

**ARIZONA STATE PARKS BOARD  
SPECIAL MEETING  
1300 W. WASHINGTON STREET  
PHOENIX, AZ  
MARCH 3, 2008**

**Board Members Present:**

William Scalzo, Chairman  
Reese Woodling  
William Cordasco  
Arlan Colton  
Tracey Westerhausen  
William Porter (via telephone)  
Mark Winkleman

**Staff Present:**

Kenneth E. Travous, Executive Director  
Jay Ream, Assistant Director – Parks  
Jay Ziemann, Assistant Director – Public Information and Partnerships  
Mark Siegwarth, Assistant Director – Administration  
Cristie Statler, Assistant Director – Outreach  
Debi Busser, Executive Director

**Assistant Attorney General**

Joy Hernbrode, Assistant Attorney General

**A. CALL TO ORDER - ROLL CALL**

Chairman Scalzo called the meeting to order at 1:05 p.m. Roll Call indicated that an quorum was present.

**B. INTRODUCTIONS**

Ms. Hernbrode introduced Ms. Theresa Craig, the new Assistant Attorney General for the Natural Resources Section of the Attorney General's Office (and her new boss). Also present was Mr. Dan Shack, who is the Appellate lawyer on this case.

**C. EXECUTIVE SESSION - Upon a public majority vote, the Board may hold an Executive Session which is not open to the public for the following purposes:**

- 1. To discuss or consult with its legal counsel in order to consider its position and instruct its attorneys regarding the Board's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. §38-431.03 (A)(4)**
  - a. Mabery Easement Dispute Litigation**

Prior to going into Executive Section, Ms Hernbrode gave a history on this issue. She referred to a map on Google Earth throughout this discussion.

Ms. Hernbrode noted that as the Board will probably remember from the endless recitations on this case, the Board has been involved in litigation with a landowner

known as the Mabery Land Co., which is up in the Verde Valley. Their property is completely surrounded by Arizona State Parks (ASP). The area surrounding it is either the Verde River Greenway or Dead Horse Ranch State Park. The Board's concerns include two access easements that the Mabery Ranch Co. had claimed as their property. One is known as the Replacement Easement. After coming over the bridge and making a right turn into the park, the Replacement Easement starts basically at that right turn and curves around to the Mabery parcel. The other plan is to Tuzigoot Road. While staff have gated it in a lot, we're still not sure where they think Tuzigoot Road is. We're talking about where we think it is. The court came up with a third version of where it is. Our litigation concerns those two parcels.

Ms. Hernbrode noted that Tuzigoot Road does, by all accounts, cut through a center portion of Dead Horse Ranch State Park and exits on the north end of the park into Tuzigoot Marsh and Tuzigoot National Monument.

Ms. Hernbrode reported that the Board has been involved in this litigation for a while – about 15 years. We are currently at the AZ Court of Appeals where we have obtained a rather nice decision from the Court of Appeals in our favor dismissing all of the Mabery's monetary claims and sending us back to the Superior Court in Yavapai County to litigate where exactly these two easements are and what rights the Maberys would have under them.

Ms. Hernbrode stated that we have granted Mabery Ranch Co. an extension to file a Petition for Review to the Supreme Court of Arizona and that extension runs until April \_\_\_\_\_, at which point the Maberys either have to file a Petition for Review or decide not to. We granted them that extension because they have made us a Settlement Offer. She requested that the Board go into Executive Session at this time to discuss what that Settlement Offer is.

Chairman Scalzo stated that, before going into Executive Session, he wanted to know whether Mr. Travous had any history to add for those Board members who are not familiar with this issue.

Mr. Travous stated that, while most of these Board members have not been through most of this, Ms. Hernbrode did a good job of covering most of it. She has raised the key issues. This has been a long, protracted case.

Mr. Cordasco noted there is a social aspect to this issue. It was a friendly initiation of getting the park established to begin with with the Maberys. He asked Mr. Travous to discuss the relationship between the Maberys and staff.

Mr. Travous responded that the relationship was always a little less than cordial, but professional. There was no reason for angst because everyone was doing their own thing on their property as they wanted to do. On several occasions the Maberys came to the Board and sold us parts of their property when we were looking at expanding the greenway. At those points in time the Board had money and bought those parcels. It used to be that we had to do a low-water crossing across the river to get into not only the park but for them to get back to their property. When the bridge was put in, we didn't need this property any more and that's when the Maberys wanted to do their Blazin' M Ranch. The Board contends that the County would not have given them their

Special Use Permit to do the Blazin' M Ranch because the road coming in had a right-angle turn that was so steep that a fire truck couldn't make the turn in case of a fire. The Board agreed to drop the easements in several places and put all of their apples in one basket and give them an easement (as shown on the map) in lieu of all the others.

Mr. Travous added that for five years there was an agreement (negotiated by Bob Frost) that they pay so much per year for the rights to commercial use over that property. At the end of that five years they determined that they did not need that concession agreement with ASP any more and that's when things started to deteriorate. This goes back to almost 1990.

Ms. Hernbrode noted that the Maberys are well-connected in the Verde Valley and there have been a number of negative articles in the news media there.

Chairman Scalzo called for a vote to go into Executive Session. The call carried unanimously. He admonished all parties not needed in this room for Executive Session to leave.

The public meeting recessed at 1:14 p.m. for the Board to go into Executive Session.

Chairman Scalzo reconvened the meeting at 2:30 p.m.

#### **D. ACTION ITEMS FROM EXECUTIVE SESSION**

##### **1. Mabery Easement Dispute Litigation**

- a. The Board will consider and may vote on whether to accept the Maberys' request.**

##### **Board Action**

**Mr. Porter:** I move that the Board approve and authorize the Assistant Attorney General (Ms. Hernbrode) to proceed in accordance with the instructions given in Executive Session.

Mr. Winkleman seconded the motion and it carried unanimously.

#### **E. ADJOURNMENT**

Mr. Winkleman made a motion to Adjourn the meeting. Mr. Cordasco seconded the motion and it carried unanimously.

Chairman Scalzo adjourned the meeting at 2:32 p.m.

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Arizona State Parks Board  
Minutes  
March 3 2008

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William C. Scalzo, Chairman

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Kenneth E. Travous, Executive Director