12. NATURAL RESOURCES

## CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

*Editor's Note: 12 A.A.C. 17 consists of new rules for the Arizona Navigable Stream Adjudication Commission that were made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).*

*Editor's Note: 12 A.A.C. 17, which formerly contained the rules of the Arizona Navigable Streambed Adjudication Commission, expired under A.R.S. § 41-1056(E) at 9 A.A.C. 4135, effective July 31, 2003. The rescinded Chapter is on file in the Office of the Secretary of State (Supp. 03-3).*

## ARTICLE 1. HEARINGS

*Article 1, consisting of R12-17-101 through R12-17-110, made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).*

## Section

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## ARTICLE 1. HEARINGS

**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 set in accordance with A.R.S. § 37-1123(E).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

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

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

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

**R12-17-103. Service of Documents**

If 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. 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, addressed to the person being served at the last known address of record.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

**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.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

**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 relevant to a matter that is being heard.
  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 that can be copied.
- 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, exclude the evidence, or take the matter under advisement for later determination.
- D. Recordkeeping. The Commission shall maintain a permanent record for all relevant evidence submitted for each hearing.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

**R12-17-106. Hearings**

- A. Evidence.
  1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
  2. At the beginning of the hearing, the Presiding Officer shall announce the time when evidence will no longer be 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; confusion of the issues; or 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, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:
1. The order in which parties will testify,
  2. The time limit for testimony, if any, and
  3. The order and duration of questions that a party may ask 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 regarding any item on the hearing 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.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
3300, effective October 1, 2005 (Supp. 05-3).

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

- A.** The Presiding Officer shall ensure that a record of the proceeding is created. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceeding. 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 copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with a blank audiotape.
- C.** A person may obtain a copy of a court reporter's transcript by making copying arrangements directly with the court reporter.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
3300, effective October 1, 2005 (Supp. 05-3).

**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 within another reasonable period of time after conclusion of the hearing, as determined by the Presiding Officer.
  2. The party shall serve a copy of the opening legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
  3. Unless allowed by the Commission, a party shall not submit an opening legal memorandum that exceeds 25 pages.
- B.** Response memoranda.
1. A party may file a response legal memorandum with the Commission within 20 days, or within another reasonable period of time after service of the opening legal memorandum, as determined by the Presiding Officer.
  2. The party shall serve a copy of the response legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
  3. Unless allowed by the Commission, a party shall not submit a response legal memorandum that exceeds 15 pages.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
3300, effective October 1, 2005 (Supp. 05-3).

**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.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
3300, effective October 1, 2005 (Supp. 05-3).

**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.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
3300, effective October 1, 2005 (Supp. 05-3).