WATER-RIGHT DOCKET

Bandelier National Monument

Docket No: 1

RITO DE LOS FRIJOLES.

State Water Rights Documentation

02-11-1944: change of ownership

N [illegible]

STATE ENGINEER'S OFFICE
STATE OF NEW MEXICO

Santa Fe, Feb. 11 1944

Received of Treasurer of the United States
One & no/100 Dollars ($1.00)
Postoffice (For Nat'l Park Service, Santa Fe)
For Payment as indicated below: On Application No. 802

Filing Change of ownership	$ 1	00
Recording		
Examination		
Extension of time		
Certificate of Construction		
License to appropriate		
Change of Diversion or use		
Blue Prints		
Copies		
Miscellaneous		

Thomas M. McClure State Engineer
By Mary M. Turney Clerk.

11-20-1942: letter to frijoles ranch from state engineer regarding official receipt no. 10000 covering your remittance of the $1.00 fe

File No. 802 November 20, 1942.

Mrs. Evelyn Cecil Frey,
Frijoles Ranch,
Santa Fe, New Mexico.

Dear Evelyn:

Enclosed is our official receipt No. 10,000 covering your remittance of the $1.00 fee for the Change of Ownership of Water Right on No. 802 from A. J. Abbott Heirs to you as sole owner. A copy of this was given you here in our office I believe. Best regards.

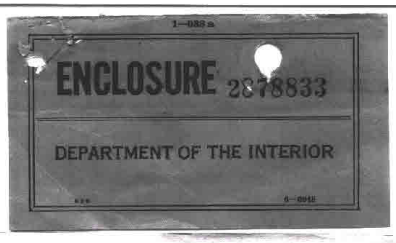
Very truly yours,

Thomas M. McClure
State Engineer.

JT
encl.

By: Chief Clerk.

11-20-1942: change of ownership of water right



Bandelier

CHANGE OF OWNERSHIP OF WATER RIGHT

State of New Mexico,)
County of Santa Fe.) ss.

File No. 802
Date Received Nov. 5, 1942

This is to certify that Evelyn Cecil Frey, being first duly sworn upon her oath states: That she is the sole owner of the water rights set forth in water right file number 802 of record in the office of the State Engineer at Santa Fe, New Mexico, the same having been acquired through A. J. Abbott heirs, the former owner and holder of said water right.

The purchased lands with bona fide water right was fully described as follows (described only lands with actual water right):

Subdivision	Section	Township	Ranger	Acreage
5 On north side above ruins				

The undersigned, being first duly sworn upon oath, deposes and says that he has read the foregoing statements and that the same are true to the best of his knowledge and belief.

/s/ Evelyn Cecil Frey

Subscribed and sworn to before me this 5 day of November, A.D. 19 43.

My commission expires:
October 28, 1945

/s/ Jean Teague
Notary Public

INSTRUCTIONS

Change of ownership shall be filed in
Duplicate--for surface water rights,
Triplicate--for underground water rights.

This form shall be executed either by the former owner or by the new owner of the water right, and shall be accompanied by a filling fee of $1.00.

IMPORTANT: Any filing, permit or license to appropriate water may be assigned but no such assignment shall be binding, except on the parties thereto, unless filed for record in the off ce of the State Engineer. Such filing shall be made out on Change of Ownership forms or may consist of certified copies of the actual assignment.

NO irrigation right which is appurtenant to the land shall be assigned or transferred apart from the land excepting in the manner specifically provided by law. Neither may title to land be transferred apart from any water right which is appurtenant thereto unless such right has been previously alienated from the land in the manner provided by law.

11-20-1942: change of ownership of water right

CHANGE OF OWNERSHIP OF WATER RIGHT

File No. 802

State of New Mexico, } ss.
County of Santa Fe }

Date Received Nov. 5, 1942

This is to certify that Evelyn Cecil Frey, being first duly sworn upon her oath states: That she, ~~County of~~ ~~State of~~, is the sole (partial or sole) owner of the water rights set forth in water right file number 802 of record in the office of the State Engineer at Santa Fe, New Mexico, the same having been acquired ~~from~~ ~~or through~~ A. J. Abbott heirs, the former owner and holder of said water right.

The purchased lands with bona fide water right are fully described as follows (describe only lands with actual water right):

SUBDIVISION	SECTION	TOWNSHIP	RANGE	ACREAGE
5 On north side above ruins				
			Total	

The undersigned, being first duly sworn upon oath, deposes and says that he has read the foregoing statements and that the same are true to the best of his knowledge and belief.

/s/ Evelyn Cecil Frey

Subscribed and sworn to before me this 5 day of November, A.D. 19 43.

My commission expires: October 28, 1945

/s/ Jean Teague
Notary Public

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11-20-1942: change of ownership of water right

FILED

NOV 5 1942

File Number 802

OFFICE STATE ENGINEER
SANTA FE, N. M.

CHANGE OF OWNERSHIP OF WATER RIGHT

State of New Mexico,
County of Santa Fe. } ss.

Evelyn Cecil Frey being first duly sworn upon ~~his~~ Her oath states: That She is

is the Sole (~~partial or~~ sole) owner of the water rights set forth in water right, File Number 802 of record in the office of the State Engineer at Santa Fe, New Mexico, the same having been acquired by ~~deed from~~ or through A. J. Abbott heirs, the former holder of said water right.

If only a part of the water right has been acquired, the purchased lands actually covered by water right must be fully described as follows:

ACRES	SUBDIVISION	SECTION	TOWNSHIP	RANGE
5	On North Rio Chama ranch-			

Evelyn Cecil Frey

SUBSCRIBED AND SWORN to before me this 5 day of November, A. D., 1942

Jean Teague
Notary Public

My Commission expires:

MY COMMISSION EXPIRES OCTOBER 28, 1945

NOTE: Fee of $1.00 must accompany this paper. The form must be executed either by the former owner or the present owner of the water right.

11-20-1942: letter to nps from state engineers office regarding six copies of license no. 802 to appropriate the waters of el rito de l

February 20, 1942.

File No. 802

COPY

Regional Director,
National Park Service,
Santa Fe, New Mexico.

Dear Sir:

There are enclosed six copies of License No. 802 to Appropriate the waters of El Rito de los Frijoles, in Sandoval County, State of New Mexico, involving lands within Bandelier National Monument.

I have this day made a careful search of the records in this office and there are no later or subsequent applications, licenses, or permits on file involving the above water rights granted to A. J. Abbott on January 27, 1915.

I have been informally advised that deeds have been executed and transfers made purporting to convey the above water right. If same were made, no records thereof appear in this office.

Very truly yours,

State Engineers Office.

By J. J.

JT
encl.

STATE OF NEW MEXICO
Office of State Engineer.

LICENSE TO APPROPRIATE WATER

License No. 802. Book "G". Refers to Permit No. 802.
Priority Date - January 27, 1915.

WHEREAS, on the fourth day of December, A. D. 1913 A. J. Abbott, of Buckman, County of Santa Fe, State of New Mexico, duly made application No. 802, for a permit to divert five-tenths (.5) of a cubic foot of water per second of the waters of El Rito de los Frijoles in Sandoval County, State of New Mexico, for irrigation purposes; which was duly approved May 11, 1915, for forty-two hundredths (.42) cubic feet per second, and

WHEREAS, on the first day of April, A. D. 1918, the holder of said permit duly made proof of the completion of adequate works for the diversion of said waters, as evidenced by the Certificate of Construction issued this fifteenth day of October, A. D. 1921, and

WHEREAS, on the first day of April, A . D. 1918, the holder of said permit, A. J. Abbott, duly made proof of the actual application to beneficial use of forty-five (45) acre feet of water, in connection with which the required inspection was made and report thereon duly executed by J. D. Walker and filed March 1, 1919, suggesting the issuance of a final license for three (3) acre feet of water per acre net for the season April 1st to August 31st.

00-00-0000: license to appropriate water, page 2cont

NOW, THEREFORE, I, Charles A. May, State Engineer of the State of New Mexico, by virtue of the authority vested in me by the laws of the State of New Mexico, do hereby grant to A. J. Abbott of Buckman, County of Santa Fe, State of New Mexico, the holder and owner of said Permit No. 802, a license dating from the filing of publisher's affidavit of publication of the notice, January 27, 1915, to appropriate 45 acre feet of water delivered on the land each one hundred fifty three (153) day irrigation season from April 1st to August 31st, to be conducted from El Rito de los Frijoles in the County of Sandoval, State of New Mexico, and applied as follows, to-wit: A total of 15 acres lying on the north and south sides of El Rito de los Frijoles Creek, immediately below the Ceremonial Cave in said Canon, the same to be used as above stated and may be changed only as provided by law.

In Witness Whereof, I have hereunto set my hand and official seal this fifteenth day of October, A. D. 1921.

Chas. A. May.
State Engineer.

STATE OF NEW MEXICO
Office of State Engineer

CERTIFICATE OF CONSTRUCTION

Certificate No. 802. Book "G". Refers to Permit No. 802.

THIS IS TO CERTIFY, that the works known as Rito de Los Frijoles Ditches, under Permit No. 802, from El Rito de Los Frijoles, which are located on unsurveyed lands in the Santa Fe National Forest, at a point which bears S. 20° 14' E. 1214 feet distant from the base of the cliff below the San Juan Cave in El Rito de Los Frijoles Canon, in the County of Sandoval, State of New Mexico, after having been duly inspected and reported on by J. D. Walker of Santa Fe, New Mexico, who is competent and was duly authorized by this office, were found to be properly constructed and adequate through which to apply forty-five acre feet of water per season to the intended use, the actual capacity of said diversion canal being one cubic foot per second.

Witness my hand this fifteenth day of October, A. D. 1921.

Chas. A. May
State Engineer.

10-15-1921: letter to john boyd from state engineer regarding enclosed duplicates

October 15, 1921

802

Mr. John Boyd,
Santa Fe, N. M.

Dear Sir:

Please find enclose duplicate Certificate of Construction and Final License under Application No. 802, for which you paid a fee of $10.00, covered by Receipt No. 2114. These papers are made in the name of A. J. Abbott, the original applicant, for the reason that there is no assignment of record. I am also enclosing the duplicate Notice of Intention.

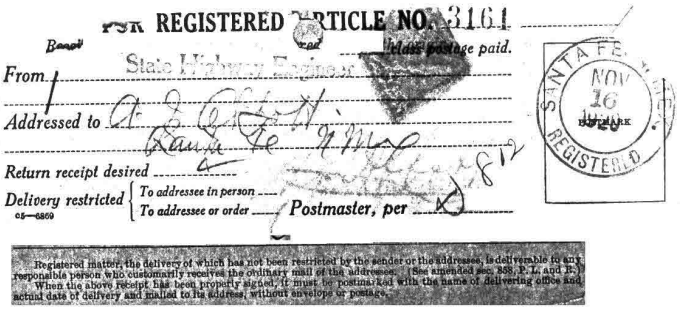
Very truly yours,

State Engineer.

BMT:IM

Enc.

11-16-1920: registered article no. 3161



November 15, 1920

802

Mr. A. J. Abbott,
Santa Fe, New Mexico.

Dear Sir:-

As heretofore advised the record under your project No. 802 on the Rito los Frijoles shows that the issuance of final certificate and license has been withheld pending payment of a fee of $10.00. I understand that you have assigned this project to Mr. John Boyd and have written him but so far have received no reply.

In order to give this matter the proper consideration and to protect any subsequent appropriators from this stream, you are hereby given notice that this project will be held open for 30 days from date for the payment of the above fee in order to show that the project has not been abandoned and in the absence of such payment as required the State Engineer will cancel the project on the date set.

Very truly yours,

HWH:H

State Engineer.

copy to- John Boyd,
Rito los Frijoles,
Santa Fe, New Mexico.

Registered. Return receipt requested.

11-16-1920: letter to rito los frijoles from state engineer regarding application for water right from the rito los frijoles

July 8, 1920

802

Mr. John Boyd,
Rito los Frijoles,
Santa Fe, N. M.

Dear Sir:

The records of this office show an application for water right from the Rito los Frijoles originally filed on by Mr. A. J. Abbott. Mr. Abbott completed this project and a final inspection and report was made by a licensed engineer, so that the project is ready for the final Certificate of Construction and License to Appropriate water on payment of the fee of $10 therefor.

I have interview Judge Abbott on the matter and he states that he has assigned all his rights in the project to you. The rules of this office provide that the original or a certified copy of the assignment shall be placed on record in this office and, if you desire to complete this project and have the final papers issued in your name, kindly file this assignment and remit the above mentioned fee. In order that this project be not canceled of record, kindly comply with the above request within thirty days from date.

Very truly yours,

State Engineer.

EMT:W

11-08-1919: letter to judge abbot from state engineer regarding final proofs and his report on your irrigation project

November 8, 1919.

802.

Judge A. J. Abbott,
Santa Fe, N.M.

Dear Sir:

Mr. J. D. Walker has filed the final proofs and his report on your irrigation project in the Frijoles Canyon, No. 802. This office has taken up the matter for the purpose of issuing the Certificate of Construction and Final License, but knowing that you are not now a resident at the Canyon would like to be advised whether or not you have abandoned the project or assigned your interest therein.

As the record now stands these papers are to be issued in your name and will be so issued, unless you advise to the contrary, on receipt of the fees of $5.00 each or, a total of $10.00. The fees heretofore paid by you amount to $15.00 and cover the fees for filing the application and recording and issuing the permit.

Very truly yours,

State Engineer.

bmt
c/c Forest Supervisor,
Santa Fe, N.M.

02-20-1919: letter to state engineer from state highway commission regarding requirements in permit no. 802

FILED

MAR 1 1919

OFFICE STATE ENGINEER,

NEW MEXICO
STATE HIGHWAY COMMISSION
SANTA FE

STATE HIGHWAY COMMISSION
CHARLES SPRINGER, Pres.
EUGENE KEMPENICH, Sec'y
W. M. ATKINSON

STATE HIGHWAY ENGINEER
JAMES A. FRENCH

Feb. 20 1919

Hon James A.French,
State Engineer,
Building;
Dear Sir:

In accordance with your advice as per letter dated May 10 1918 and the circular letter, I beg to submit the report as required by law and your requirements,in permit No. 802 by A.J.Abbott.

1. Give location of point of diversion or storage by legal subdivision as well as by course and distance.

As the country in this vicinity is unsurveyed reference can not be given to any established corner, but the headgates of ditches are about one third and one half mile below the ceremonial cave.

2. Report on actual construction works completed noting in detail any changes from original intentions, and any new changes or repairs you as engineer deem advisable or necessary. Give maximum capacity

The ditches have been constructed for a period of probally one hundred years. They consis t of an earthen channel two feet wide by nine inches deep well constructed.

The maximim capacity is 1 sec. ft.

3. You shall report on the total ammount of water applied to a benifici benificial use on the basis pf acre feet per acre pr season actually delivered on the land under said permit.

45 acre ft . is actually applied benificially on 15 acres of land thw duty of the water being three acre ft. per acre.

4. According to law the final liscence is limited to theammount of water actually applied beneficially. In reprting confine yourself as clssely as possible to that provision.

The duty of 3 acre ft. of water per acre delivered on the land was actually applied to a beneficial use as required by law and is not excessive.

5. Note the periods of annual use, especially the irrigation season in number of days beginning April 1st. and ending August 31st. Irrigation season of 153 days.

6. In describing acerage cultivated, list and locate by subdivision, township and range, giving number in each. Be careful to include only areas irrigated under the permit.

As the county is unsurveyed land, cannot be listed by subdidision but consists of about 15 acres.

7. Your report shall be formulated separate from the proofs, and sworn to before a notary or officer qualified to take oaths.

Proofs on proper form and duly executed, dated, filed in your office Aprill1, 1918, accompany this report.

8. When either the proof of completion of proof of water used is in error, make sufficient explanation in the report.

The said proofs conform generally to this report.

9.If the holder of said permit is not the original applicant the assignment shall be of record in the State Engineer's office.

The holder of permit is the original applicant.

10. The right-of-way for the works under the water permit shall either be owned or controlled without controversy by the holder of

JAMES A. FRENCH
STATE ENGINEER
STATE HIGHWAY ENGINEER

STATE OF NEW MEXICO
ENGINEERING DEPARTMENT
SANTA FE

SUBJECT:

said permit. Conclusive proof of this shall be filed.

The right-of-way for the works is controlled without controversy by applicant.

11. The following statement or certificate shall be made a part of the report to be sworn to:

"I hereby certify that I am the engineer who made the inspection in the field of the works known as Rito de los Frijoles Ditches, under Permit No. 802, diverting from Rito de los Frijoles, and have found them in satisfactory condition to deliver the full amount of water actually applied beneficially on the total area described. I suggest the issuance of a certificate of construction and a license to appropriate in accordance with the statute and recommendations herein contained, the said livense to be limited for the said 153 days irrigation season to 3 acre feet of water per acre delivered on the land, and, also, to be limited and appurtenant to the said cultivated area upon which the water has been applied beneficially ynder Permit No. 802, comprising 15 acres."

J. D. Walker
Engineer.

Subscribed and sworn to before me this 12th day of March 1919.

Bradley M. Hanna
Notary Public.

My commision expires Jan 21, 1919.

02-20-1919: proof of completion of works

PROOF OF COMPLETION OF WORKS

Under Permit No. 802

FILED

APR 1 1918

OFFICE STATE ENGINEER,

State of New Mexico } ss.
County of Santa Fe }

I, A. J. Abbott

of Buckman, County of Santa Fe

State of New Mexico, being first duly sworn, do hereby certify that I am the holder of the permit to appropriate water from Rito de los Frijoles River in the Rio Grande stream system or drainage in Santa Fe and Sandoval County for Irrigation and domestic. purposes;

that said application for permit has been approved and filed in the State Engineer's Office under No. 802; that the plans and specifications were filed in the Office of the State Engineer of New Mexico, and approved on the 11th day of May, 1915; that the works necessary to accomplish the appropriation of the water in accordance with the said application for permit have been completed; that the following statement of facts is submitted in proof of the completion of said works; that I made the said statement and that each and all of the items contained therein are true.

A. J. Abbott

Subscribed and sworn to before me this 1st day of April, 1918.
My commission expires
Aug. 17 1921.

Antonio Ortiz Gabriel
Notary Public.

STATEMENT.

1. Name of appropriator is A. J. Abbott.
2. Postoffice address Buckman, NewMexico
3. The direct source of supply is Rito de los Frijoles in the Rio Grande stream system.
4. The "point of diversion" or "point of issuance" is situated at ~~X~~ points in the bed of Rito de los Frijoles about 1/3 below and 1/2 mile below the Ceremonial Cave.
5. The diverting works consist of a loose rock obstruction in the bed of the strea
6. Name of canal, ditch, pipe line or other diverting channel (if named) is Nos. 2 and 3.
7. The nature of the diverting channel is (earth, wood, iron, concrete) earth.
8. The length of diverting channel is are 1/2 mile and 3/4 mile.
9. The top width of the diverting channel is (if a ditch) 12 ft.
10. The bottom width of the diverting channel is (if a ditch) 1 ft.
11. The effective depth of the diverting channel is (if a ditch) nine inches ft.
12. The width of the diverting channel is (if a flume) ft.

13. The effective depth of the diverting channel is (if a flume) ..... ft.

14. The diameter of the diverting channel is (if a pipe) ..... ft.

15. The average grade of the diverting channel is 5 ft. per 1000 ft.

16. The maximum height of the dam is ..... ft.

17. The length of dam on top is ..... ft.

18. The maximum width of dam on top is ..... ft.

19. The maximum width of dam on bottom is ..... ft.

20. The character and composition is

No dam used, not necessary.

21. The cost of said dam is $

22. Construction of works was commenced See general remarks.

23. Construction of one-fifth of works was completed " " "

24. Construction of works was completed " " "

GENERAL REMARKS.

These are old ditches which are supposed to have been constructed at least one hundred years ago.

State of New Mexico
County of ..... } ss.

I, ...

of .....County, State of New Mexico, having been duly sworn according to law depose and say: That I am a qualified engineer and that I have inspected the completed works as above set forth and find them to be completed in accordance with the foregoing statement of facts; that they are properly and safely constructed and are now in a satisfactory condition for acceptance.

.....

Subscribed and sworn to before me this.....day of....., 19.....

My commission expires .....
Notary Public.

Above for your engineer to swear to.

Proof of Application of Water to Beneficial Use

FILED

APR 1 1918

OFFICE STATE ENGINEER,

DEPOSITION OF HOLDER.

Under Permit No. 802

Question 1. State your name, occupation and post office address.
Answer:
A. J. Abbott, Custodian Bandalier National Monument,
Buckman, New Mexico.

Question 2. If acting in behalf of a corporation, state its name, place of business and your authority for applying in its behalf.
Answer:

Question 3. State number and date of permit, source of water supply and location of point of diversion.
Answer:
No. 802. December 4, 1913. Rito de los Frijoles.
1/3 and 1/2 mile respectively below Ceremonial Cave.

Question 4. Give name of canal or other works by which water is conducted to its place of use, and state the maximum amount of water such works are capable of carrying.
Answer:
Rito de los Frijoles Canals
5/10 of a second foot.

Question 5. What is the minimum required for the use specified during the irrigation season?
Answer:
5/10 of a second foot.

Question 6. What is the minimum required for the use specified during the remainder of the year?
Answer:
An inconsiderable amount, only for domestic purposes.

Question 7. If you are not the person or representative of the corporation to whom the above mentioned permit was originally issued, state how ownership was acquired by you.
Answer:

Question 8. State for what purpose water is used, and at what point. If for irrigation, name each subdivision on which used, giving number of acres in each subdivision on which said water has been continuously and beneficially used under said application.
Answer:
Used for Iffigation.
Land on which water is used is unsurveyed.

00-00-0000: proof of application of water to beneficial use, page 2cont

Question 9. State the date on which the water was applied to its full beneficial use under above described and numbered permit.

Answer: Water was used many years prior to date of application.

Question 10. State the amount of, and to what extent the water diverted under the above mentioned permit has been used.

Answer: To the capacity of the works.

(Signed) A. J. Abbott

I hereby certify that the foregoing testimony was read to the above subscriber before its signing and that said testimony was subscribed and sworn to before me this 1st day of April, 1918

Notary Public.

My commission expires Aug. 17- 1921.

01-07-1918: letter to mr. a. j. abbott from state engineer regarding completed sufficient works irrigate land under permit no. 802

January 7, 1918.

802.

Mr. A. J. Abbott,
302 North Lemon St.,
Anaheim, Calif.

Dear Sir:

As we understand yours of Dec. 31st, it seems that you completed sufficient works to irrigate land under Permit No. 802 within the limits set, and, that being so, you are entitled, upon proper compliance, to final papers under the law to that extent.

Evidently it was ignorance of the requirements of the law that caused you to allow the records to show a lapse when in fact you made compliance. You were required as per Sec. 5688 of the 1915 Code to give notice of such compliance to this office. Sections 5688, 5689 and 5692 of the 1915 Code will make it clear as to the provisions of the law you neglected to follow out in detail. Of course, it is appreciated, when the works have been completed as required or the development was held up by operation of the law or by actual causes beyond the power of applicant to control, that this office cannot rightfully cancel the permit, but there was nothing of record as required to show that your permit should be in good standing, so this office had to give the usual notice prepared in connection with all such records. It is a protection to those who comply in good faith that this office maintain such a policy and protect their priorities as against the speculator.

If, in accordance with said Sec. 5688, your works do not involve a direct diversion of more than twenty cubic feet per second or a dam over ten feet in extreme height, advise this office as to the engineer you wish appointed to make the final inspection and report. In the event the works are larger, file your final proofs as required and someone from this office will comply.

The enclosed circular to those who have not completed as required explains itself.

Very truly yours,

State Engineer.

ASK-VR
Enc-

802 Rec letter

The enclosed circular to those who have not complied with requirements of law.

Pasadena California Dec 31-1917

Hon. James A French
State Engineer
Santa Fe. N.M.

Dear Sir;

Your letter with attattached Circular of Information Concerning my water permit No. 802. is received by me here. It is a great surprise to me To be informed that I have left any duty unperformed in that matter. I have receipts for all money Payments that were ever required of me, and I am not conscious

of having left anything undone
in the matter.

My P.O address for the next two
weeks will be

302 North Lemon St.
Anaheim California

If I need to make any payment
please inform me of the amount
and I will immediately remit.
I expect to be absent from
Santa Fe about three months unless
imperative duty requires my
return.

Very truly yours

December 20th, 1917.

802.

Mr. A. J. Abbott,
Buckman, New Mexico.

Dear Sir:-

This is to advise that thirty days from date, the record under water permit No. 802 will be cancelled without further notice from this office and the action will be final provided proper appeal is not taken within thirty days after date of cancellation. The attached circular of information explains itself.

Very truly yours,

State Engineer.

ASK.

Inc.

Douglas Walker Esq
to call & file
Last

To Whom It May Concern:-

The record under permit to appropriate water from El Rito de los Frijoles. . . . . , No. 802, shows it as having lapsed on August 11th, 1917 without your having complied with the provisions of the law and the requirements of this office under which the permit was granted and you were supposed to have complied in good faith. Of course, it is appreciated, not all succeed, but it was expected of those that they advise this office so that the state be not compelled to go to unneceseary expense in clearing away dead records.

You can help us and your standing before this office, if you will advise by return mail so we can take immediate action and show a withdrawl in good faith instead of an action by cancellation by the State Engineer. Then, if you have a project worth proceeding with, and such a withdrawl is shown under your lapsed permit, you can proceed with a new filing toward procuring another permit of good standing, and in the future be careful to comply. Blanks and the Manual of rules and regulations will be furnished upon request.

Very truly yours,

ASK. State Engineer.

Santa Fe, N. M.,

January 27, 1915.

802.

Mr. A. J. Abbott,

Buckman, N. M.

Dear Sir:

This is to acknowledge receipt of publisher's affidavit of publication in connection with your application No. 802, which has been dated today and filed of record. Bill attached is being enclosed, as this office does not pay for publication.

Very truly yours,

State Engineer.

ASK/VR

Enc.

01-26-1915: notice state engineer's office

802

STATE OF NEW MEXICO }
County of Santa Fe, } ss.

J. A. Garrett
~~A. J. Loomis~~ being first duly sworn according to law, deposes and says that he is the manager of ~~publisher~~ of The Eagle, a newspaper of general circulation, published in Santa Fe, Santa Fe county, New Mexico, that a notice of which the annexed notice is a true copy, of Application & appn. priate ma

FILED
JAN 27 1915
OFFICE STATE ENGINEER

was published ~~in every regular weekly issue~~ of said newspaper and not in a supplement, from the 16th day of January A. D. 1915 to and including the 23rd day of January A. D. 1915 said notice being published during two consecutive weeks.

J. A. Garrett
Manager ~~Publisher~~

Subscribed and sworn to before me, a Notary Public in and for Santa Fe County, New Mexico, this the 26th day of January 1915

Nora E. Sullivan

My commission expires March 14 1916 Notary Public.

Notice

State Engineer's Office, Number of application 802. Santa Fe, New Mexico, January 11th, 1915.

Notice is hereby given that on the 4th day of December, 1913, in accordance with Section 26, Irrigation Law of 1907, A. J. Abbott, of Bucknan, County of Sandoval, State of New Mexico, made formal application to the State Engineer of New Mexico for a permit to appropriate the public waters of the state of New Mexico.

Such appropriation is to be made from El Rito de los Frijoles at a point the headgate of No. 1 is located at lowest or most easterly point where bluff of "Ceremonial Cave" touches bed of Rito de los Frijoles and about 250 feet from said cave. The headgates of the other two ditches are located from points on No. 1 by means of diversion works and one-half cu. ft. per sec. is to be conveyed to lands unsurveyed within the Jemez Forest Reserve by means of one new ditch and two old ditches used alternately and there used for the irrigation of thirty acres and domestic purposes.

Any person, association or corporation deeming that the granting of the above application would be truly detrimental to their rights in the water of said stream system shall file a complete statement of their objections substantiated by affidavits with the State Engineer and serve a copy on applicant on or before the 11th day of April, 1915, the date set for the Engineer to take this application up for final consideration unless protested, when all parties will be given a reasonable length of time in which to submit their evidence in detail or arrange a date convenient for a hearing or appoint a referee satisfactory to all to take testimony. Appearance is not necessary until advised officially by letter from the State Engineer.

JAMES A. FRENCH,
State Engineer.

16-23

NOTARY PUBLIC

January 12, 1915.

802.

Mr. A. J. Abbott,

Buckman, N. M.

Dear Sir:

Your publication notice has been re-ordered in the Santa Fe Eagle and given date of January 11, 1915, and date for consideration April 11, 1915.

Blank has been forwarded.

Very truly yours,

State Engineer.

ASK/VR

Santa Fe, N. M., January 11th, 1915. ~~December 4th, 1913.~~

Mr. A. J. Abbott,

Buckman, N. Mex.

Dear Sir:

You are hereby instructed that the following notice shall be published once a week for two consecutive weeks in the English newspaper as indicated below having general circulation in the stream system and file publisher's affidavit of proof of said publication within sixty days from this date. Failure to comply with the foregoing causes the application to lose its priority.

Name of Paper Santa Fe Eagle

James A. French,
State Engineer.

(Editor, after publishing notice as required, is requested to immediately file proof by affidavit in the Office of State Engineer.)

NOTICE

State Engineer's Office

Number of Application 802. Santa Fe, New Mexico, (Reordered) January 11th, 1915. ~~December 4th, 1913.~~

Notice is hereby given that on the 4th day of December, 191 3, in accordance with Section 26, Irrigation Law of 1907 A. J. Abbott of Buckman County of Sandoval State of New Mexico, made formal application to the State Engineer of New Mexico for a permit to appropriate the Public waters of the State of New Mexico.

Such appropriation is to be made from El Rito de los Frijoles. . . . . ,

at a point the headgate of No. 1 is located at lowest or most easterly point where bluff of "Ceremonial Cave" touches bed of Rito de los Frijoles and about 250 feet from said cave. The headgates of the other two ditches are located from points on No. 1. . . . . ,

by means of diversion works. . . . . ,

and one-half cu. ft. per sec. . . . . ~~XXXXX~~ is to be conveyed to

lands unsurveyed within the Jemez Forest Reserve. . . . . .

. . . . . ,

by means of one new ditch and two old ditches used alternately. . . . . .

and there used for the irrigation of thirty acres and domestic purposes. . .

. . . . . .

Any person, association or corporation deeming that the granting of the above application would be truly detrimental to their rights in the water of said stream system shall file a complete statement of their objections substantiated by affidavits with the State Engineer and serve a copy on applicant on or before the ~~3rd~~ 11th day of ~~March~~ April, 1915 ~~14~~, the date set for the Engineer to take this application up for final consideration unless protested, when all parties will be given a reasonable length of time in which to submit their evidence in detail or arrange a date convenient for a hearing or appoint a referee satisfactory to all to take testimony. Appearance is not necessary until advised officially by letter from the State Engineer.

James A. French,
State Engineer.

ASK

12-23-1914: letter to a.j. abbott from state engineer regarding publication notice

December 23, 1914.

802.

Mr. A. J. Abbott,

Buckman, N. M.

Dear Sir:

The publication notice was ordered in the Santa Fe Eagle and sent to you, and you should have sent it to the office for publication. If you did not, it will be necessary to re-order publication.

Very truly yours,

State Engineer.

ASK/VR

12-22-1914: letter to state engineer from a. j. abbott regarding receipt of $5.00 to pay for the filing of my water application

Buckman. New Mexico, Dec. 22, 1914

James A French, State Engineer,
Santa Fe, N.M.

Dear Mr. French:-

Your letter acknowledging the receipt of five dollars ($5.00) to pay for the filing of my water application received. Thanks:

As regards the filing of the "Publisher's notice" I supposed the Publisher attended to that. I do not know in which paper it was published. Kindly inform me and also give me explicit directions for me to carry out.

Very respectfully

A. J. Abbott

12-11-1914: letter to a.j. abbott from state engineer regarding receipt no. 414 for $5.00 recording fee

December 11, 1914.

802.

Mr. A. J. Abbott,

Buckman, N. M.

Dear Sir:

Receipt No. 414 for $5.00 recording fee is being enclosed. Your application will be approved and held in this office until Mr. Walker comes and makes the changes required on the plats.

Very truly yours,

State Engineer.

ASK/VR

Your publisher's affidavit has never been filed.

12-09-1914: letter to state engineer from a. j. abbott regarding notice regarding the closing up of my water-right in the rito de los fri

Buckman, N.M. Dec. 9, 1914

for

James A. French,
State Engineer,
Santa Fe, N.M.

Dear Mr. French.

Thanks for the notice regarding the closing up of my water-right in the Rito de los Frijoles Canon.

I have just seen the younger Mr. Walker (Douglas) and he will make the corrections as requested on my plat.

Enclosed, please find my check for $5.00 for recording.

Very respectfully

A. J. Abbott

Send [illegible] notice in

December 5,1914.

882.

Mr. A. J. Abbott,

Buckman,N.M.

Dear Sir:-

Mr. Walker did not make the corrections as requested on your plats. Until the change is made and a fee of $5.00 for recording is deposited, your application will not be acted upon.

Very truly yours,

State Engineer.

02-17-1914: letter to a.j. abbott from state engineer regarding receipt of duplicate map in connection with your application no. 802

802

Feb. 17, 1914.

Mr. A. J. Abbott,
Buckman, N. M.

Dear Sir:

This is to acknowledge receipt of duplicate map in connection with your application No. 802, as requested some time ago.

Very truly yours,

James A. French,
State Engineer.

ASK/VR

12-04-1913: letter to a.j. abbott from state engineer regarding receipt of plat and formal application in duplicate

80 ✓

~~836.~~

Dec. 4, 1913.

Mr. A. J. Abbott,
Buckman. N. M.

Dear Sir:

This is to acknowledge receipt of plat.and formal application in duplicate, in connection with your notice of intention no. 882. which have been dated today and filed of record. Publication notice has been ordered and enclosed.

There will have to be a few minor corrections made in the plat which we will take up with Mr. Walker.

Very truly yours.

State Engineer.

ASK/VR

12-04-1913: application for permit to appropriate the public waters of the state of new mexico

802

Original

READ INSTRUCTIONS ON BACK BEFORE FILLING IN THE BLANKS.

APPLICATION FOR PERMIT

[Maps, Detail Plans and Detail Specifications Must Accompany This Application.]

To Appropriate the Public Waters of the State of New Mexico.

No. 802

1. Date of receipt of application December 4th 1913.
2. Name of Applicant A. J. Abbott

Post office address Buckman County of ~~Sandoval~~ Santa Fe State of New Mexico.

3. If applicant is a corporation give
   (a) Date and place of organization of corporation
   (b) The amount of capital stock $ (c) The amount paid in $
   (d) The names and addresses of Directors

4. Quantity of water claimed One half of a second foot.
   (a) By diversion ½ second foot. sec. ft. or and (b) By storage ac. ft.
   (c)

5. Periods of annual use One half sec. ft. from May to September (Irrigation Season)
   sec. ft. from to (During Winter.)

6. Source of water supply (a) Name El Rito de los Frijoles
   (b) Which is a tributary of The Rio Grande

7. Location of point of diversion or storage.
   The corner of Section
   Township Unsurveyed, Range , bears
   feet distant
   The headgate of no.1 is located at lowest or most easterly point where bluff below the "Ceremonial cave" touches bed of Rito de los Frijoles and about 250 feet from "Cerimonial cave." The headgates of the other two ditches are located from points on No.1.

8. To be used for Irrigation purposes

IRRIGATION AND DOMESTIC USE:

   (a) Number of acres to be irrigated Thirty
   (b) In the following legal subdivisions Unsurveyed but is within the Jemez Forest Reserve.

MANUFACTURING, MINING AND POWER PURPOSES.

   (a) Quantity of water sec. ft.
   to be used for
   (b) Power to be generated H. P. (c) Conducted by
   (Canal, Pipe Line or Flume)
   feet in length from a point
   (Locate Point of Diversion or Intake)
   to a point where water will be returned to stream undiminished in quantity
   (Locate Point of Return)

2802

9. Remarks:
Ditches no. 2 and 3 have been built and in use for years. No. 1 to be constructed.

10. Estimated cost of work $ 100.00

11. Description of work for diversion Water taken direct from the river.

CANAL OR DITCH.

(a) Size of headgate, width ..... ft; Height ..... ft. (b) Width of canal at bottom ..... ft; Width at water line ..... ft; Depth ..... ft; The slopes of said ditch are ..... to ..... Average grade per 1,000 ft. is Five feet.

STORAGE WORKS.

(a) Maximum height of dam ..... ft; Length of dam at top ..... ft; Maximum width of dam on top ..... ft; Maximum width of dam on bottom ..... ft. Character and composition of dam .....

Estimated cost of dam $ .....

REMARKS.

12. Other reservoirs and canals, name or number, location, size and capacity of each as above .....

13. The time required to begin construction ..... months. The time required to complete the works ..... months. The time required to fully apply the water to a beneficial use on the irrigable land herein described ..... months.

14. Reference .....
(Give name of bank and merchant reference)

I, A. J. Abbott, do solemnly swear that the statements and answers to questions in this application are true to the best of my knowledge and belief.

Claimant A. J. Abbott

Subscribed and sworn to before me this 4th day of December 1913.

Notary Public.

My commission expires January 31st 1917.

98 802

APPROVAL OF STATE ENGINEER

The number of this permit is 802. Publisher's affidavit filed January 27th 1915.
Date of receipt of Notice July 3rd, 1913. Date of receipt of first application December 4th, 1913.
Returned for correction Received corrected
Publication ordered December 4th, 1913. Paper Santa Fe Eagle.
Application recorded in Book "C" Page 802 Approved this 11th day of May, 1915.
(a) Equivalent of 0.42- - cubic feet per second; (b) By storage acre ft.
(c) Remarks This application is approved allowing the full diversion of the works provided the total amount appropriated shall not be in excess of the equivalent of forty-two one hundredths of a cubic foot per second, also provided it is not exercised to the detriment of any others having prior valid rights to the use of the water of this stream system.

The construction of the within described works to be commenced not later than August 11th, 1915.
One fifth of the work above specified to be completed on or before November 11th, 1915.
The whole of said work to be completed on or before May 11th, 1916.
The time for application to beneficial use shall not be later than August 11th, 1917.
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of New Mexico, and hereby approve the same, subject to the foregoing proviso and conditions:
Witness my hand this 11th day of May, 1915. 19

James A. French
State Engineer.

EXTENSIONS.

STATE OF NEW MEXICO, } ss.
Office of State Engineer. }

This is to certify that, after considering the merits of the application for an Extension of Time filed in connection with the foregoing permit on the day of 19,
I have issued the certificate for said extension this day of 19,
extending the dates as follows:
The construction work to be commenced not later than
One-fifth of the work to be completed on or before
The whole of said work to be completed on or before
Application to beneficial use shall not be later than
Witness my hand this day of 19

State Engineer.

STATE OF NEW MEXICO, } ss.
Office of State Engineer. }

This is to certify that, after considering the merits of the application for an Extension of Time filed in connection with the foregoing permit on the day of 19,
I have issued the certificate for said extension this day of 19,
extending the dates as follows:
The construction work to be commenced not later than
One-fifth of the work to be completed on or before
The whole of said work to be completed on or before
Application to beneficial use shall not be later than
Witness my hand this day of 19

State Engineer.

07-05-1913: letter to a.j. abbott from state engineer regarding receipt of notice of intention to make formal application for permit

July 5, 1913.

802.

Mr. A. J. Abbott,

Buckman, N. M.

Dear Sir:

This is to acknowledge receipt of notice of intention to make formal application for permit, in duplicate, which has been dated July 3 and filed of record under No. 802.

Formal application and plats in detail are to be received on or before Jan. 3, 1914. Check for $10.00 as deposit for fees is herewith acknowledged receipt of.

Very truly yours,

State Engineer.

ASK/VR

Land History

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that EVELYN C. FREY, divorced, also known as Evelyn Cecil Frey, hereinafter referred to as the grantor, for and in consideration of One Dollar ($1.00) and other valuable consideration paid by THE UNITED STATES OF AMERICA, hereinafter referred to as the grantee, does by these presents, devise, release and forever quitclaim unto said grantee, all her right, title and interest in and to the following-described real property and interests therein, located in Sections 14, 15 and 23, T. 18 N., R. 6 E., NMPM, County of Sandoval, State of New Mexico, located within the exterior boundaries of Bandelier National Monument, to wit:

> The right to appropriate 45 acre-feet of water delivered to the land each 153-day irrigation season, from April 1 to August 31, to be conducted from El Rito de los Frijoles, in the County of Sandoval, State of New Mexico, and applied as follows, to wit: A total of 15 acres, lying on the north and south sides of El Rito de los Frijoles tract, immediately below the Ceremonial Cave in said canyon; said right being granted to A. J. Abbott by Charles A. Hay, State Engineer of the State of New Mexico, on October 15, 1921, under authority of the laws of the State of New Mexico, and having a priority date of January 27, 1915, and referred to as License No. 802, Book "G" of the records of said State Engineer; the said right granted by license having been vested in said grantor by virtue of the Final Decree of Divorce, Civil No. 1590, District Court, Santa Fe County, State of New Mexico, styled Evelyn Cecil Frey v. George L. Frey, said decree being filed March 23, 1935; and said vesting of title being further evidenced by a Change of Ownership of Water Right dated November 5, 1942, as recorded in File No. 802 of the records of said State Engineer.

TO HAVE AND TO HOLD unto said UNITED STATES OF AMERICA and its assigns forever.

IN WITNESS WHEREOF, the said grantor has executed this quitclaim deed this 25 day of February, 1959.

x Evelyn C. Frey
Evelyn C. Frey

STATE OF ~~NEW MEXICO~~ Texas }
COUNTY OF Dallas } ss

On this 25 day of February, 1959, before me personally appeared Evelyn C. Frey, divorced, known to me to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

E. C. Stamfestin
Notary Public

My commission expires June 1st - 1959.

State of New Mexico
OFFICE OF
CLERK OF SANDOVAL COUNTY

No 27825

Bernalillo, N. M., 2-12 19 59

RECEIVED OF Paul Judge
Fee & Tax $1.70 DOLLARS

For Recording Quitclaim Deed from Evelyn Cecil Frey to U.S. of America

Reception Book Page 117
Fee Record Page 174

COUNTY CLERK
By DEPUTY

and 23, T. 18 N., R. 6 E., NMPM, County of Sandoval, State of New Mexico, located within the exterior boundaries of Bandelier National Monument, to wit:

The right to appropriate 45 acre-feet of water delivered to the land each 153-day irrigation season, from April 1 to August 31, to be conducted from El Rito de los Frijoles, in the County of Sandoval, State of New Mexico, and applied as follows, to wit: A total of 15 acres, lying on the north and south sides of El Rito de los Frijoles tract, immediately below the Ceremonial Cave in said canyon; said right being granted to A. J. Abbott by Charles A. Hay, State Engineer of the State of New Mexico, on October 15, 1921, under authority of the laws of the State of New Mexico, and having a priority date of January 27, 1915, and referred to as License No. 802, Book "G" of the records of said State Engineer; the said right granted by license having been vested in said grantor by virtue of the Final Decree of Divorce, Civil No. 15904, District Court, Santa Fe County, State of New Mexico, styled Evelyn Cecil Frey v. George Y. Frey, said decree being filed March 23, 1935; and said vesting of title being further evidenced by a Change of Ownership of Water Right dated November 5, 1942, as recorded in File No. 802 of the records of said State Engineer.

TO HAVE AND TO HOLD unto said UNITED STATES OF AMERICA and its assigns forever.

IN WITNESS WHEREOF, the said grantor has executed this quitclaim deed this _____ day of _____, 1959.

/s/ Evelyn C. Frey
Evelyn C. Frey

Texas
STATE OF //////////)

STATE OF NEW MEXICO }
COUNTY OF SANDOVAL } ss.
This instrument was filed for record on

2-12-59

At 11:40 o'clock A M., Recorded in Vol. DR-9 Page 509

County Clerk
Deputy

12-04-1913: land ownership record: deed no. 4; water right application license no. 802

State New Mexico — LAND OWNERSHIP RECORD — Tract No. _____

County Sandoval — Deed No. 4

Civil Subdivision _____ Area _____ acres _____ Bandelier National Monument (Name of Park or Area)

Right based on Application filed by A. J. Abbot December 4, 1913 Date — Developed portions of Valley (Section of Park or Area)

Legal Description: Water right application _____, License No. 802 with priority of January 27, 1915.

Method of Acquisition: Appropriation and donation Appropriation or Source of funds: _____

~~Cost~~ or estimated value: $437.50

Acquired from: Perfected as appurtenance to Federal Land covered by Deed 1 by Judge A. J. Abbott and successors including Mrs. Evelyn C. Frey.

Accepted by Secretary (__) Opinion of Att'y. Gen.–title in U. S. (__) date: _____

Physical Characteristics: A perfected right to divert 0.50 sec. ft. for irrigation purposes as shown on map filed by Abbott and on Map NM-BAN-6976 filed with application 2470 (Deed 5). By State code the right became appurtenant to the federal land when perfected – is therefore federal property although Mrs. Frey claims it. On November 11, 1942 Mrs. Frey filed sworn statement with state engineer to effect that she was sole owner and declaring abandonment as claimed but Mrs. Frey's title or right to declare abandonment is questioned.

Improvements on Land at time of Acquisition: _____

Existing or outstanding special use permits, reservations, rights, or rights of way: _____

Report Based on: Records of Water Rights Section

Prepared by: A. Van V. Dunn, Hydraulic Engineer date: 10/28/43

Map References: Abbot file map _____ and NM-BAN-6978 with deed 5

Remarks: Value of this right depends on legal steps taken by U. S. to preserve it. That stated is for 0.0715 sec. ft. but U. S. may be able to reinstate full 0.50 sec. ft. if action taken soon.

Other Supporting Information

03-24-1975: letter to field solicitor from deputy regional director regarding memorandum of understanding

RECEIVED
NATIONAL PARK SERVICE
[illegible] OFFICE
MAR 26 9 01 AM '75

Bert'—

A44-NM

Interior, [illegible]
Southwest Region
[illegible]
Santa Fe, New Mexico 87501

MAR 24 1975

Memorandum

To: Field Solicitor, Santa Fe

From: Deputy Regional Director

Subject: Memorandum of Understanding

As a follow-up to our January 28, 1975 meeting with representatives of ERDA, enclosed is a draft copy of the Memorandum of Understanding for ERDA to use 45 acre feet of water of Bandelier's Water Right NM #802, for an indefinite period of time.

In general, the conditions appear to include the most salient points of our discussions with them. Any comments you may have will be appreciated.

Enclosure

/s/ T. E. Thompson

cc:
Associate Director, Park System Management, WASO w/copy of enclosure
Superintendent, Bandelier, w/copy of enclosure

02-11-1975: memorandum to deputy director from hydraulic engineer regarding erda/nps memorandum of agreement

RECEIVED
NATIONAL PARK SERVICE
WASHINGTON OFFICE
FEB 13 8 49 AM '75

L54-PSN

FEB 11 1975

Memorandum

To: Deputy Director, Southwest Region
Through: Associate Director, Professional Services

From: Hydraulic Engineer, Water Resources, PSN

Subject: ERDA/NPS Memorandum of Agreement, Bandelier Water Rights

On January 28, 1974 we verbally confirmed our agreement to allow ERDA to use for an indefinite period of time, rights to use of water amounting to 45 acre feet per year under NM license #802. The agreement was made subject to certain conditions.

1. No diversion structures and related equipment will be constructed within the Monument. The diversion will be incorporated into the ERDA's existing well field system.

2. The NPS will remain as custodian of the water right for the U.S. forever.

3. Price of water - this item was discussed briefly but no agreement was reached.

Regarding the subject on price of water, the following facts appear.

1. 45 a.f. of water is worth $1,575.00 or $35.00 per a.f. This figure is based on what ERDA is presently paying the San Ildefonso Pueblo.

2. The retail value of 45 acre feet of water is estimated at $8,651.17 ($0.36/1000 gal. water and $0.13/1000 administrative costs).

In view of the above the following are some alternatives worth considering.

1. The NPS shall pay no charge for water as long as the agreement is in effect.

2. Pay for water as any customer after having consumed $1,575.00 worth of water. At the present costs this will amount to 2,670,000 gallons per year which our estimates indicate will occur around 1980.

3. Continue to purchase water at prevailing rate without any compensation for the 45 acre feet covered by agreement.

RECOMMENDATION

The NPS should stress alternative #1, but may settle for alternative #2 as a rock bottom position. At no time should we consider, beyond this memorandum, alternative #3.

Garland Moore

cc:
Associate Director, Park Systems Management, SWRO
Supt., Bandelier
Chief, Division of Natural Resources, MW-WASO
Attn: Vic Berte'

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES ENERGY RESEARCH
AND DEVELOPMENT ADMINISTRATION
LOS ALAMOS AREA OFFICE

AND

UNITED STATES DEPARTMENT OF INTERIOR
NATIONAL PARK SERVICE

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as Agreement), effective when signed by both parties hereto, between the United States Energy Research and Development Administration (hereinafter referred to as ERDA), represented by the Area Manager, Los Alamos Area Office, Los Alamos, New Mexico, and the United States Department of Interior, National Park Service (hereinafter referred to as the Park Service), represented by the Regional Director, Southwest Region, National Park Service, United States Department of Interior, Santa Fe, New Mexico.

WITNESSETH THAT:

WHEREAS, the Park Service is the Licensee under License to Appropriate Water, File 802, issued by the State Engineer, State of New Mexico, authorizing the Park Service to appropriate forty-five (45) acre feet of water per year; and

WHEREAS, the ERDA furnishes water to the Park Service at its facilities at Bandelier National Monument at a rate of thirty-six (36) cents per one thousand (1,000) gallons; and

WHEREAS, the ERDA desires to obtain use of the aforesaid forty-five (45) acre feet of water and to apply the same to

beneficial use as a part of the water system at Los Alamos, New Mexico; and

WHEREAS, the Park Service desires to allow the ERDA to use the aforesaid forty-five (45) acre feet of water under the Park Service's permit and assure itself a continued supply of water at a rate of thirty-six (36) cents per one thousand (1,000) gallons at its facilities at Bandelier National Monument;

NOW THEREFORE, the parties hereto agree as follows:

A. The Park Service:

1. Hereby grants, sells, transfers and assigns to ERDA all right, title and interest in and to License to Appropriate Water, File 802, issued by the State Engineer, State of New Mexico, subject to the following right of reversion;

2. That upon six (6) months written notice by the Park Service to the ERDA all right, title and interest of the ERDA in and to License to Appropriate Water, File 802, shall revert to the Park Service.

B. The ERDA:

1. Will apply the water under the aforesaid permit to beneficial use;

2. Will not sell, assign, or transfer any right, title or interest in or to said water without the prior written approval of the Park Service;

3. Will continue to furnish water to the Park Service for use at its facility at Bandelier National Monument at the current rate of thirty-six (36) cents per one thousand (1,000) gallons for so long as the ERDA retains use of water under the aforesaid License to Appropriate Water.

C. The Park Service and the ERDA mutually agree that:

1. This agreement may be amended or modified at any time by mutual agreement between the parties.

2. No member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom unless it is made with a corporation for its general benefit.

3. The liability of the ERDA and the Park Service under this agreement is subject to the availability of appropriated funds which may legally be spent for the purpose.

4. The use of the permit covered by this agreement shall be on a "No Charge" basis.

5. That this agreement may be terminated upon six months' written notice by either party to the other and in such event all right, title and interest of the ERDA in and to License to Appropriate Water, File 802, shall revert to the Park Service and all right of the Park Service to purchase water from the ERDA at the rate of thirty-six (36) cents per one thousand $1,000) gallons shall cease and terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding in several counterparts.

UNITED STATES OF AMERICA
ENERGY RESEARCH AND
DEVELOPMENT ADMINISTRATION

_____
Kenneth R. Braziel
Area Manager

Date: _____

UNITED STATES
DEPARTMENT OF INTERIOR

_____
Joseph C. Rumburg, Jr.
Regional Director
Southwest Region
National Park Service

Date: _____

11-26-1962: memorandum to regional director from superintendent regarding acceptance of water and natural gas pipeline constru

...ED
PARK SERVICE
...ON OFFICE

Nov 30 8 AM '62

Bandelier National Monument
Santa Fe, New Mexico

November 26, 1962

Memorandum

To: Regional Director, Southwest Region

From: Superintendent, Bandelier

Subject: Acceptance of Water and Natural Gas Pipeline Construction, Frijoles Mesa

On November 14, Mr. Stanley Kozimor, Contractor's Representative, D.W. Falls, Inc., and I made the final inspection of the work done by D.W. Falls, Inc. for Bandelier National Monument and found that the work was completed in accordance with the plans and specifications and is entirely acceptable.

This work was done by the contractor under terms of an existing contract with the Atomic Energy Commission (Contract No. AT(29-1)-1692 dated 3/30/62 , Supplemental Agreement, Modification No. 2, dated 8/17/62).

Memorandum of Agreement Between Bandelier National Monument and the Atomic Energy Commission dated August 15, 1962 and assigned Contract No. 14-10-0333-962, covered the execution of this work on a reimbursable basis. Since the work has been completed in an acceptable manner, the Atomic Energy Commission has been advised to pay the contractor and to submit a Standard Form 1081, Voucher and Schedule of Withdrawals and Credits to the National Park Service for reimbursement.

The final amounts for the items of work are as follows:

Clearing right-of-way including trees, undergrowth and stumps, lin. ft.	2,500 @ $0.41	$ 1,025.00
Trenching and backfilling, 4 ft. depth, and 2 ft. width, lin. ft.	11,807 @ $0.28	$ 3,305.96
Paving cut and repair, lin. ft.	22 @ $5.00	$ 110.00

Piping - 6" cast iron, complete, including fittings, concrete supports, service valves w/valve boxes, sub-outs w/valves and valve boxes, manual and automatic air vent valves w/valve boxes, cad welding and coductor, lin. ft.	2,286 @ $2.96	$ 6,766.56
Piping - 2½" galvanized iron, complete, including fittings, concrete supports, service valves w/valve boxes, and manual and automatic air vent valves w/ valve boxes, lin. ft.	7,771 @ $1.64	$12,744.44
Piping - 2" black steel w/extruded plastic and mastic coating, complete, including stub-outs, valves, valve boxes, fittings, blow down pockets, 3 layers of Scotchwrap #50 on joints, and cad welding w/conductors, and cast iron boxes for cathodic protection, lin. ft.	8,625 @ $1.19	$10,263.75
Fire hydrants, complete including service valves and piping, valve box and hydrant wrench but exclusive of trenching, each	2 @ $298.	$ 596.00
Total		$34,811.71

On November 16, Project Supervisor Frank Matteson returned to the area and we went over the work together. He agreed that the work was completely acceptable.

Albert G. Henson
Superintendent

In Duplicate

Copy to: The Director
Chief, Western Office Design & Construction

09-11-1962: memorandum to regional director from chief regarding construction of water and natural gas mains

Bandelier

WR Copy

September 11, 1962

D5039-RL

Memorandum

To: Regional Director, Southwest Region

From: Chief, Branch of Water Resources

Subject: Construction of Water and Natural Gas Mains, Bandelier

The Agreement No. 14-10-0333-962 of August 15 between the Atomic Energy Commission and this Service, of which you forwarded a copy on August 22, appears to be as favorable to this Service as you suggest. However, our records do not appear to be adequate for complete evaluation. Supplemental data should be supplied, and this is an excellent time to assemble a partial water right docket.

The apparent contract price of $31,953.00 for water and gas lines is less than the $40,000.00 for water line shown on PCP-U-22-1 for which funds are shown on the 1963 B&U program of August. However, we appear to have no plans, such as Drawing NM-BAN-5324, and the respective costs of water and gas lines are not segregated in the agreement.

The PCP indicates that the water will be supplied at cost. However, this is not covered in the contract agreement. We do not appear to have any suggestion of the estimated cost of the water, or how charges are to be made.

The PCP also suggests that there is ample water. We understand from the U. S. Geological Survey that the Los Alamos water source is from wells, and assume that this is the Atomic Energy Commission supply to which all references have been made. The docket should include data on a reasonable estimate of the available water, its source, estimates of present and future needs of the town, and an estimate of monument needs, to show that the supply is adequate for both.

We should also be advised as to whether this water supply is for only the Mesa area, or is to be extended to replace the water supply covered by records in Bandelier Docket No. 2.

In the future, we believe that all agreements such as 14-10-0333-962 should be between the National Park Service and other Federal agencies, and not between a monument or park and such agency, as in this case.

SIGNED

A. van V. Dunn
Chief, Branch of Water Resources

Copy to: Superintendent, Bandelier
Chief, WODC (2)
P. Miller
Kenner
Mr. Dunn

AvanVDunn:ljc

08-22-1962: memorandum to director from regional director regarding construction of water and natural gas mains

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Southwest Region
Santa Fe, New Mexico

AUG 27 8 49 AM

IN REPLY REFER TO:
D5039

AUG 22 1962

AUG 27 1962

Memorandum:

To: Director

From: Regional Director

Cover
PAMiller
JKenner

Subject: Construction of Water and Natural Gas Mains, Bandelier

Enclosed is a copy of the Memorandum of Agreement between Bandelier National Monument and the Atomic Energy Commission, Los Alamos, New Mexico, which provides for the Commission to include in their construction contract Water and Gas Mains for Bandelier National Monument.

The agreement worked out between the Superintendent and the Atomic Energy Commission is quite favorable to the National Park Service, not only in savings but also in advancing the work at Bandelier.

Thomas J. Allen
Regional Director

Enclosure

Copy to: Chief, WSDC (1)
Superintendent, Bandelier
Project Supervisor Novak, Bandelier
Each with copy of Agreement

BAnD

00-00-0000: memorandum of agreement between band and the atomic energy commission

CONTRACT NO. 14-10-0333-902

MEMORANDUM OF AGREEMENT BETWEEN
BANDELIER NATIONAL MONUMENT
The Atomic Energy Commission
Relating to the Construction of Water and Natural Gas Mains

This Memorandum of Agreement made this 15th day of August, 1962, between the Atomic Energy Commission, (hereinafter called the Commission) and Bandelier National Monument, National Park Service of the Department of the Interior (hereinafter called the Monument) represented by the Superintendent, Bandelier National Monument,

WITNESSETH:

WHEREAS, The Monument has an approved program for the construction of water and natural gas lines for residences and other administrative facilities, and

WHEREAS, The Commission has contracted for the extension of certain water and natural gas lines to service certain sites known as TA-49, TA-39, and TA-33 to which mains may be connected to provide the water and natural gas service for the Monument, and

WHEREAS, The Commission is willing to include in its Contract No. AT(29-1)-1692, a requirement for the installation of water and natural gas mains to serve the Frijoles Mesa and Frijoles Canyon Development Areas of the Monument, and

WHEREAS, Section 601 of the Act of June 30, 1932, as amended,

(31 U.S.C., sec. 686), the so-called "Economy Act", provides, in part, as follows:

> "(a) Any executive department or independent establishment of the Government or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render" (underscoring supplied).

NOW THEREFORE, the parties agree as follows:

1. WORK TO BE PERFORMED

The Commission will include in its said Contract, requirements for the installation of the following items:

BY CONTRACT

WATER

2200	Lineal Feet	6" Cast Pipe @	2.96	$ 6,512.00
7162	Lineal Feet	2½" Galvanized Pipe @	1.64	11,745.68
9232	Lineal Feet	Trench and Backfill @	.28	2,584.96
2500	Lineal Feet	Clearing @	.41	1,025.00
22	Lineal Feet	Cut and Repair Pavement @	5.00	110.00
2	Each	Fire Hydrants @	298.00	596.00
				$22,573.64

7682	Lineal Feet	2" Black Iron Pipe Wrapped in same trench with water pipe @	1.19	$ 9,379.58

GRAND TOTAL $32,953.22

2. PAYMENT

The above quantities and amounts are estimated. Payment will be made for the actual quantities of work performed. The Monument will reimburse the Commission upon receipt of an executed Standard Form 1081, Voucher and Schedule of Withdrawals and Credits. At the option of the Commission, the Monument will make a single total or partial interim payments.

3. LOCATION

The Monument will set alignment and grade stakes as shown on Department of the Interior, NPS Drawing No. NM-BAN-5324, attached to and made a part of this agreement.

4. SPECIFICATIONS

All the provisions and specifications contained in Contract No. AT(29-1)-1692, for the construction of water and natural gas lines, shall be made applicable to the work described in this agreement.

5. SUPERVISION

The work performed by the Commission's contractor as a result of this agreement will be supervised and inspected by the Monument, in the field.

Albert G. Hanson

Superintendent

Bandelier National Monument

Charles C. Campbell

Area Manager

Los Alamos Area Office

Atomic Energy Commission

01-15-1968: memorandum to district engineer from acting regional director regarding measurements of rito de los frijoles

Southwest Region
Santa Fe, New Mexico

L54

JAN 15 1968

Memorandum

To: District Engineer, U. S. Geological Survey, Surface Water Branch, P. O. Box 277, Santa Fe, New Mexico

From: Acting Regional Director, Southwest Region, National Park Service, P. O. Box 1728, Santa Fe, New Mexico

Subject: Measurements of Rito de los Frijoles, Fiscal Year 1964, Bandelier National Monument

Reference is made to the telephone call between you and Civil Engineer William E. Fields of this office on January 9 regarding the above subject.

This memorandum is your authority to continue readings of the flow of Rito de los Frijoles within Bandelier National Monument for the Fiscal Year 1964. It is understood that we will be billed on a reimbursable basis during the Fiscal Year 1964 in the amount of $1,000.

EXTRA FILE COPY

(SIGNED)

George W. Miller
Acting Regional Director

W O D C
JAN 17 1963

CHF
ADM
PERS
P & P
ARCH
ENGR
L. A.
SPEC
CONT
SFTY
HABS

ACTION TAKEN - DATE

cc: Director (2)
Chief, WODC (2)
Supt., Bandelier

Com

BANDELIER NATIONAL MONUMENT

WATER RIGHTS #1
(No Appropriation of Record)
Rito de los Frijoles Gauging Station

This docket concerns water measurements taken at a gauging station on the Rito de los Frijoles. The measurements are used as partial proof of beneficial use.

The station was originally on the river within Bandelier Monument, but somewhat distant from Bandelier's headquarters and ditch and pipe diversion. Measurements were taken at the original station from Aug. 1959, to Oct. 1959, by the U.S. Geological Survey, Surface Water Branch. The Atomic Energy Commission, A.E.C. was interested in the measurement until summer of 1961, and helped defray cost during that time.

But what the A.E.C. declined to participate further, and the New Mexico State Engineer declined an invitation to participate, the entire cost fell upon the N.P.S. Therefore on No. 1, 1963, the upstream gauging station was replaced by one better able to serve N.P.S needs by being located closer to serve Bandelier's headquarters and water diversions (please refer to NM-BAN-6978 in Bandelier Water Rights Docker #2).

By William Cruzen
LWSSC
December, 1966

02-19-1965: memorandum to district engineer from assistant regional director regarding measurements of rito de los frijoles

Southwest Region
Santa Fe, New Mexico
87501

L54
BAND

FEB 19 1965

Memorandum

To: District Engineer, U. S. Geological Survey, Surface Water Branch, P. O. Box 277, Santa Fe, New Mexico

From: Assistant Regional Director, Operations

Subject: Measurements of Rito de los Frijoles, Fiscal Year 1965, Bandelier National Monument

Reference is made to the telephone conversation between you and Hydraulic Engineer William E. Fields of this office on February 18 regarding the above subject.

This memorandum is your authority to measure the flow of Rito de los Frijoles within Bandelier National Monument for the Fiscal Year 1965. We understand the costs will be on a reimbursable basis and will not exceed $1,050. This will be charged to Regional Office Account 143.2.

We would appreciate if if you would submit Form 1081 for payment when the work is completed. You may make partial billings as the work is completed if you wish.

(SIGNED)

George W. Miller

cc: Superintendent, Bandelier

02-13-1964: memorandum to director from assistant regional director regarding measuring device



Southwest Region
Santa Fe, New Mexico

L54
Band

FEB 13 1964

Memorandum

To: Director

From: Assistant Regional Director, Resource Planning

Subject: Measuring Device, Rito de los Frijoles, Bandelier National Monument

We are in receipt of an Advance Station Description concerning the subject measuring device at Bandelier and Report of Discontinued Station on the same creek.

As you recall we moved the measuring station from the Canyon above Bandelier Headquarters to a more accessible site near the Headquarters area. This was done as an item under J-WR-63B.

These documents are informational only, but since this station is used as a partial Proof of Beneficial Use we have filed this in our Docket No. 1, Bandelier National Monument.

By copies of this memorandum we are sending this to WODC and Superintendent, Bandelier for insertion in their docket.

Leslie P. Arnberger

In duplicate

Enclosure

cc: WODC (2) w/c enc.
Superintendent, Bandelier, w/c enc

[redacted]

Santa Fe District
08-3134.00

D 1

Advance Station Description

Rio Grande Basin

Rito de los Frijoles in Bandelier National Monument, N. Mex.
RITO DE L FRIJ IN BAN N MONU N MX

Established July 10, 1963

Location.--Lat 47°29'08", long 106°16'50", in Bandelier National Monument, 2,000 ft southeast of Ceremonial Cave, 3,600 ft upstream from Monument headquarters, 6 miles south of Los Alamos and 19 miles northwest of Santa Fe.

Drainage area.-- sq mi. Rugged rock-wall canyons with semi-forested plateaus and slopes. Annual precipitation probably averages 16 inches.

Cooperation.--National Park Service.

Remarks.--This station replaces another 4¾ miles upstream "near Los Alamos" (records not equivalent), which was discontinued Nov. 1, 1963; about 4 months overlap for comparison purposes. Park Service built new station, with some assistance from USGS. Number of former station was 08-3133.00 (drainage area, 8.9 sq mi, operated since 8-21-59).

Classification.--(A-21) Areal secondary; (A-42) Design of project.

Justification.--Operation should be less difficult, records quality at least equal, higher utility value of record to Park Service.

Prepared by R. E. Cook 12-12-63

Santa Fe District
08-3133.00

Report of Discontinued Station

Rito de los Frijoles near Los Alamos, N. Mex.

Discontinued.--Nov. 1, 1963 and station dismantled.

Classification.--(A-21) Areal secondary.

Period of Record.--August 1959 to October 1963.

Reason for discontinuing.--Cooperating agency wanted a replacement station convenient to their area of activity, were willing to build new station. Our operational problem will be greatly reduced (former location was in a deep canyon, well off used road, and required use of snow shoes during heavy winter. Consumed time was considerable).

Overlap of 4 months will help to correlate base flows.

Prepared by R. E. Cook 12-12-63

01-31-1963: memorandum to director from acting regional director regarding continued operation, gauging station

Southwest Region
Santa Fe, New Mexico

L5/

JAN 31 1963

Memorandum

To: Director

From: Acting Regional Director

Subject: Continued Operation, Gaging Station, Rito de los Frijoles, Bandelier National Monument

Enclosed is a copy of a letter received from the Division Hydrologist, U. S. Geological Survey, Denver, Colorado. This letter was written to us at our request in order that we might program the money for this project during this fiscal year.

This is being sent to you in order that you may be aware of our progress to date.

[illegible]NED

J. M. Carpenter

In duplicate

Enclosure

cc: Supt., Bandelier w/enclosure
R. Giles w/enclosure

01-31-1963: memorandum to regional director from chief regarding water rights

WR copy
2/4/63

January 31, 1963

L54-RLW

Memorandum

To: Regional Director, Southwest Region

From: Chief, Branch of Water Resources

Subject: Water Rights, Bandelier

The copy of Superintendent Henson's memorandum of November 26, 1962, to you on the acceptance of the new water and gas line has been routed through this Office.

When Mr. Dunn and I visited Bandelier early in November, we raised the question of maintaining the water rights to Rito de los Frijoles. Please refer also to Mr. Dunn's memorandum of September 11, 1962, and your reply of November 20, 1962. It would appear that now is the time to decide whether those water rights to the Rito de los Frijoles should be maintained or whether they should be abandoned. Will the Los Alamos supply be sufficient for all the park needs in the future? Can it be depended upon completely or is a standby source worthwhile?

If the decision is made to maintain the water rights, several possibilities should be considered, as follows:

1. Maintain the present pipeline right under License 2470 to 11 acre-feet per year with a priority of April 2, 1943. If the ruling, in United States vs H. F. Ballard, et al., that the United States cannot lose water rights through nonuse holds, it would appear that these rights could not be challenged when not exercised, although the state law prescribes forfeiture after nonuse for four years. However, maintenence of the pipeline as a standby would be sensible from an engineering as well as a legal point of view.

2. Maintain the Abbott-Frey ditch rights. How much of the 45 acre-feet originally granted to Abbott with a priority of January 1915 actually passed to the United States when the monument was established would have to be determined. Probably the most that could be claimed would be the maximum used during the four years preceding the monument's establishment. This Service should not recognize any partial abandonment of claims by Mrs. Frey. Mr. Dunn advises that the State Engineer questioned her action

and the validity of the declaration at the time but this Service has done nothing about it. However, a check of the docket and the correspondence here fails to give any positive proof of such abandonment. The copy of the statement of Mrs. Frey in the docket is not a facsimile copy and contains several obvious errors. The original record in the State Engineer's office should be examined to check this unless you have more positive information. Any declaration of abandonment would weaken a Federal claim that the rights have not lapsed.

3. Amend part of the ditch rights with the 1915 priority to cover the pipeline diversions and subsequently withdraw Application 2470 and request cancellation of the 1943 rights. This assumes that United States rights to at least 11 acre-feet of water under the Abbott filing can be established. The amendment would be through changes in point of diversion, from ditch to pipe, and of place and purpose of use. However, such an application for amendment would have to be advertised and might be protested. Hence the withdrawal of Application 2470 should be deferred until after approval of the application to amend the Abbott rights unless it becomes necessary to do so to eliminate protest.

We shall be interested in learning the region's decisions on the Bandelier problem.

E. W. Reed

cc:
Superintendent, Bandelier
Chief, WODC (2)
Mr. Reed
Mr. P. Miller
EWReed:ljc

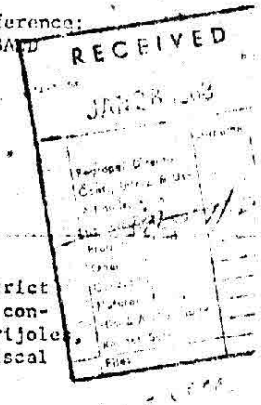
01-25-1963: letter to acting regional director from division hydrologist regarding geological survey will continue the operation of the

IN REPLY REFER

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
FEDERAL CENTER, DENVER 25, COLORADO

January 25, 1963

Your reference:
L-54 - BAND



Mr. George W. Miller
Acting Regional Director
National Park Service
P. O. Box 1728
Santa Fe, New Mexico

Dear Mr. Miller:

In accordance with your request to Mr. Wilbur Heckler, District Engineer, Santa Fe, New Mexico, the Geological Survey will continue the operation of the gaging station on Rito de Los Frijoles, Bandelier National Monument, New Mexico, during the 1963 fiscal year.

As outlined in your memorandum of January 18, 1963, to Mr. Heckler, you will be billed on a reimbursable basis in an amount not to exceed $1,000 during the fiscal year.

It is understood that the data collected on this project will be available for use by the Geological Survey in the preparation of reports that are released to the public.

Sincerely yours,

E. K. Jackson
Division Hydrologist

01-18-1963: memorandum to district engineer, surface water branch from acting regional director regarding continued measureme

Southwest Region
Santa Fe, New Mexico

L54
BAND

JAN 18 1963

Memorandum

To: Wilbur Hecklер, District Engineer, Surface Water Branch, U. S. Geological Survey, P. O. Box 277, Santa Fe, New Mexic

From: Acting Regional Director, National Park Service, Southwest Region, P. O. Box 1728, Santa Fe, New Mexico

Subject: Continued Measurements, Rito de los Frijoles, Bandelier National Monument

We received a letter from your Division Hydrologist, Mr. S. K. Jackson, dated February 26, 1962, which acknowledged the continuation of the gaging station on the subject stream for the 1962 Fiscal Year. In that letter Mr. Jackson stated that we would be billed on a reimbursable basis in an amount not to exceed $1,000.

Would you write Mr. Jackson and request a similar letter for the 1963 Fiscal Year in order that we may obligate the funds for this project.

Henceforth at the beginning of each fiscal year we would like a letter of acknowledgment for projects done for us by your Service for obligation purposes.

George W. Miller
Acting Regional Director

cc: Director (2)
Supt., Bandelier

04-24-1943: memorandum to hydraulic engineer from acting director regarding purchase of mrs. frey's water interests

660- Bandelier

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO, ILLINOIS

ADDRESS ONLY
THE DIRECTOR, NATIONAL PARK SERVICE

April 24, 1943.

MEMORANDUM for Hydraulic Engineer Dunn,
Water Rights Section,
San Francisco, California.

This refers to your letter of March 23 concerning the purchase of Mrs. Frey's water interests at Bandelier National Monument.

Our justification to the Bureau of the Budget for the continuance of water rights activities commits the Service to a program of purchasing water rights only in exceptionally meritorious cases and when purchases may be made below actual values due to existing conditions.

We have no doubt your appraisal of $1,000 represents a fair valuation of Mrs. Frey's interests. However, there is no showing that her interests could not be acquired at a similar or lower figure at some future date, and any justification for purchasing at this time appears to be offset by the fact that there is no immediate need for additional water at the monument -- a condition which may reasonably be expected to obtain for some years -- and the additional fact that an application for appropriation of additional water is now pending.

In view of the matters noted, we believe it advisable that negotiations for the purchase of Mrs. Frey's water interests be deferred.

(SGD) Hillory A. Tolson

Acting Director.

cc: Regional Director, Region Three.
Supt., Southwestern Monuments.
Custodian, Bandelier N.M.,
through Supt., Southwestern Monuments.



09-12-1962: memorandum to assistant regional director from civil engineer regarding field trip to band to reestablish gauging stati

TO BE PREPARED BY:	ROUTING
	SUPERINTENDENT
	CHIEF RANGER
FOR SIGNATURE OF:	
FILE	
DISPOSE	
LIBRARY	

L54
BAND

Southwest Region
Santa Fe, New Mexico

SEP 1 2 1962

Memorandum

To: Assistant Regional Director Arnberger

From: Civil Engineer

Subject: Field Trip to Bandelier National Monument to Reestablish Gaging Station

I left Santa Fe at 8:30 a.m. on August 23 enroute to Bandelier National Monument. Mr. Wilbur Heckler, District Engineer of the Surface Water Branch of the U. S. Geological Survey, accompanied me.

The USGS has been operating a gaging station in the upper reaches of the Rito de los Frijoles for the AEC. A year ago the AEC decided to discontinue the operation and the National Park Service assumed the obligation of payment in order to keep the station operating. It was felt that these records were necessary for the proof of our Water Right. Last spring Mr. Heckler recommended that we move the station downstream closer to our headquarters because the present site is inaccessible except by foot and is very rough to maintain during the winter. The purpose of our trip was to pick a spot near the headquarters area where we can move the station for better accessibility and maintenance.

We arrived at Bandelier at 9:30 a.m. and since Superintendent Henson was on leave we reported to Chief Ranger Ed Widmer.

We discussed with Ranger Widmer the new water system which is planned. Water will be piped from the Los Alamos water system into the present headquarters system. I cautioned Mr. Widmer that under no condition should we cease using the present water system because we need to protect our present water rights which date back to 1915. The irrigation diversion should be utilized fully and if our present system is relegated to a standby system it should be fully utilized a few times a year and records kept of this use.

Mr. Heckler and I then "walked out" the Rito de los Frijoles to a point about one half mile upstream from our domestic pipeline diversion. We picked out a place near a tuff cliff overhang

about 200 yards upstream from the pipeline diversion. This would measure the total flow in the stream prior to any of our diversions. The soil in this area however appears porous and it is not feasible to get a vehicle into this area for construction purposes and maintenance and checking would have to be done on foot. For these reasons we decided to check downstream for another possibility.

As a preferable alternate we found a place about 100 yards upstream from the irrigation diversion which has better soil possibilities and can be reached by any type of vehicle. To get total flow then we would meter the water in the pipeline and add this to the stream reading. The meter could be installed in the old chlorinator house. This meter should be installed even if the recorder is placed above the pipeline diversion so we would have a record of our domestic use at headquarters with the present system.

Mr. Heckler and I agreed that the best solution would be the second plan.

We left Bandelier at 2:45 p.m. and arrived in Santa Fe at 3:45 p.m.

William [redacted]
Civil Engineer

Copy to: Regional Director
Assistant Regional Director Miller
Regional Chief of Lands
Supt., Bandelier
Wilbur Heckler

Region Three
Santa Fe, New Mexico

L54
BAND

APR 12 1962

Memorandum

To: District Engineer, Surface Water Branch, U. S. Geological Survey, P. O. Box 277, Santa Fe, New Mexico

From: Acting Regional Director, Region Three, National Park Service, P. O. Box 1728, Santa Fe, New Mexico

Subject: Partial Billing for Services Rendered, Measurements of Upper Rito de los Frijoles, Bandelier National Monument

On February 14 by memorandum we requested that your office submit a Standard Form 1081 for the period of July 1 to December 31, 1961 for the measurements in the upper Rito de los Frijoles. In that same memorandum we requested that you bill us again in April for the period of January 1 - March 31, 1962.

As yet we have not received any bill and we thought perhaps our memorandum had not been received by you. Would you please submit Standard Form 1081 covering the work performed through March 31.

(SIGNED)
James M. Carpenter
Acting Regional Director

Copy to: Director (2)
Supt., Bandelier

03-01-1962: memorandum to director from acting regional director regarding measurements of upper rito de los frijoles



Region Three
Santa Fe, New Mexico

MAR 1 - 1962

L54
BAND

Memorandum

To: Director

From: Acting Regional Director

Subject: Measurements of Upper Rito de los Frijoles by U. S. Geological Survey, Bandelier National Monument

A memorandum of February 19 from the Chief of the Water Resources Branch, concerning the above subject, suggested that we charge the cost of these measurements to the 143.2 M&P rather than the work order Construction Account 102.5.

After a careful review of the reasons for these measurements we have decided that they should be properly charged to the M&P Account. Therefore we are changing our cost estimate sheet by taking the $1,000 out of the Construction column and placing it in the M&P column.

On February 21 we sent your office charts showing final 1963 F.Y. and preliminary 1964 F.Y. programs for water resources investigations to be made by the U. S. Geological Survey. We are changing our chart by moving the $1,000 from Construction to M&P for the 1963 water resources investigations. This will change the M&P total from $15,510 to $16,510 and the Construction total from $13,000 to $12,000. Would you please change your charts accordingly.

Subsequent telephone conversations with Mr. Wilbur Heckler, District Engineer for the local branch of the U.S.G.S., indicates that for our purpose it would be better to move the gauging station to a spot within the Monument closer to our diversions. A project will be set up in the 1963 work order to do this work. It is anticipated that the work will be done by Park Service personnel.

(SIGNED)

George W. Miller
Acting Regional Director

In duplicate

Copy to: Chief, WODC (2)
Supt., Bandelier

02-19-1962: memorandum to regional director from chief regarding measurements of upper rito de los frijoles

FEB 21 '62

February 19, 1962

L54-Ab

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Branch

Subject: Measurements of Upper Rito de los Frijoles by U. S. Geological Survey, Bandelier National Monument

The memorandum of February 12 from Mr. Miller indicates that I have not made myself clear in previous correspondence.

There is doubtless some merit in obtaining records of the flow of Rito de los Frijoles at points of NPS diversion, and of the portion of that flow which NPS diverts, if there is any question of the adequacy of the supply for ultimate needs, or if there are conflicting claims by NPS and others to more than that available flow. In the latter case the quantities diverted by others should also be measured.

The AEC gauge is apparently too far up stream to be of maximum value to the Park Service, and there appears to be no such gauge at either the ditch or pipeline diversion. It is quite proper to move the gauge, and to use Water Resources Construction funds for that purpose. However, that work should be charged to Account 102.5-Bandelier because the gauge will become fixed equipment for some form of water resources work.

This will place the capital investment on the Park Service books. If the gauge was originally installed by AEC or USGS, any duplication of total Federal capitalization should be eliminated. It seems probable that the installing agency has liquidated all of the investment except the salvage value of the components which can be moved to the new site.

I assume that the Geological Survey has considered the merits of establishing ratios between the old and new tributary areas and resulting difference in runoff. This may not be important, but it would be unfortunate to lose the records over any extensive past period.

It is not yet clear to me why the annual use of the gauge (measurements and compilation of records) should be financed with the construction funds in the future, "to protect water rights", after the use of M&P funds was justified for the past year. There appears to be no controversial Federal water claim to protect (the relative interests of the United States and Mrs. Frey cannot be clarified any better by determination of total creek flow at the diversion point). Therefore, this justification appears to be incorrect.

You do appear to have PCP-U-26, to provide lateral from existing pipeline (Docket 2) to campground. You also have PCP-U-22, to provide facilities to pump 30 gpm to proposed development on Mesa, 600 feet higher than the Creek, with diversion from the Creek. The U-22 project, and part of campground development for which U-26 is related but not listed, are now in 1963 B&U program. It would be proper to finance proposed measurements under 3-WR-62B Bandelier, Account 102.5 as advance planning, except for the fact that the data will be too late for use in that connection.

It seems to me that the future records of total creek flow will be of value to determine when, if at all, the source will become inadequate for the increasing future water needs of the Monument. The inadequacy will probably be seasonal, and only when the old Abott rights (Docket 1) are exercised. The cost might be charged to Construction Account 134.2 under Work Order 3-WR-63A if there is a reasonable belief that more storage or a supplemental water source will be needed within the next 10 or 15 years. However, I believe that the measurements are more properly those needed for Monument operation whether further construction is contemplated or not. On the latter basis, the work should be charged to M&P Account 143.2, as during the past year, or some other noncapitalizing Monument fund for management and operation. I referred to M&O as a loose term to cover any such funds.

Your determination of the proper funds to use for the measurements will be satisfactory if based on the proper purpose, and that purpose is given in the justification and outline of work.

SIGNED

A. van V. Dunn
Chief, Water Resources Branch

Copy to: Superintendent, Bandelier
Chief, WODC (2)

02-14-1962: memorandum to district engineer from assistant regional director regarding partial billing for services rendered

Region Three
Santa Fe, New Mexico

SUPERINTENDENT	
ADM. ASSISTANT	
CHIEF RANGER	
ARCHEOLOGIST	
FOREMAN III	
DIST. RANGER	
PARK RANGER	

L54
BAND

FEB 14 1962

Memorandum

To: Mr. Wilbur Hecklor, District Engineer, Surface Water Branch, U. S. Geological Survey, P. O. Box 277, Santa Fe, New Mexico

From: Assistant Regional Director, Region Three, National Park Service, P. O. Box 1728, Santa Fe, New Mexico

Subject: Partial Billing for Services Rendered, Measurements of Upper Rito de los Frijoles, Bandelier National Monument

In our agreement with your office of June 1961 we started underwriting the cost of taking the measurements at the flume in the upper Rito de los Frijoles above Bandelier National Monument.

We would like for you to submit Standard Form 1081 for the period July 1 through December 31, 1961. This will amount to $500.00 as per our agreement.

We then would like for you to submit to us another bill in April 1962 for the period of January 1 - March 31, 1962 for $250. The remaining $250 can then be billed early in July for the period April 1 - June 30, 1962.

(SIGNED)

George W. Miller
Assistant Regional Director

Copy to: Director (2)
Supt., Bandelier

02-12-1962: memorandum to director from assistant regional director regarding measurements of upper rito de los frijoles

Region Three
Santa Fe, New Mexico

L54
HAND

FEB 12 1962

Memorandum

To: Director

From: Assistant Regional Director

Subject: Measurements of Upper Rito de los Frijoles by U. S. Geological Survey, Bandelier National Monument

In reply to a memorandum of January 30 from the Chief of the Water Resources Branch, following is a chronological description of the exact nature of the project.

For several years the U. S. Geological Survey has been taking measurements on a measuring device in the Upper Rito de los Frijoles for the benefit of the Atomic Energy Commission. Last summer the AEC decided they no longer needed these measurements. Because we felt that our water rights docket needed this type of measurement we contracted with U.S.G.S. to continue these measurements at a cost of $1,000 per year. Mr. Dunn should remember we first wrote regarding this matter under date of June 8, 1961 and, we thought, carefully explained the project in Acting Regional Director Carpenter's memorandum of that date.

W O R S
FEB 14 '62

The next reply we received was Mr. Berte's memorandum of June 14 suggesting that we work out an agreement with the U. S. Geological Survey prior to June 30 so that 1961 F. Y. M&P Funds could be obligated for the project. An informal agreement regarding the continuation of the project was worked out and $500 of the 1961 F. Y. Funds were obligated. We also set up an additional $500 of M&P Funds in the 1962 F. Y. program. This program was an attachment to Acting Regional Director Miller's memorandum of September 29, 1961.

The apparent confusion, if any, stems from the fact that we proposed to continue the measurements until June 30, 1962 with M&P Funds, Account 143.2 and change over to the construction account on July 1, 1962, when the project has been budgeted in accordance with the 1963 F. Y. programs attached to the above-mentioned memorandum of September 29, 1961.

We are not certain what Mr. Dunn had in mind in his memorandum of January 30, 1962. We think the "M & O Funds" mentioned in the second paragraph of the January 30 memorandum probably was intended to be "M & P Funds".

Because of the possibility that the site for measuring may possibly be moved closer to the Monument we obligated the $1,000 under the Construction Fund 1963 estimates. Results of these periodic measurements will be available to us along with a written report each year.

No decision has been reached as yet whether the site will be moved or if it is at all feasible. A joint field trip to the area is planned by Civil Engineer Fields of this office and Mr. Wilbur Heckler, District Engineer, Surface Water Division, U.S.G.S., and at that time a more firm decision will be made.

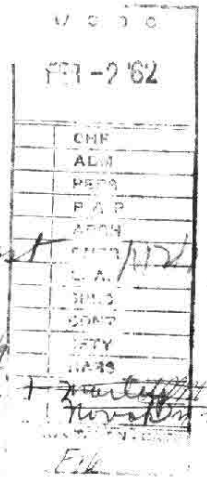
(SIGNED)

George W. Miller
Assistant Regional Director

In duplicate

Copy to: Chief, WODC (2)
Supt., Bandelier

01-30-1962: memorandum to regional director from chief regarding measurements of upper rito de los frijoles



January 30, 1962

L54

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Branch

Subject: Measurements of Upper Rito de Los Frijoles by USGS, Bandelier National Monument

We acknowledge receipt of Mr. G. W. Miller's memorandum of January 23 relating to the financing of the subject measurements.

We would appreciate further clarification of the exact nature of this project so we can determine whether or not its cost is a proper charge against water resources funds. From the limited information we now have, it appears that this project should be financed with M&O funds unless there is planned imminent water system construction or a water right controversy exists.

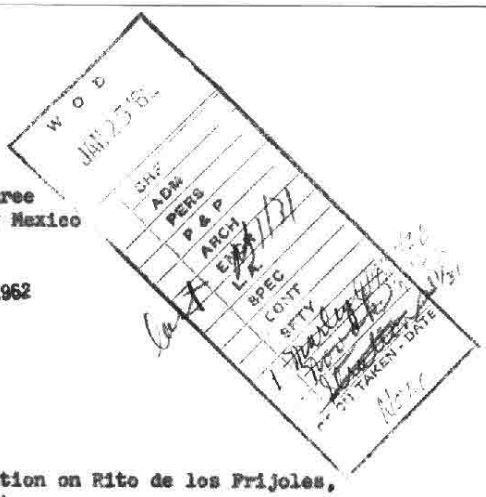
In trying to determine the project objective, we are further confused by Mr. G. W. Miller's memorandum of September 29, 1961, transmitting tentative 1963 F.Y. USGS program wherein the subject project is budgeted under the Water Resources Construction account whereas his January 23 memorandum indicates financing under the Water Resources M&P Account.

SIGNED

A. van V. Dunn
Chief, Water Resources Branch

Copy to: Superintendent, Bandelier
Chief, WODC (2)

01-23-1962: memorandum to director from acting regional director regarding continuation of gauging station on rito de los frijoles



Region Three
Santa Fe, New Mexico

L54
BAND

JAN 2 3 1962

Memorandum

To: Director

From: Acting Regional Director

Subject: Continuation of Gaging Station on Rito de los Frijoles, Bandelier National Monument

We are in receipt of a letter dated December 18, 1961 from W. L. Heckler, District Engineer, Surface Water Branch, U. S. Geological Survey, concerning the above subject. He states that the New Mexico State Engineer's office will be unable to participate financially in the continued operation of the subject gaging station. We have advised your office by memorandum on June 8, 1961 that we were interested in an arrangement for continued measurements at a cost of $500 per year with the idea that the State Engineer would furnish an additional $500.

Since the State Engineer's office is unable to participate we feel that we should continue these measurements even at a cost of $1,000 per year and have so budgeted in our M&P Account 143.2.

Recently Civil Engineer Fields of this office discussed this project with Mr. Heckler. They decided that since continued measurements should primarily be for the benefit of water rights at Bandelier National Monument that perhaps the gaging station could be moved. When the weather will allow, Mr. Heckler and Mr. Fields will visit Bandelier National Monument and make a proposal for a new site for the gaging station.

(SIGNED)

George W. Miller
Acting Regional Director

In duplicate

Copy to: Supt., Bandelier
Chief, WODC (2)
W. L. Heckler

01-23-1962: project construction program proposal

(October 1957)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

WR Copy

PROJECT CONSTRUCTION PROGRAM PROPOSAL

1. NAME OF AREA	LOCATION OF AREA (STATE)
Bandelier National Monument	New Mexico

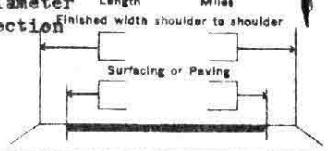
2. PROPOSED WORK

Construct water line from AEC main line near present Bandelier Entrance Station on State Highway 4 to the Frijoles Mesa development area, located west and south of the Entrance Station. Domestic, campground, utility area and Fire hydrant use.

3. DIMENSIONAL DATA

Length of line from AEC main line to development area approximately 1500 feet. Size of pipe 4 and 6 inches. The AEC line will be 6" diameter pipe. Distrivution lines as required and for fire protection of new facilities.

Length Miles



4. LAND STATUS AND DATA

Owned by National Park Service, except New Mexico State Highway 4 which must be crossed to reach AEC line.

5. CONSTRUCTION DATA

The location of pipe line is through timbered and rocky country. The line should be buried 4 feet to prevent freezing. A tee and valve will be installed by AEC on their main line at the take off point. Gravity supply, no storage required. Necessary to cross State Highway 4 pavement . Dry excavation.

6. JUSTIFICATION

Because of the limited space in Frijoles Canyon there is no room for expansion. A new location near the present Entrance Station has been selected for the new residential, utility, and campground areas. There is plenty of room in this area for expansion. This will allow more room in the Canyon for parking and day use.

7. MISCELLANEOUS DATA—REMARKS—REPORT REFERENCES

Recommended for accomplishment by contract. There will be ample water available from the AEC line and it will be furnished to the NPS at cost. A reservoir will not be needed and the water will be treated by AEC. There should be plenty of pressure. It is believed that this will be much more economical than the original proposed pumping of water from the canyon, since the initial cost will be much lower and maintenance costs will be reduced.

8. DATA ON THIS FORM PREPARED Recommended

11-27-61 Date

Name Paul A. Judge

Paul A. Judge

Title Superintendent

Name

Title

9. PCP CROSS-REFERENCES

U-24 Sewer system
U-34 Gas system

11. DRAWING NO.

Preliminary None
Working None

12. RECOMMENDED Reviewed

Date 2/16/62

for CHIEF, FIELD DIVISION, D & C

10. ESTIMATE—CLASS C

Construction and Facilitating Services	$ 34,000
Contingencies	$ 2,000
Plans, Surveys and Supervision	$ 4,000
Grand Total	$ 40,000

13. APPROVED

Date 2/16/62

SUPERINTENDENT

14. NAME OF PROJECT

Water system to new development area on Mesa

Route No. Section

Master Plan Drawing No

15. LOCATION WITHIN AREA OR TERMINI

New Development Area near Entrance Station on Frijoles Mesa

16. INDEX NO.

U-22-1

BPR ☐ NPS ☒

(If additional space is needed to insure complete description, use reverse and refer to item No.)

K-7-4

51428

06-14-1961: memorandum to regional director from acting chief regarding financing under m&p account 0140 (143.2)

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ACTION TAKEN - DATE
None

June 14, 1961

L54-OBL

Memorandum

To: Regional Director, Region Three

From: Acting Chief, Water Resources Section

Subject: Financing Under M&P Account 0140 (143.2), USGS Water Measurements in Bandelier National Monument

In reply to Mr. Carpenter's memorandum of June 8, we agree that continued measurements, by the USGS, of the Rio de Los Frijoles would offer water right protection in the event the need to appropriate additional water should arise.

The $500 a year cost would be chargeable to the subject account. As indicated in Mr. Dunn's memorandum of May 4, to all Regional Directors, a small surplus of M&P funds is available. We suggest that you work out an agreement with the USGS prior to June 30 so that 1961 F.Y. M&P funds can be obligated for the project.

Accordingly, by copy of this memorandum, we are requesting our Budget Officer to withdraw $500 from the $34,622 which have been allocated to the Washington Office, reducing that allotment to $34,122, and reallot the $500 to Region Three, to increase your operating fund from $4,910 to $5,410.

SIGNED

Victor A. Berte
Acting Chief, Water Resources Section

Copy to: Superintendent, Bandelier
Chief, WODC (2)

06-08-1961: memorandum to director from acting regional director regarding measurements of upper rito de los frijoles

L54

Region Three
Santa Fe, New Mexico
JUN 8 1961

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None

Memorandum

To: Director

From: Acting Regional Director

Subject: Measurements of Upper Rito de Los Frijoles, U. S. Geological Survey, Bandelier National Monument

The Atomic Energy Commission has been receiving measurements of the Rito de Los Frijoles taken by the U. S. Geological Survey, Surface Water Branch, in past years at a point within the Monument boundary upstream from the Monument Headquarters.

The AEC has now decided they no longer need these readings. U. S. Geological Survey has contacted us to inquire if we would like these measurements continued on a cooperative basis with the State Engineer of New Mexico. The total cost for taking these readings is $1,000 a year. If we were to enter into an arrangement for the continued measurements our cost would be $500 a year.

We do not have this item budgeted but we could budget it with a revised work order and charge it to the construction account, or we could program it under our M & P Account 143.2 after July 1.

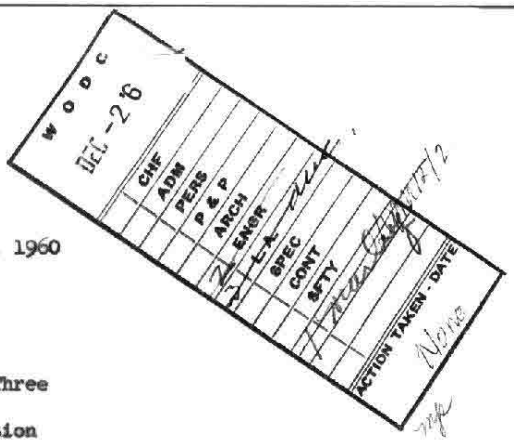
We would like to know if you would concur in the continued measurements for our water rights protection. The records would be published and in our opinion the greatest protection would be the flow record of measurement if it becomes necessary to appropriate additional water from the Rito de Los Frijoles.

(SIGNED)

James M. Carpenter
Acting Regional Director

Copy to: Chief, WODC (2)
Superintendent Bandelier

11-30-1960: memorandum to regional director from chief regarding survey of los frijoles ditch systems



L54-OBL

November 30, 1960

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Survey of Los Frijoles Ditch Systems, License 802, Docket 1, Bandelier

It was gratifying to learn from Mr. Fields' memorandum of November 25 that he is giving his office staff some related field experience.

It does not seem necessary to me to relocate all of Ditches 1 and 2. The traverses on the Abbott map with the engineer's statement of October 14, 1913, which is in Docket 1, can be accepted with minor adjustments and ties to section corners or Monument boundary corners from the approximate locations of the headgates. The traverse of Ditch 3 on Drawing 6978 in Docket 2 was so projected and is adequate.

The main thing, for historical purposes, would be to recover the outlines of the rest of the original irrigated areas before they become further overgrown, or eroded, then extend the records on Drawing 6978 to show all present and proposed areas of irrigation, and determine how closely they approach the original Abbott areas. The rights should then be amended, as proper, to change points of diversion and identity of ditches or pipes through which the water is now applied to the present irrigated areas.

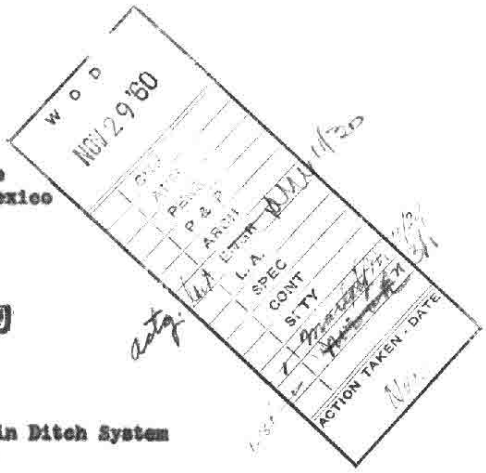
It may be that Mrs. Frey was correct in her declaration to the State Engineer, of some years ago, that part of the rights have lapsed or been abandoned, but the United States, as the land owner, should make the determination. I should also limit the Federal definition, and any recording with the State, to the extent of continuing use, even if somewhat intermittent, with no commitment on what has happened to the rest of the rights until your development plans are complete, and you are ready to survey off the residual as a property value.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Bandelier
Chief, WODC (2)

11-25-1960: memorandum to regional chief of operations from civil engineer regarding trip to band to survey in ditch system



Region Three
Santa Fe, New Mexico

L-54

Memorandum

To: Regional Chief of Operations NOV 25 1960

From: Civil Engineer

Subject: Trip to Bandelier to Survey in Ditch System for Water Rights and Dockets

On October 26, 1960 I left Santa Fe at 7:45 a.m. enroute to Bandelier National Monument. I was accompanied by cartographic draftsmen Lawrence Sando and Clyde Arquero. The purpose of this trip was to accurately locate for our water rights docket the irrigation ditches which have been used in this area since the early 1900's. My reason for taking draftsmen Sando and Arquero along was to give them actual field experience to augment their training and experience which I propose to give them in the future in order that they may become familiar with the duties of rodmen and chainmen and on occasion assist me in some of my field surveys.

It was felt since the area is only a little over 50 miles from Santa Fe that it would be better to return each night rather than stay at the Monument or at nearby facilities. We figured that the cost of mileage for the round trip each day would be less than the cost of per diem for three men.

We arrived at the Monument at 9:15 a.m. and Superintendent Judge showed us the location of a ditch known as Ditch #3 which is still used for irrigation purposes by the National Park Service. This ditch is a small ditch and a diversion is accomplished by means of a dirt dam on the Ritos De Frijoles.

We spent the following two days staking and surveying the location of this ditch, the land which it irrigates, and tying this, for map purposes, to the Frijoles Creek and making a tie from this ditch to the USGS brasscap located in front of the Visitor's Center. We returned to Santa Fe each night arriving in Santa Fe at 5:40 p.m. on October 26 and at 6:30 p.m. on October 27.

During the afternoon of October 27, Mrs. Frey who is the concessioner at Bandelier and also an heir to the individuals who originally owned the land at Frijoles Canyon loaned us a linen tracing prepared in 1913

by Engineer John A. Walker. This tracing shows the location of the ditches and the land which they irrigated as of 1913 and was drawn especially as a water rights document. We brought this linen tracing in with us that evening and ran a reproducible so we could make our own reproductions. We plan to insert this map as a part of our Docket along with the new map which will be drawn as a result of this field survey.

On the afternoon of October 28 we tried to locate Ditches #1 and #2 which are upstream from Ditch #3. These ditches have not been used for irrigation purposes for many years and have almost become obliterated by the elements. I could not determine where these ditches were exactly so no attempt was made to stake them. On a later trip, if it is deemed necessary that these abandoned ditches be located, then I will attempt to re-trace the survey made by Engineer John A. Walker in 1913.

We returned home to Santa Fe on October 28 arriving here at 4:45 p.m.

(SIGNED)

William E. Fields
Civil Engineer

Copy to: Director (2)
WODC (2)

APPROVED FOR DISTRIBUTION BY:

(SIGNED)

Thomas J. Allen, Regional Director

Date: NOV 25 1960

06-20-1957: letter to rio grande underground water basin from chief, water resources section regarding band is included in the rio

June 20, 1957

Rio Grande Underground Water Basin

Bandelier National Monument is included in the Rio Grande Underground Water Basin which was declared by the State Engineer on November 29, 1956. Said declaration states that the underground waters are inter-related with the flow of the Rio Grande stream system, and that waters of the Rio Grande stream system are fully appropriated.

(SGD.) A. VAN V. DUNN.

A. van V. Dunn
Chief, Water Resources Section



03-05-1953: memorandum to regional director from assistant director regarding status of mrs. frey's interests in rito de los frijoles

In reply refer to:
L54 BAND-L

MAR - 5 1953

Memorandum

To: Regional Director, Region Three

From: Assistant Director

Subject: Status of Mrs. Frey's Interests in Rito de los Frijoles Ditch Rights, Bandolier

The memorandum of July 11, 1952, for you from Mr. Barton, which was forwarded by memorandum of September 3, 1952, was not answered specifically in my reply of January 29 (file C3823 BAND) because the concession sale has fallen through. At the same time, Mr. Dunn points out that the status of the water rights under License 802 (Docket No. 1) merits further consideration when Mr. Barton has the time.

Mr. Barton did not specifically mention the memorandum of March 23, 1943, for the Director from Mr. Dunn, of which copies were sent to you. The statement, therein mentioned, is at the top of the assembly in Docket 1. The gist of the matter is that Mrs. Frey claimed to be the sole owner of the ditches and appurtenant rights and declared that she had abandoned all irrigation except on 5 acres on the north side of the creek (the garden area).

Mr. Dunn discussed the matter with Mr. Bliss, the State Engineer, while he was still assistant to Mr. McClure, and found that Mr. Bliss, like Mr. Dunn, questioned Mrs. Frey's title and authority to amend the rights, since they are appurtenant to the Federally-owned land. There has been no attempt to correct her statement because of the great amount of other work, and the fact that Mrs. Frey has continued to exercise the rights, without further assignment, on the land where authorized by the concession contract. It should also be noted that under Article III (g) and Article IV (b) of the contract, recognition is taken of the fact that Mrs. Frey is exercising the water rights, but no question of ownership is raised. So far as we know, too, we have not been formally advised of the fact that Mrs. Frey filed the statement of November 5, 1942.

covered by conference with
Mr Dunn in Regional Office
Aug. 5, 1953.

Since the ditch rights have a priority of January 27, 1915, and the "domestic" Federal rights under Permit and License 2470 (Docket 2) have a priority of April 2, 1943; and since the Rio Grande was so fully appropriated prior to 1943, we believe that Federal title to the earlier right should be established if possible. Mr. Dunn also hopes to assign part of the earlier priority to the pipe line andabandon the rights under License 2470 when that matter is settled.

Accordingly, it is suggested that Mr. Barton informally discuss the matter further with Mr. Bliss, or the State Attorney General, and obtain a concrete statement concerning their views as to the Federal interests in the rights under License 802. We should also like to know more about the terms under which Mrs. Frey was removed from her former establishment, if you have the records, since we will have to go to Archives for our original records.

(SGD) THOMAS J. ALLEN

Assistant Director

In triplicate

07-11-1962: memorandum to regional director from regional counsel regarding water rights held by mrs. frey

Region Three
Santa Fe, New Mexico

July 11, 1962

Memorandum

To: Regional Director

From: Regional Counsel

Subject: Water rights held by Mrs. Frey at Bandelier National Monument

The Regional Chief of Concessions Management has requested a memorandum on the status of the above-mentioned water rights. It is understood Mrs. Frey is contemplating a sale of her interests at Bandelier, including a transfer of her concession contract subject to the approval of the Director. One of the elements of value in the proposed sale is a water right claimed by Mrs. Frey.

The water right claim of Mrs. Frey is based upon Application No. 602, filed in the office of the State Engineer December 4, 1915, and followed by a license issued in 1921, with a priority of January 27, 1915, to appropriate 45 acre feet of water each 155-day irrigation season from April 1 to August 31, to irrigate 15 acres lying on the north and south sides of Frijoles Creek (Rito de los Frijoles). Through a series of conveyances, all rights under the above-described license No. 602 became vested in Mrs. Frey. The chain of title is not perfect, but the defects have undoubtedly been cured by more than 10 years adverse possession under color of title. Mrs. Frey's record title is defective for another reason, namely, that the various conveyances which included the water right have not been filed with the State Engineer. It is doubtful that her affidavit of ownership, filed in his office on November 5, 1942, cured that defect. However, this defect has not been considered material in our dealings with Mrs. Frey, and it should not be considered material now.

Prior to 1943, this Service considered obtaining Mrs. Frey's permission to transfer a part of her claimed water right, with priority of 1915, to the Bandelier pipe lines. This proposal was abandoned, and an independent water right was established with a priority of April 2, 1943, to appropriate 11 acre feet of water per

annum from Frijoles Creek, of which three acre feet are to be used for the irrigation of small areas totaling one acre of land. This irrigation is understood to be by hose connections to the pipe lines.

Mrs. Frey still irrigates a tract of land consisting of garden and orchard, using one of the three ditches originally specified in Application 302. The area of the tract was estimated by Mr. Dunn in 1941 at 2.7 acres. The duty of water for irrigation in New Mexico being limited to three acre feet per acre per annum, her claim of 45 acre feet is now valid for at most 8.1 acre feet. It is understood that when Mrs. Frey's present contract expires at the end of 1958 she or her successor under the contract will be obliged to cease irrigating the 2.7 acres which may now be irrigated. All of Mrs. Frey's claimed water rights will then lapse after four years of non-use, unless they are transferred to other diversions and/or other places or purposes of use. The water right might have some slight value by reason of its early priority. Since water conflicts along Frijoles Creek are unlikely, a late priority, even one established after 1930, would appear to be of almost equal value with a priority of 1915. If this Service needs water in the future in addition to that now diverted under our priority of 1943, some slight value might be given to a portion of Mrs. Frey's right for the purpose of transferring it to any proposed additional water system built by the Government.

The question has been raised whether Mrs. Frey has any right which can be transferred by her. Section 77-522, New Mexico Statutes 1941, Annotated, as well as Section 77-102, provides that water used for irrigation purposes shall be considered appurtenant to the land upon which it is used, and provides that the rights shall never be severed from the land without the consent of the owner of the land. If those sections were taken literally, Mrs. Frey would have no salable water right at all, not even for the 8.1 acre feet per annum which I believe she has. However, notwithstanding the statutory language, the Supreme Court of New Mexico has taken the view that a good water right can be established for use upon the public lands of the United States and that it may be severed from the original place of use without the consent of the subsequent grantee of the United States. First State Bank v. Yellow, New Mexico 1928, 269 Pac. 55. That case involved pipe lines for stock watering, and the court reserved its judgment as to irrigation, but it clearly made a distinction between appropriators owning land and appropriators having only a possessory interest in Government land even where the use is for irrigation.

1953 Comp 75-5-22

1953 Comp. 75-1-2

The contract now in effect between the Secretary and Mrs. Frey purports to recognize her separate water rights, without defining them. It will be difficult to say that she has no severable water right, or that the Government has not consented to severance at such time as she ceases to irrigate the 2.7 acres she now irrigates. The value of her water right will then become practically zero by reason of the physical conditions preventing an effective transfer to another user.

Any prospective purchaser from Mrs. Frey will probably become aware of this situation. He should be informed of it if he makes inquiry; it may be that he should be informed in any event so that he will not be tempted to make an imprudent investment based on fictitious values, and expect to recover such investment through his future activities as a concessioner.

Merritt Barton
Regional Counsel

Copy to: Director
Gen'l Supt., Southwestern
National Monuments (2)

Approved for distribution:

_____
Regional Director, July , 1962

03-31-1943: letter to frijoles lodge from superintendent regarding copy of our application for permit to appropriate waters

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
~~Santa Fe, New Mexico~~ COOLIDGE, ARIZONA

APR 4 ... BANDELIER NATL. MON.

March 31, 1943.

Mrs. Evelyn Frey,
Frijoles Lodge,
Bandelier National Monument,
Santa Fe, New Mexico.

Through Custodian Thomas, Bandelier National Monument.

Dear Mrs. Frey:

We are enclosing a copy of our application for permit to appropriate waters of Frijoles Creek at Bandelier National Monument, together with a print of the map NM-BAN-6978 which accompanies the application.

This application and map are copies of the originals that you studied in my office early this month during our discussion with Mr. A. van V. Dunn. The original application and map will be filed with State Engineer McClure at an early date.

Sincerely yours,

Charles A. Richey,
Superintendent.

Encl. 2876498.

cc: Custodian Thomas, Bandelier N. M.

03-23-1943: memorandum to regional director from hydraulic engineer regarding band water right problem

...n, Bandelier N.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WATER RIGHTS SECTION
SAN FRANCISCO, CALIF.

RECEIVED
APR 4 1943
BANDELIER NATL. MON.

March 23, 1943.

MEMORANDUM for the Regional Director, Region Three.

I am just sending the attached letter to the Director with regard to the Bandelier water right problem, and hope that it may offer a solution. It looks to me as though there were a perfectly satisfactory method of buying out Mrs. Frey's interests without introducing any real controversy over the true title to the water right itself. I am sure, from our discussion in Santa Fe, that no real harmony can exist at the monument as long as the operator claims some of the property. I also feel, with the interstate and international water claims on the Greater Rio Grande River, that we should establish our title to license No. 802 before it is further mismanaged or lost through lapse of use or other conditions.

I also enclose a copy of the application which you are now filing with the State Engineer for the independent diversion by the pipe line. This application was promised by Mr. Richey to Mrs. Frey along with a copy of the map, and I assume that a print of the map was run off before filing it with the State Engineer.

...V. DUNN

A. van V. Dunn,
Hydraulic Engineer.

Enclosure 2136681.

cc: Director.
Supt., S.W.Monuments.
Custodian, Bandelier N.M.,
through Supt., S.W.Mons.

03-23-1943: memorandum to director from nps regarding reference is made to the water right problem at band

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

WATER RIGHTS SECTION

SAN FRANCISCO, CALIF.

March 23, 1943.

MEMORANDUM for the Director.

Reference is made to the water right problem at Bandelier National Monument.

In the light of information obtained on my recent trip to Santa Fe I should like to request reconsideration of the possibility of purchasing Mrs. Frey's interests and a request for release of sufficient of our impounded funds to permit such purchase now. This request is supported by Mr. Richey.

I offer both positive and negative justification but feel that the weighted sum favors such action.

As a result of my trip the United States is supposed to have filed an application for 0.03 sec. ft. of water from Frijoles Creek, to be diverted by the Park Service pipe line, during the past week.

Mrs. Frey claims the old Abbott right under license No. 802 and on November 11, 1942, filed a sworn statement with the State Engineer to the effect that she was sole owner. This statement also indicated that part of the right had lapsed — as it has — and that she now irrigates 5 acres of land. This defines her right as 0.0715 sec. ft. with an annual limit of 15.0 acre feet.

License No. 802 has a priority of January 27, 1915, and the Park Service claim will have a priority of March or April 1943, depending on when it is actually filed.

Under the license, Mrs. Frey can now divert at 0.0715 sec. ft. for just 105 days per year without exceeding the 15.0 acre foot total. I believe the growing season is nearly 200 days in the area so that she is only entitled to irrigate on an average of alternate days.

Actually, the orchard which Mrs. Frey irrigates has an area of only 1.14 acres. In other words, she only needs about 23% of the water covered by license. We could prove lapse of the rest if we wished, but for the moment we can say that she should not irrigate at 0.0715 sec. ft. but one day in 8, or a total of 25 days per year. She might prefer to irrigate about 3 hours per day during the whole season. There could be other schedules between these two, but in any case the creek is all available to supply the NPS claim most of the time.

Even if both diversions are made at once, the total demand is only 0.1015 sec. ft., which is far less than minimum stream flow. It is possible, however, that with minimum flow little or no water would reach actual headgates.

Mrs. Frey advised that she has actually felt a shortage due to NPS diversions. I am quite certain that she diverts at a rate of over 0.5 sec. ft. most of the time so that this claim is ungrounded.

Mrs. Frey's sworn statement as to title is not necessarily true. "All water appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of.... the ditch...., is appurtenant to the land upon which it is used and shall so continue as long as it can be beneficially used on or until it is lawfully severed from the land." (From State Water Manual.)

The United States is, and always has been, owner of the land, but I do not know what contracts may have existed under Forest Service jurisdiction in 1914-1915. The Park Service seems to have recognized that she has some title:

1. It provided the new lodge, etc., in exchange for her old developments.

2. It permits her to irrigate and cultivate the orchard.

The land was first occupied and developed with the intent to patent. It seems possible that Mrs. Frey has acquired some vested right under the Public Land laws.

The Park Service claim has not been filed since sent to the Regional Director in November because Mrs. Frey protested, feeling that we were claiming part of her right under license No. 802. In our conference on March 8 I seemed to convince her that the two claims were independent and she consented to the filing. The fact that the Park Service has deferred action in deference to her whims, suggests further recognition of her title to license No. 802, morally or otherwise.

It has been pointed out that the Park Service and Mrs. Frey both claim rights which can be fully satisfied by Frijoles Creek, and so far as I have been able to determine the two rights are all on that creek. So far as the one stream is concerned, the United States does not need the Frey right. However, Frijoles Creek is part of the Rio Grande drainage — an interstate and international stream. It is also above the Middle Rio Grande Conservancy District which probably claims all tributary waters. On this basis the Park Service should prefer a priority of 1915 to one of 1943.

During a call on the State Engineer on March 9, I found that he would accept an application to sever the Frey right from the land and transfer it to any other point in the Rio Grande drainage, subject to protest by other water users and the owner of the land to which it is now appurtenant. Hence, right under license No. 802 is worth more than is implied by its present location.

In our conference Mrs. Frey pointed out that she was not amortizing her investment as planned under the NPS contract and that she was negotiating to sell her concession and water right to a man from Oklahoma. I am not sure that she can sell the concession without NPS approval, and I always feel that Oklahomans overestimate the value of their purchases near parks and monuments. Be that as it may, she has a potential market.

The State Engineer also advised that there is a market for water rights in the aforesaid Conservancy District near Cochiti Canyon, about 40 miles north of Albuquerque. He advised that the crops there were general, alfalfa, grain, fruits, beans, and vegetables, and that irrigated land was probably worth about $40 per acre.

Mr. Richey advised that much land between Santa Fe and the monument is being subdivided and sold as home sites at from $150 to $200 per acre.

Three possible values of the water right result:

5 irrigated acres @ $40	$200.00		
5 irrigated acres @ $150		$750.00	
5 irrigated acres @ $200			$1,000.00
Less 5 arid acres @ $2.50	12.50	12.50	12.50
0.0715 sec. ft. of right at Bandelier	$187.50	$737.50	$ 987.50
Less: State fees for transfer	$25.00		
Cost of file map	100.00		
Abstract, etc.	25.00		
	150.00	150.00	150.00
Market value at Cochiti Canyon	$37.50	$587.50	$837.50
Value per second foot	525.00	8,200.00	11,700.00

Mean value per second foot.....$6,112.50

Mean value for 0.0715 second foot..... $437.50

Mrs. Frey also has the following investments:

900 ft. of orchard fence.....	$ 75.00
50 fruit trees, now at least.....	500.00
15 yards concrete distribution ditch.....	225.00
1.14 acres grading and clearing.....	50.00
1400 ft. of diversion ditch.....	100.00
Total.....	$950.00

It seems to me that there is a total value of about $1,387.50 of which $950 is definitely investment by Mrs. Frey and her predecessors, and $437.50 is disputed by the United States and Mrs. Frey. Mrs. Frey does not need to know how much we are paying for water rights and how much for improvements. If she is willing to sell at not to exceed $1000 we would have a single solution to a complicated problem.

We would buy her interest in improvements and water rights under license No. 802, showing that we paid practically nothing for the right itself. We would have undisputed title to an older right in the Rio Grande drainage.

A. van V. DUNN

A. van V. Dunn,
Hydraulic Engineer.

cc: Region Three.
Supt., S.W.Monuments.
Custodian, Bandelier N.M.,
through Supt., S.W.Mons.

03-10-1943: memorandum to water rights section from acting regional director regarding a copy of acting directors memo relative

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

March 10, 1943.

MEMORANDUM for the Water Rights Section,
601 Sheldon Building, San Francisco, California.

Reference is made to your memorandum of February 18 enclosing a copy of Acting Director Moskey's memorandum of November 25, relative to the application to appropriate waters of Frijoles Creek in Bandelier National Monument.

Since Engineer Dunn of your office planned to be in Santa Fe March 8 and 9, no action was taken in response to your memorandum pending the arrival of Mr. Dunn.

The above-referred to application was discussed in detail with Mrs. Frey, Mr. Dunn, Regional Engineer Lassiter and Assistant Superintendent Maxwell, on March 8. Details pertaining to the water rights at Bandelier, which had not previously been understood by Mrs. Frey, were clarified at this time. She has no further objection to our filing an application to appropriate waters of Frijoles Creek since she clearly understands that our application will not conflict with her present claims. It was decided to file the application just as soon as Regional Engineer Lassiter returns from Denver, Colorado, where he is accompanying Mr. Dunn.

While we regret that the filing of this application has been delayed, we do feel that it has been beneficial to have the opportunity to review this matter with Mr. Dunn and to have Mrs. Frey clearly understand our intent and to know that we are not trying to take the original Abbott right or any claims that she might have. Mr. Dunn has complete information concerning our attitude in this matter, and I feel sure that he will pass it on to you and clarify any misunderstanding which may have been caused by Regional Director Tillotson's memorandum of February 11.

CHARLES A. RICHEY

Charles A. Richey,
Acting Regional Director.

cc: The Director.
Supt., SW National Monuments.
Custodian, Bandelier N. M.

03-04-1943: letter to mrs frey from nps regarding reason for not receiving replies

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
COOLIDGE, ARIZONA
Santa Fe, New Mexico

March 4, 1943.

Mrs. Evelyn C. Frey,
Encino,
New Mexico.

Dear Mrs. Frey:

I saw Custodian Thomas of Bandelier National Monument several days ago and he told me that you were away from Bandelier visiting your father in Encino. I presume that this is the reason I have not received replies from you in response to my recent letters regarding your operation contract and the water rights matter.

Information has just come to me that Engineer van Dunn of the Water Rights Section of this Service will be in Santa Fe several days during the coming week. It seems to me that this would be an opportune time to review the Bandelier water rights matter and to clarify any misunderstandings which may have developed in the past. It is my understanding that Mr. van Dunn is fully acquainted with this problem, having studied the matter at Bandelier several years ago, and I would like to have the opportunity to discuss the current status of this matter with you and him.

I wonder if it would be convenient for you to come to my office on Tuesday afternoon, March 8, at about two p. m. Should this be impossible, I believe that we can arrange for a meeting at Bandelier the same afternoon, if this will be more convenient for you. Under either condition, I will appreciate information from you concerning this date. I am sending a copy of this letter to you at Bandelier, and a copy to Mr. Thomas, so that we may be able to contact you in case you are not at Encino.

Sincerely,

Charles A. Richey,
Superintendent.

cc: Mrs. Frey, Frijoles Canyon Lodge,
Bandelier N. M., Santa Fe, N. M.
Custodian, Bandelier N. M.

Art: I will be pleased to have you present at the meeting referred to above. Should Mrs. Frey be at Bandelier, you might check the matter with her. If she is at Encino, we will try to get word to you if she confirms the above-suggested appointment date. CAR.

02-18-1943: memorandum to regional director from attorney regarding application to appropriate waters

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WATER RIGHTS SECTION
601 Sheldon Building SAN FRANCISCO, CALIF.

February 18, 1943.

MEMORANDUM for the Regional Director, Region Three.

Reference is made to your memorandum of February 11 addressed to the Regional Director, Region Four, relative to our application to appropriate waters of Frijoles Creek in Bandelier National Monument.

You state that this application has not been filed with the State Engineer because of certain differences of opinion in your office and in the office of the Southwestern National Monuments as to the relative merits of proceeding under the water rights application as compared with the purchase of Mrs. Frey's water rights. You also advise that when these differences have been settled and it is decided to apply for the appropriation of water you will advise us.

We were under the impression that the matter of filing water right applications was usually in the discretion of this office. However, we have agreed with your office in the past as to the advisability from a matter of policy of purchasing whatever rights Mrs. Frey might have, even though those rights are very inchoate and ephemeral. In order to protect our rights we had determined that it was necessary to make an application to appropriate water in behalf of the National Park Service at Bandelier; but on November 14, 1942, I wrote the Director asking for authority to negotiate on the basis of $1000 for the purchase of the private rights at Bandelier. You received a copy of my memorandum. The reply thereto was made by Chief Counsel Moskey as Acting Director under date of November 25, 1942, of which I note you did not receive a copy. I am enclosing a copy of the Acting Director's reply herewith. You will note therein that he expects us to go on with the perfection of the pending water right application, and then the matter of undertaking purchase negotiations might be considered.

It would therefore seem to us that the water right application should be filed immediately and then we can decide on your and our recommendation to appeal for an allotment of $1000 with which to negotiate for the purchase of the alleged rights of Mrs. Frey.

Albert L. Johnson,
Attorney.

Enclosure 2136667.

cc: Director.
Supt., S.W.Mons.)with copy of Mr. Moskey's
Custodian, Bandelier)memorandum of 11/25/42.

02-11-1943: memorandum to regional director from regional director regarding application to appropriate waters

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

February 11, 1943.

MEMORANDUM for the Regional Director, Region Four.

Reference is made to Hydraulic Engineer Dunn's memorandum of February 8, relative to the application to appropriate waters of Frijoles Creek in Bandelier National Monument.

This application has not been filed with the State Engineer. There still remain certain differences of opinion in this office and in the office of the Southwestern National Monuments as to the relative merits of proceeding under Mr. Dunn's application, as compared with the purchase of Mrs. Frey's water rights.

When these differences have been settled and it is decided to apply for the appropriation of water, we will advise you.

M. R. TILLOTSON

M. R. Tillotson,
Regional Director.

cc: Supt., Southwestern
National Monuments.
Custodian, Bandelier
National Monument.

01-20-1943: letter to frijoles canyon lodge from nps regarding water right on the rio de los frijoles

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
COOLIDGE, ARIZONA
Santa Fe, New Mexico

January 20, 1943.

Mrs. Evelyn C. Frey,
Manager,
Frijoles Canyon Lodge,
Bandelier National Monument,
Santa Fe, New Mexico.

Through Custodian, Bandelier National Monument.

Dear Mrs. Frey:

Reference is made to our recent conversation during your last trip to my office in Santa Fe, concerning your water right on the Rio de Los Frijoles, Bandelier National Monument. Upon your departure, I discussed this matter in some detail with Regional Engineer Lassiter and Auditor Vanden Heuvel.

I feel that there has been some misunderstanding concerning this water right as Mr. Lassiter informs me the Government has never made application for a water right at Bandelier. I was of the opinion, from discussing this matter with Custodian Thomas, that application had been made for sufficient water to operate the lodge and the residential development. It is presumed that Mr. Thomas received this information from you without checking it with the State Engineer's office.

As discussed with you, I would like very much to go into this matter in detail with you and several members of my staff. I think it would also be opportune if both of us went to the State Engineer's office to clarify the misunderstanding that this Service has filed a water right application at Bandelier.

I now intend to be in this office for the next several weeks and will be glad to discuss this matter at your convenience. Some advance notice will be appreciated so that I can arrange for the attendance of Regional Engineer Lassiter and Custodian Thomas.

Sincerely yours,

Charles A. Richey,
Superintendent.

cc: Custodian Thomas,
Bandelier N. M.

11-25-1942: memorandum to attorney from acting director regarding acquisition of water rights

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO

November 25, 1942.

MEMORANDUM for Attorney Johnson, Region Four.

This refers to your memorandum of November 14, concerning the acquisition of water rights at Bandelier National Monument, and requesting authority to negotiate for the purchase of certain private water rights on the basis of a consideration of $1,000.

I note Mr. Dunn's statement in his memorandum of November 13 that there is no immediate need for the additional water; also his statement, in which I concur, concerning the wisdom of undertaking purchase negotiations pending the ultimate perfection of the pending water right application. In these circumstances, and in the absence of other information, the proposal does not appear sufficiently urgent or otherwise meritorious to justify a recommendation to the Bureau of the Budget for approval and release of purchase funds. The matter should continue to receive field consideration and be resubmitted for our consideration if and when all of the circumstances will conclusively justify the expenditure of funds under the restrictions imposed by the war program.



/s/ G. A. Moskey
Acting Director.

660-05 Bandelier

RECEIVED DEC 7 1942 National Park Service Region III

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO

Maxwell RM
Leasing
Forest Homes

November 25, 1942.

MEMORANDUM for Attorney Johnson, Region Four.

This refers to your memorandum of November 14, concerning the acquisition of water rights at Bandelier National Monument, and requesting authority to negotiate for the purchase of certain private water rights on the basis of a consideration of $1,000.

I note Mr. Dunn's statement in his memorandum of November 13 that there is no immediate need for the additional water; also his statement, in which I concur, concerning the wisdom of undertaking purchase negotiations pending the ultimate perfection of the pending water right application. In these circumstances, and in the absence of other information, the proposal does not appear sufficiently urgent or otherwise meritorious to justify a recommendation to the Bureau of the Budget for approval and release of purchase funds. The matter should continue to receive field consideration and be resubmitted for our consideration if and when all of the circumstances will conclusively justify the expenditure of funds under the restrictions imposed by the war program.

cc: Regional Director, Region Three.
Supt., Southwestern Natl. Monuments.
Custodian, Bandelier National Monument.

(SGD) G. A. Moskey
Acting Director.

660-05,7

Custodian, Bandelier N.M.

FEB 10

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WATER RIGHTS SECTION
SAN FRANCISCO, CALIF.

February 8, 1943.

MEMORANDUM for the Regional Director, Region Three.

Our records show that we sent you an application to appropriate the waters of Frijoles Creek in Bandelier on November 3, 1942, and that a letter from you answering our earlier questions of August was written on November 10 and probably crossed our correspondence in the mail.

We should like to know whether the application has been filed with the State Engineer, and if so whether a permit has been granted. When such permit is received by the Superintendent, we should like to borrow it to complete other Park Service copies.

(SGD.) A. WM. V. DUNN

Hydraulic Engineer.



cc: Supt., S.W.Mons.
Custodian, Bandelier N.M.

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
WATER RIGHTS SECTION
SAN FRANCISCO, CALIF.
601 Sheldon Building

November 14, 1942.

MEMORANDUM for the Regional Director, Region Three.

Reference is made to your memorandum of November 10 concerning water rights at Bandelier National Monument. Your memorandum evidently was written prior to the receipt of Mr. Dunn's memorandum of November 3 transmitting an application to appropriate the waters of Frijoles Creek for the federal pipe line.

I do not think there is anything further I can add to your and Mr. Dunn's last memoranda except what is contained in my memorandum of even date to the Director, a copy of which is enclosed. I would emphasize, however, Mr. Dunn's suggestion that the filing whould be made without alterations and without delay. In the meantime we will learn from the Director as to whether we can negotiate on the basis of $1,000 with Mrs. Frey and her attorney.

(SGD.) ALBERT L. JOHNSON
Attorney.

Enclosure 2122068.

cc: Director.
Supt., S.W.Mons.
Custodian, Bandelier N.M.,
through Supt., S.W.Mons.

Memorandum
8010
11-27

11-14-1942: memorandum to director from attorney regarding water rights

Supt. ~ W.Monuments.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WATER RIGHTS SECTION
SAN FRANCISCO, CALIF.

November 14, 1942.

MEMORANDUM for the Director.

In enclosing a copy of Mr. Dunn's memorandum of November 13 to me with reference to water rights at Bandelier National Monument, I do so for the purpose of answering the question in the antepenultimate paragraph of Mr. Dunn's memorandum, which is the same question propounded by Regional Director Tillotson in his memorandum of November 10 to us.

While I understand that $2,000 was tentatively set aside or allotted for the purchase of water rights at Bandelier, nevertheless I understand that all purchase funds are reserved. If we could negotiate on the basis of $1,000 for the purchase of the long-standing private rights at Bandelier, I feel with Mr. Dunn that it would be an excellent compromise. In fact, I think the Regional officials at Santa Fe would consider the elimination of private rights at Bandelier as warranting a much larger expenditure than that. The only thing is that we have analyzed those water rights so long to such a fine point that we do not think an appraisal would go much higher than $1,000.

May we negotiate on that basis after the filing of the National Park water claim at Bandelier National Monument?

(SGD.) ALBERT L. JOHNSON
Attorney.

Enclosure 2122067.

cc: Region Three)with copy
Supt., S.W.Monuments)of Mr. Dunn's
Custodian, Bandelier N.M.)memorandum of
through Supt., S.W.Mons.)Nov. 13, 1942.

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

601 Sheldon Building

November 13, 1942.

MEMORANDUM for Attorney Albert L. Johnson.

Reference is made to Mr. Tillotson's memorandum of November 10, 1942, with regard to water rights at Bandelier National Monument.

This apparently crossed my memorandum of November 3 transmitting an application to appropriate the waters of Frijoles Creek for the federal pipe line, the latter having been delayed a few days because of blue printing schedules. A review of the matter, however, indicates that Mr. Tillotson's memorandum adds nothing to Mr. Richey's comments of September 18, 1942, with regard to the particular system to alter the application as drawn. It is suggested that the filing should be made without alterations, preferably before further questioning of Mrs. Frey with regard to her claims.

From Mr. Tillotson's memorandum and mine of August 18 it is clear that Mrs. Frey has only irrigated 1.14 acres in recent years and not over 2.58 acres since 1932 or 1933. Since the license granted 45 acre-feet per annum for 15 acres at 3 acre-feet per acre, all rights to more than 7.75 acre-feet per annum have lapsed by 10 years of non-use. (On the middle of page 18 of the State manual published in April 1941 such forfeiture results after 4 consecutive years of non-use.)

The license No. 802 also defines the season of use as 153 days from April 1 to August 31 of each year. This gives an average application of 0.05065359477 acre-feet per day as a liberal use, which converts to 0.1005 second feet. The license granted a maximum rate of diversion of 0.42 second feet which I believe would still apply so long as irrigation was only made during 38 days of the total season.

On page 5 of my memorandum I showed that we paid $10,000 per second foot for the Rattlesnake Springs right for Carlsbad, and suggested that the right of Mrs. Frey might be worth only $5,000. I am inclined to give her the benefit of the doubt and say her right and good will are worth $1000 to the National Park Service.

As of July 1, 1942, see my tabular report of Status of Water Rights as submitted to the Regional Directors and Park Superintendents on August 19, 1942, we had $2,000 allotted to the purchase of Mrs. Frey's rights out of our total fund of about $69,000. The amount was impounded, however.

It does not seem wise to negotiate for the purchase until the NPS water right application becomes a permit, and nominally we cannot do so until after the war, but it may be that Mrs. Frey will protest our filing until she knows the fate of her right. For that reason, I think we should learn from the Director whether we can obtain a release of $1,000 of impounded funds for possible purchase during the latter part of this fiscal year.

Mrs. Frey would still probably have to perfect her abstract of title, but so far as I can see our main interest is obtaining her interest regardless of its status. Mr. Tillotson states he does not plan to irrigate the monument so the value of an irrigation right to the United States is only as a reserve for future conversion to other uses. We would continue to irrigate the orchard until a larger pipe is installed for domestic purposes, when the right would be converted and transferred to it.

(SGD.) A. VAN V. DUNN

Hydraulic Engineer.

11-10-1942: memorandum to water rights section from nps regarding water rights

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

November 10, 1942.

MEMORANDUM for the Water Rights Section, Region Four.

Reference is made to Regional Attorney Johnson's memorandum of August 21, tranamitting Hydraulic Engineer Dunn's memorandum of August 18, relative to water rights in Bandelier National Monument.

The statement in the second paragraph of Mr. Johnson's memorandum "that the orchard is the only area now under irrigation" is correct. This area has been continuously irrigated, but it is doubtful if any other sections in the Canyon have been irrigated since 1932 or 1933.

We have not heard anything from either Mrs. Frey or her attorney, Judge Seth, as to the results of the latter's attempt to protect her title to her water rights. As soon as we learn of any action or progress in the matter, we will advise you.

With reference to Mr. Dunn's memorandum, we submit the following answers to the points requiring clarification:

1. The use of Mr. Dunn's calculated bearing and distance for the tie to the point of diversion will not affect anything in this Office.

2. Refer to enclosed print of BAN-6977 for indicated changes.

3. CCC Camp moved out of Bandelier National Monument to the adjoining Santa Fe National Forest.

4. Practically all of Ditches Nos. 1 and 2 would have to be reconstructed, together with diversions, to put them in use. Ditch No. 3 is usable only as far as the orchard.

5. The Park Service will not irrigate any area by ditch. Only irrigation will be patio and small plots around Lodge and Headquarters, which will be done by hose from domestic supply.

6. The areas formerly irrigated are about as shown on map. They have not been irrigated --except the orchard--since 1932 or 1933.

7. See map. Yes.

8. We may, at some future date, want to install a larger pipe line, if this is necessary to protect our water right.

We will endeavor to find out in the near future as to what Mrs. Frey has done in the matter of perfecting her rights, and if she will dispose of them at a reasonable figure.

Will you please advise us if you made an encumbrance against your last year's funds which can still be used for this project?

Regional Director.

Enclosure 2878006.
cc: Supt., SWNMS.
Cust., Bandelier NM.

11-03-1942: memorandum to regional director from nps regarding application for permit to appropriate waters

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WATER RIGHTS SECTION
SAN FRANCISCO, CALIF.
601 Sheldon Building

RECEIVED NOV 12 National Park Service Region III

ROUTING

November 3, 1942.

MEMORANDUM for the Regional Director, Region Three.

We enclose an application for permit to appropriate waters of Frijoles Creek at Bandelier National Monument, in duplicate, together with tracing of NM-BAN-6978 to accompany it. Both should be signed before a notary and submitted to the State Engineer with a voucher for $10.00. One copy of the application will be returned to the Superintendent of Southwestern Monuments on acceptance, and should be returned to us for completion of copies for others. Also, after the map is duly accepted by the State Engineer we shall want a negative for which his charge is $2.00.

We are eliminating the Notice of Intention to file application because we do not need the intervening time. This seems to eliminate a $10.00 charge as well, but the State Engineer may not agree. When all fees are adjusted, the cost may be billed to this office by you.

The application form has been changed since our last filing, and we have also been advised of a very limited definition of domestic use in New Mexico. We have filled out both of items 9 and 10 to try to obtain the superior right of domestic and irrigation usage while the claim falls more largely under a form of industrial use under definition. If the State Engineer wishes alterations we shall be glad to make them so long as we obtain the best type of preferred right we can.

Mr. Richey's memorandum of September 18, 1942, did not answer or approve of all of the points of question in my memorandum of August 18, 1942, but I gather that where no answer was made my ideas were accepted except with regard to the ditches. Hence, the present application is limited to use by the pipe line and covers the full capacity of it. We can thus perfect our rights for the pipe line and let the ditch problem ride a little longer.

We should watch the action of Mrs. Frey, however. Her rights have really very largely lapsed. Further, referring to the top of page 3 of my memorandum to Mr. Johnson of August 18, 1942, it will be noted that her title to all the original Abbott right is questionable

and her right to transfer it from the federal land is very doubtful. I feel, personally, that part of the right became federal property when the Park Service moved Mrs. Frey's hotel and she did not provide for transfer of the right in the agreement to move her other interests. Now, therefore, we should not let her alter her rights at all without having the changes first carefully reviewed by this office and the Chief Counsel.

(SGD.) A. VAN V. DUNN

Hydraulic Engineer.

Enclosure 2122043.

cc: Director.
Supt., S.W.Mons.
Custodian, Bandelier Nat. Mon.
(through Supt., S.W.Mons.)

660-05.7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

August 21, 1942.

MEMORANDUM for the Regional Director, Region Three.

Enclosed herewith is Mr. Dunn's latest analysis of the water rights situation at Bandelier National Monument together with a map of the Bandelier Water Systems and Rights.

At the top of page 2 of Mr. Dunn's memorandum he mentions his personal visit to Bandelier last year where he saw only traces of Ditches Nos. 1 and 2, and his failure to see any irrigation under Ditch No. 3 except in a small orchard area. He states that the orchard area is only 1.14 acres. From my visit to Bandelier at about the same time I do not think the area irrigated was in excess of that amount, but I am doubtful from what was told me there whether irrigation had been used continuously since 1937. The Custodian might be able to inform us on this point.

With reference to the contents of page 3 of Mr. Dunn's memorandum, we expected before this time to have some report from the Regional Office as to Mrs. Frey's attempt through her attorney to secure a water right chain of title. If we have this report from Mrs. Frey's attorney we will be better able to judge the minimum of Mrs. Frey's water rights if any. The search of records by Mrs. Frey's attorney may clarify some of the matters discussed by Mr. Dunn on pages 3 and 4 of this memorandum.

You may not agree with our comparison of the value of the ditch right with the right purchased at Carlsbad in 1936, but if you do not we hope you will feel free to comment upon the valuation contained in Mr. Dunn's memorandum of August 18 and that in his memorandum of May 18, 1942. We will await your latest views on this subject and your report with reference to Mrs. Frey's attorney searching the records for a definite title.

ALBERT E. JOHNSON
ALBERT E. JOHNSON
Attorney.

Enclosure 2121998.

cc: Director, with enclosures.
Supt., S.W.Mons., with enclosures.
Custodian, Bandelier Nat. Mon.,
(through Supt.,S.W.Mons.) with enclosures.

08-18-1942: memorandum to attorney from nps regarding various correspondence relating to water rights

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

August 18, 1942.

MEMORANDUM for Attorney Albert L. Johnson.

Reference is made to the various correspondence relating to water rights at Bandelier National Monument. The attached map of Bandelier Water Systems and Rights, NM-BAN-6977, has been prepared to clarify several points under discussion. From the data it is hoped that a policy can be defined regarding NPS procedure when funds are again available. It is also intended to justify my present plan to file a new claim to 0.03 sec. ft. for the NPS pipe line and I hope it will result in your approval of that plan.

Mrs. Frey's Water Rights

Mrs. Frey claims title to all rights initiated by Judge Abbott and perfected under License No. 802 for 0.42 sec. ft. and an annual limit of 135 acre feet to irrigate 45 acres of land. On the drawing I have plotted the Rito de los Frijoles Ditch System in relation to other monument developments.

There were three ditches and I find, by planimeter, that they irrigated only 26.15 acres as follows:

Under Ditch No. 1.....	2.58 acres
Under Ditch No. 2.....	6.31 acres
Under Ditch No. 3.....	17.26 acres
Total	26.15 acres

On this basis the original license was based on some misrepresentation, and any portion to irrigate more than 26.15 acres is either void or has lapsed by not having been used at all since the date of filing claim. In other words Mrs. Frey has a right to only 26.15/45 of 0.42 sec. ft. and 135 acre feet per annum, or a right to only 0.245 sec. ft. and 78.45 acre feet per annum. In terms of quantity Mrs. Frey's right is thus worth only 58.5% of the face value of the license.

On my visit to Bandelier last year I only saw traces of Ditches Nos. 1 and 2. I also failed to see any irrigation under Ditch No. 3 except in the small orchard area. I was advised at the monument that the orchard area was about 2 acres, but I find it to be only 1.14 acres. If, as I believe, this is all that has been irrigated since about 1937, it is possible that all the right has lapsed except that to irrigate this area. This would limit the right to 0.011 sec. ft. and 3.42 acre feet per annum.

I find that the Park Service pipe line has a grade of 9 feet per 1000 feet for some distance below the diversion which limits the 2" pipe capacity to 19,600 gpd or 0.030 sec. ft. This is all the water that has been used by the Park Service, CCC, and Mrs. Frey since about 1937. At least 6000 gpd of this has been used by the Park Service and CCC. I think these units used much more but this gives a liberal allowance to the lodge of 13,600 gpd or 0.021 sec. ft. This seems to be the maximum water Mrs. Frey has used for non-irrigation purposes either at the present lodge or her former hotel. As a matter of fact, she probably used less and the Park Service probably used more.

My conclusion is that at the time the Park Service took over Mrs. Frey may have been using 0.245 sec. ft. for irrigation and not over 0.021 sec. ft. for other purposes, a total of 0.266 sec. ft. At the present time her total use does not exceed 0.032 sec. ft. of which only 0.011 sec. ft. is by her right through the Rito de los Frijoles Ditch System.

The map shows that the Ditch No. 3 may have irrigated the old CCC camp site, checking station area and lodge parking area at one time, but it probably just missed the present lodge area because of the high elevations and steep slope of that land. In other words, Mrs. Frey now occupies a lodge on land never served by her own water system and rights. She now derives her lodge water from the NPS pipe line with a diversion more than half a mile above any diversion she has ever made under her own rights or by her own system.

So far as can be determined Frijoles Creek has a flow of more than 1 sec. ft. at all times and Mrs. Frey and the Park Service are the sole claimants between the NPS pipe diversion and its mouth. In other words, NPS pipe diversions have no physical connection with Mrs. Frey's rights, and also offer no conflict.

The New Mexico water right manual of April 1941, at page 15, states:

> "No irrigation right which is appurtenant to the land shall be assigned or transferred apart from the land except in the manner specially provided by law. Neither may title to land be transferred apart from any water right which is appurtenant thereto unless such right has been previously alienated from the land in the manner provided by law."

On the preceding page the manual specifies that a right is severed from the land by change in point of diversion, place, or method of use. This has not been done by Mrs. Frey or her predecessors. On the same page it specifies that the map to accompany application for such change shall show the ownership of the land, suggesting that a person may assign water to land other than his own and yet have the water become appurtenant to the land.

Mrs. Frey and her predecessors have never owned the land at Bandelier. They occupied it under lease from the Forest Service prior to the creation of the monument, and they were squatters (perhaps intending to patent) prior to that. On this basis, there seems to be a strong argument for claiming that all of the Frey or Abbott water right applying to land which is not now occupied by Mrs. Frey has become the property of the United States because it is appurtenant to the federal land. In other words, of the apparent right to 0.245 sec. ft. in 1937, the United States might have title to 0.234 sec. ft. at this time except for such portions as may have lapsed.

Park Service Water Claims

The water right manual, page 15, states that:

> "Any filing, permit or license to appropriate water may be assigned, but no such assignment shall be binding except on the parties thereto unless filed for record in the office of the State Engineer. Such filings shall be made out in duplicate on the proper Change of Ownership forms or it may be a certified copy of the actual assignment. A fee of $1.00 must accompany the filing."

The United States has already been advised, in the case of the Rattlesnake Springs at Carlsbad, that it was using water illegally because it failed to record ownership of Right No. 0432. This error was corrected in 1936, only three years after the land and right were acquired by the United States and the same three years after the vendor last used it.

In the case of Bandelier it seems to have been at least five years since part of the right was exercised by Mrs. Frey, and no change of title has been recorded. Thus, it is possible to claim that the right has lapsed except for the portion needed for Mrs. Frey's orchard and for any other areas which may have been irrigated during the past four years. On one print of the map we should like to have you indicate any areas which may have been irrigated since midsummer 1938.

Lapse, of course, is supposed to be a matter of fact and need not be declared. However, there is some question as to whether we need recognize the lapse unless we wish to. The chief reason for claiming the lapse would be to prevent the use of the right in the NPS pipe line by Mrs. Frey to the disadvantage of the Park Service. Mrs. Frey, on the other hand, might claim the lapse to prevent the right from falling into federal hands if she did not feel she was properly recompensed for it. Hence there is a delicate administrative problem to settle rather than one of need (there is plenty of water without this right).

The Park Service pipe line is covered by no right. It has a capacity of only about 0.03 sec. ft., based on an initial control grade of 9 feet per 1000 feet and diameter of 2 inches. I have suggested that Mrs. Frey may have used anything up to 70% of this amount. However, she uses it on federal land and in federal buildings which she occupies under lease. Hence her use, as well as that of the Park Service, should be under a federal water right.

It is possible for the Park Service to claim that the construction of the pipe line was the first step toward changing the point of diversion, place of use, and possibly the method of use under the Abbott right. It is also possible for Mrs. Frey to claim that her move from the old hotel to the NPS lodge, and use of the pipe line, constituted the first step toward making the same changes. The title to the right would depend on which made the claim first and obtained a permit, provided the other did not protest. However, the pipe capacity can be exhausted by filing a new claim so that neither party can transfer existing rights.

If the NPS title to part of the ditch right is good, the best procedure is to apply for the changes. But this claim of title will cause ill feeling because Mrs. Frey believes she has full title through ignorance of the law. She also feels there has been no lapse because her attorney is attempting to clarify title at this time. Therefore, it seems wise for the Park Service to file a new claim at least until the conflicting claims to the old right can be adjusted. Then it will be possible to cancel that filing and apply for transfer of that old right.

Value of the Abbott Right

If we fill the pipe by filing a new claim it will probably be better diplomacy to recognize that the Abbott right has not lapsed to the total of 0.245 sec. ft. for irrigation and 0.021 sec. ft. for other purposes, a total of 0.266 sec. ft. The reason for such recognition would be that failure to use the full amount during more than four years has been due to failure to come to proper decision as to title and as to the operator's land title.

The Park Service purchased 79.87 acres of land and 0.5 sec. ft. of declared water right from Mrs. Harrison at Rattlesnake Springs for Carlsbad Caverns for $7540. Exactly 35 acres of the land were under irrigation. The following constitutes a possible breakdown of the price:

35 acres of irrigated land at $25.....	$875.00
44.87 acres of range land at $5.....	224.34
Ranch buildings (guess).....	1,500.00
Fees for abstracting, etc.....	25.00
0.5 sec. ft. of Declared Water Right 0432.	4,915.66
Total	$7,540.00

On this basis, the declared water right was worth about $10,000 per second foot. The flow of the spring is limited and the declared right is the senior one with several filed claims from the same source also existing. It seems probable that the Abbott right is only worth half as much in New Mexico because it is the sole right on the stream to date and there is plenty of water to satisfy the further demand of the Park Service. This fixes its price at $5000 per second foot.

The total potential value of the Abbott right would then be 0.266 x $5000 or $1330. Actually at least 10 acres of the irrigible land are in scrub timber and ruins which do not seem to have been cultivated at all. Thus, an inspection by the State Engineer at the time of change in point of diversion, place and method of use might result in reducing the total right from 0.266 sec. ft. to 0.173 sec. ft., which would reduce the value to $865. The one remaining ditch is little more than a plow furrow. There is no headgate but there is a concrete distribution head at the orchard which may have cost between $100 and $200.

By memorandum to Attorney Johnson of May 18, 1942, I suggested that Mrs. Frey's right and interest might be worth from $500 to $1000. I still feel that $1000 is the maximum. If, however, we were to allow recompense for only her present use it would be for 0.032 sec. ft. and the conduit — a total of $360.

Title does not seem to be an important factor. If Mrs. Frey bought title from Abbott through intermediaries she still has title to only that portion of the right actively used on occupied land. She only occupies 1.14 acres of the original tract. The value is therefore in good will rather than physical property.

(SGD.) A VAN V. DUNN

Hydraulic Engineer.

Attachment.

07-17-1942: memorandum to custodian from superintendent regarding negotiations relative to the possible purchase of mrs. frey's

060,05,7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
COOLIDGE, ARIZONA

ADDRESS REPLY TO
THE SUPERINTENDENT

July 17, 1942.

MEMORANDUM for the Custodian,
Bandelier National Monument.

Thank you for your very complete report of July 6 concerning negotiations carried on by you and Acting Regional Director McColm with Judge Seth on May 9, relative to the possible purchase of Mrs. Frey's water rights at Bandelier.

Mr. McColm never furnished this office a report on the meeting. I do not believe that he ever wrote one.

I quite agree with you about the inadvisability of attempting to purchase Mrs. Frey's right, and believe that we would be better off to perfect one of our own. As I understand the entire negotiation carried on by the Region Three Headquarters and the Water Rights Division, they were simply attempting to remunerate Mrs. Frey for any right that she might have. It is evident that their good intent has been misunderstood by Mrs. Frey. I would like very much to know how she got her present impression. I do not believe that we can change her mind.

Charles A. Richey
Superintendent.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
BANDELIER NATIONAL MONUMENT
SANTA FE, NEW MEXICO

July 6, 1942.

MEMORANDUM for Acting Superintendent Richey,
Southwestern National Monuments.

Reference is made to your memorandum of June 26, 1942, regarding water rights for Bandelier.

In accordance with Acting Regional Director McColm's request over the phone I met with him and Judge Seth on June 9, 1942. As Mr. McColm stated that he would write a full report of the conference to Attorney Johnson with copy to you, I did not feel it my place to inform you of what took place at the meeting.

As a matter of fact not a great deal was accomplished. It developed that Mrs. Frey is suspicious of the Park Service. She had stated to Attorney Seth that the Park Service seemed to be investigating her water rights and so forth in a rather underhanded way and she was convinced that they meant to obtain the water right for the express purpose of forcing her out of the use of the garden and perhaps making her pay for water for the hotel. Both Mr. McColm and I tried to assure Judge Seth that we had no such intentions and were simply investigating it to be sure that some one in the Canyon had a bona fide water right.

The final consensus of opinion was that we would not gain very much by buying Mrs. Frey's water right and that as she was very much opposed to considering the sale of it that perhaps the best thing to do would be to drop the matter of attempting to purchase her right and request Attorney Johnson's office to file or begin filings for a water right for the monument independent of any prior existing rights. I have not seen a copy of Acting Regional Director McColm's memorandum if wrote one so am passing this information on to you so that you may be informed of the status of the project.

Mrs. Frey came to my office several days after our conference with Attorney Seth and reiterated her belief that the Park Service was trying to pull something as she expressdd it and expressed her determination never to part with her water rights. As I perhaps told you and expressed

in a memorandum for the Regional Director while at Coolidge, I never have been in favor of attempting to purchase Mrs. Frey's right. I believe that we would be far better off to attempt to perfect a right of our own. I believe the Regional Director suggested that we purchase her right as a gesture of good will but she does not seem to understand it that way and rather takes the opposite attitude. What Attorney Johnson's reaction to the proposal to drop the deal with Mrs. Frey will be I, of course, cannot tell.

Chester A. Thomas,
Custodian.

CAT:hl

06-26-1942: memorandum to custodian from acting superintendent regarding unnecessary expense connected with court action

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
COOLIDGE, ARIZONA

JUN 30 1942
BANDELIER NATL. MON.

ADDRESS REPLY TO
THE SUPERINTENDENT

June 26, 1942.

MEMORANDUM for the Custodian,
Bandelier National Monument.

Reference is made to your copy of Attorney Johnson's memorandum of June 2 for the Regional Director concurring in the general recommendations stated in Acting Regional Director McColm's memorandum of May 22, and suggesting that the Region Three Headquarters negotiate with Attorney Seth, as the representative of Mrs. Frey, to stop any unnecessary expense connected with Court action contemplated by Attorney Seth in establishing Mrs. Frey's water rights.

Acting Regional Director McColm called me during the early part of June regarding this matter, and it was suggested that he arrange a meeting with you and Mr. Seth in an attempt to establish a possible purchase price for any rights that Mrs. Frey might have.

Since it is anticipated that the Water Rights Division intends to make this purchase with current fiscal year funds, we are considerably concerned over these negotiations.

I do not wish to appear to be pushing the Region Three Headquarters in this matter, since they have been carrying on negotiations direct with the Water Rights Division; however, I would like to have you keep me advised on this subject. It is presumed that Mr. McColm is keeping in close contact with you relative to negotiations being carried on with Mrs. Frey or her attorney J. O. Seth.

Charles A. Richey
Acting Superintendent.

06-02-1942: memorandum to regional director from attorney regarding water rights

Acting Custodian, Bandelier Nat. Mon.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

660-05.7

June 2, 1942.

MEMORANDUM for the Regional Director, Region Three:

Reference is made to your memorandum of May 22 received on May 28 relative to the water rights in Bandelier National Monument.

We agree with the general recommendations made therein as stated heretofore. Your history of the negotiations with Mrs. Frey corroborates what Mrs. Frey told the writer in April 1940. I think the Service has always recognized that Mrs. Frey has certain water rights there which were properly derived from the original holder, Judge Abbott. We are perfectly satisfied that you should go ahead with the appraisal of the water rights and any negotiations for the purchase thereof immediately.

We understand the engineering data which we have requested will be forwarded in a short time.

As to the court action contemplated by Attorney J. C. Seth in behalf of Mrs. Frey, you may stop any unnecessary expenses therein by openly negotiating with Attorney Seth as the representative of Mrs. Frey.

Attorney.

cc: Director.
Acting Supt., S.W.Nat. Monts.
Acting Custodian, Bandelier
Nat. Mon.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

May 22, 1942.

MEMORANDUM for the Water Rights Section,
Region Four Headquarters:

Reference is made to your memorandum of May 19 relative to the water rights in Bandelier National Monument.

In our memorandum of May 14, we suggested that negotiations be entered into with Mrs. Evelyn C. Frey for the purchase of whatever rights she may have to the water in El Rito del Frijoles.

Our basis for making such a suggestion goes back to 1938, when the present contract with Mrs. Frey was negotiated. For some seven years prior to that time, Mrs. Frey had owned and operated the Frijoles Ranch some one half mile up the Canyon from the present Lodge. Our Service felt that Mrs. Frey's operation interfered with the proper presentation of the archeological story of the Monument, and in lieu thereof, induced her to give up her original business and take over the operation of the existing facilities which were provided by the Government. Among the terms of agreement was the demolition of her old structures, with no compensation to her, other than the taking over of the new building, and the setting up of the value of the demolished building as assets of her operation. Such value was to be amortized over a period of 20 years, if there was sufficient profit from the business.

In negotiating the contract with Mrs. Frey, recognition was apparently given to her water rights by Paragraph (g), page 4, of the contract, which is as follows:

> "(g) That, in view of the water rights now exercised by the Operator within the monument and the free use of water accorded the Government by the Operator, no charge will be made by the Government to the Operator for the delivery of water or the disposal of sewage."

In view of these provisions, negotiations and apparent recognition of rights, we believe that the Service is morally bound to deal openly with Mrs. Frey on this water, and we again suggest that

the best solution would be to negotiate with her for the purchase of whatever rights she may have. After such purchase, we should then go to the courts, if necessary, to perfect title to the water.

The Engineers will make a survey of the existing water conditions in the next two or three days and submit the information to your Office, as requested in Mr. Dunn's memorandum of May 5.

Relative to paragraph 4 in Mr. Johnson's memorandum of May 19, as to the court action, or actions, which Attorney J. O. Seth intends to file for Mrs. Frey to establish her water rights, it is our understanding that Judge Seth has been employed to take all action which may be necessary to perfect her right in the courts, as well as in the Office of the State Engineer of New Mexico, and to take such other action, if any, which may be necessary.

MILTON J. McCOLM
Acting Regional Director.

cc: Director.
Actg.Supt.,S.W.Natl.Mnts.
Actg.Custodian, Bandelier
National Monument.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

May 18, 1942.

MEMORANDUM for Attorney Albert L. Johnson:

Reference is made to Mr. Tillotson's memorandum of May 14, 1942, regarding Mrs. Frey's water rights at Bandelier National Monument.

I feel that some slip must have been made to stir up her present action to establish full title at this time, and we should watch such actions carefully. The question of purchase by the United States should be secondary at this time, or else definitely protestant. Mr. Tillotson seems to favor the former, but I am not sure whether I agree or not.

First, I feel that her right is now limited to the portion of the original one serving her garden by the original ditches. It does not include rights for use at the hotel because the conduit is not hers and the water is from a point about half a mile above those covered by her right.

I think we should make it clear to Mrs. Frey and Mr. Seth — if necessary — that the Park Service does not recognize any water use by its pipe lines under her rights, so far as those rights are owned by her; and that the United States will protest any attempt by her to change her point of diversion to make such use of the National Park Service pipe line possible as a means of conveyance.

Second, I feel that we should file our own claim to water through the Park Service pipe line before any court action is taken by Mrs. Frey, because:

1. It will fill the pipe so she cannot make the transfer.

2. Until we make such a filing we have no right and may be considered as taking water illegally as was claimed in the case of Rattlesnake Springs at Carlsbad in 1936.

Unfortunately we cannot file the claim until we have the ties and other data requested in my memo of May 5, 1942. This should be rushed to us at once. We have funds if the Region does not, so a rush order survey might be possible with men possibly about to be released, billing the charges back to us.

(through Supt., S.W.N. Mon.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

660-05.7

May 19, 1942.

MEMORANDUM for the Regional Director, Region Three:

Reference is made to your memorandum of May 14 concerning the Bandelier National Monument water rights.

You recommend the purchase of Mrs. Frey's water rights prior to the close of the fiscal year and prior to the time that Mrs. Frey may expend certain costs and attorney's fees in perfecting her title. However, I understand that her attorney, Judge Seth, has only advised court proceedings to determine heirship and quiet title rather than the actual initiation of water rights. If we could obtain an appraisal of what value existed in her present claim to water rights a deal might be completed before the end of the fiscal year from water rights funds.

However, I am enclosing a copy of Mr. Dunn's memorandum of May 18 giving his view of the present situation. I call particular attention to Mr. Dunn's first point which I am able to ratify from my visit at the monument in April 1941 and from my conversation with Mrs. Frey there.

The second point made in Mr. Dunn's memorandum may be dependent upon what report you make to us as to the nature of the action started by Mrs. Frey. I understand from your memorandum that Judge Seth would not institute an original action for water right claim but would merely fill in a gap in title. If you can give us any further data on that at the same time you furnish the ties and data requested by Mr. Dunn in his memorandum of May 5, it will be a great help. We can take care of any expense from water rights funds.

It may be difficult to secure very much of an appraisal on this water right, as I agree with Mr. Dunn that she does not have much to sell.

Attachment.

Attorney.

cc: Director, with attachment.
Supt., S.W.Nat. Mon., with attachment.
Custodian, Bandelier Nat. Mon., with attachment (through Supt., S.W.Nat. Mon).

Third, I am inclined to claim that all Mrs. Frey's rights except those used on her garden and those used at her old lodge have lapsed. This would be a small portion to the original right. We are in the position to force the lapse of past use at the lodge — or, for that matter, even to force the lapse of the right of use on the garden. I also feel that our new filing, or any other we make for some years, will be just as good as hers and far cheaper to acquire.

I also agree with Mr. Tillotson that we should probably buy out Mrs. Frey's interests as a matter of maintaining good public relations. But I fail to see that we acquire much more after she "perfects" title than before. We have to pay about as much to transfer it to federal title as to file a new claim, and priority is not now important. Hence, I would be inclined to try to prevent the proposed court action in the interest of economy to both parties.

As to the relation between federal purchase and the close of the fiscal year, we should note that we have funds now (technically impounded) and may not have after June 30. In fact, we are not sure we will not lose unexpended sums at that date. Hence I think the whole matter merits special consideration by the Director.

I feel that Mrs. Frey has as much title to the portions of the right I have described as Judge Abbott or any intervening owners because title passed with the land title and even the original land title was by lease or permit from the Forest Service. I also feel that there is a severance or damage value to buy because the Park Service has more or less forced her to allow the lapse or potential lapse of rights to use at the lodge by moving that lodge without granting further pipe line right of way, granting use of NPS water in lieu thereof.

Of the original 0.42 sec. ft. covered by water right, not over 0.25 sec. ft. is now active. With the United States the only other user on the stream which is adequate for all claims of both, the value is low. I would suggest that an offer of between $500 and $1000 is all we could offer, depending on the unimportant quality of title.

(SGD.) A. VAN V. DUNN

Hydraulic Engineer.

Archives Collection

m & to Bandelier.

660-05.7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

May 14, 1942.

MEMORANDUM for the Water Rights Section,
Region Four Headquarters.

This refers to Mr. Johnson's memorandum of May 4 transmitting copy of Mr. Dunn's memorandum of March 10 concerning water rights at Bandelier National Monument.

In our previous correspondence we have submitted to you in detail our findings as a result of the search and examination of the records of Sandoval County, New Mexico, including those of the Office of the State Engineer in regard to the water right claim by Mrs. Evelyn C. Frey. She may be the owner of all such rights claimed by her, but we are unable to find record evidence of such an allegation. Her attorney, J. O. Seth, of Santa Fe, New Mexico, has been unable to find one of the deeds by which Mrs. Frey purports to establish her title. Judge Seth has informally advised us that he may institute court proceedings within a few days to determine heirship and quiet title in this case.

If you feel that such action would be consistent in view of the fact that title at the present time is not absolutely clear, we recommend that the Government now purchase Mrs. Frey's water rights and we re-affirm the views and recommendations expressed in our memorandum of April 6 to you, in which we stated:

> "It seems likely that the Government could obtain sufficient water right by an independent filing because of (1) the unused waters that are or appear to be subject to filing, and (2) the probable weakness of Mrs. Frey's rights, both recorded and otherwise. However, from a public relations standpoint, we believe and recommend that the Government should purchase such rights, if any, which Mrs. Frey actually owns of the waters and water rights within the monument, provided they can be purchased at a reasonable price, allowing for the probable expense to the Government in perfecting such rights."

As it appears that Mrs. Frey may expend considerable sums on court costs and attorney fees in perfecting her title to the above waters and water rights, it is suggested that the Government may be able to acquire

these interests at this time at a much smaller figure than if we wait until Mrs. Frey completes her court proceedings, which, her attorney advises, will require at least 60, and possibly 90 to 120 days. In the meantime, we will have reached the close of our fiscal year and no present funds of the Government will have been encumbered to make such purchase.

As we are nearing the close of the 1942 fiscal year, we suggest that proper steps be instituted at once in accordance with the above suggestions to acquire the waters and water rights of El Rito de las Frijoles.

M. R. TILLOTSON
Regional Director.

cc: Acting Supt., SWNMS.
Cust., Bandelier NM, through SWNMS.
The Director.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

660-05.7

May 7, 1942.

MEMORANDUM for the Water Rights Section,
Region Four Headquarters.

Reference is made to Mr. Dunn's memorandum of May 4 in regard to the water rights of Mrs. Evelyn C. Frey, Bandelier National Monument.

Mr. Dunn indicates that before Mrs. Frey takes any court action we should determine whether the United States has any claim to such water right. I have again checked with Mr. J. O. Seth, Attorney, Santa Fe, New Mexico, who represents Mrs. Frey in this matter, and there is no evidence of any right having been conveyed specifically or by inference to the United States. My search of the records of the State Engineer and those of Sandoval County showed a very poor record of any right whatsoever.

In one of my previous memoranda to you or Mr. Johnson, I transmitted copies of the last records on this water right which showed ownership in Mr. A. J. Abbott. Mr. Seth told me this morning there is one deed which Mrs. Frey cannot locate. The grantor in such instrument is now deceased. Mr. Seth has not driven to Bernalillo, New Mexico to examine the records of Sandoval County as he was trying to conserve rubber. He states that he will attempt to obtain deeds from the various heirs of the grantor whose deed is now missing, and determine heirship in the District Court, which will take about three months.

RAYMOND SKOAF
Regional Attorney.

cc: The Director.
Acting Supt., SWNMS.
Acting Custodian, Bandelier NM,
through SWNMS.

05-04-1942: memorandum to regional director from hydraulic engineer regarding mrs. frey's water rights

hrough Supt., S.W.Monuments.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

660-05,7

May 4, 1942.

MEMORANDUM for the Regional Director, Region Three:

Reference is made to your memorandum of April 28 with regard to Mrs. Frey's water rights at Bandelier National Monument.

Before Mrs. Frey's attorney takes any court action we should determine whether we have any claim to part of the right. Will you please advise whether any part of the Frey interest in land, improvements or other property was ever deeded to the United States. If so, we should like to have a copy of that portion of the deed which relates to either water rights or appurtenances. The point is that water rights pass with the land in New Mexico unless they are specifically reserved according to a definite legal procedure.

A copy of this memorandum is also being sent to the Director in order that he may supply them information as soon as possible in case it is not available in the Region.

Hydraulic Engineer.

cc: Director) with copy of
Supt., S.W.Monuments) Mr. McColm's
Reg. Atty. Taylor) memorandum of
Custodian Thomas) April 28, 1942.

05-04-1942: memorandum to regional director from attorney regarding water rights

through

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

660-05.7

May 4, 1942.

MEMORANDUM for the Regional Director, Region Three:

Reference is made to memorandum from Associate Regional Director McColm of April 28 concerning water rights at Bandelier National Monument.

I note your statement that Mrs. Frey has recently employed a Santa Fe attorney to perfect her title to water rights at Bandelier. I am not so certain that they need perfecting. It may be only the restoration of burned records at the courthouse at Bernalillo which is needed. It seems to have been the assumption of Regional Attorney Taylor in 1936 that Mrs. Frey had a good water title derived from Judge Abbott.

Now that the matter has been brought to a focus by her employment of an attorney and the search made by your Regional Attorney, I am transmitting herewith a memorandum from Mr. Dunn of March 10 which reviews this problem in some detail. Inasmuch as early action will have to be taken if we are going to file for a water right at Bandelier this summer, I would like to have the comments of reviewing officials as soon as possible. Will Mr. Sroaf, your Regional Attorney, review the problem as submitted by Mr. Dunn in the enclosed memorandum?

Attorney.

Attachment.

cc: Director, with attachment.
Supt., S.W.Monuments, with attachment.
Reg. Atty. Taylor, with attachment.
Custodian Thomas, with attachment (through Supt., S.W.Monuments.)

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

April 28, 1942.

MEMORANDUM for Water Rights Section,
Region Four Headquarters.

Reference is made to Mr. Johnson's memorandum of April 24, enclosing a copy of Mr. Dunn's memorandum of April 14 in connection with water rights of Mrs. Evelyn C. Frey at Bandelier National Monument

Mrs. Frey has recently employed Attorney J. O. Seth, of Santa Fe, New Mexico, to represent her in perfecting her title to the water rights at Bandelier. Mr. Seth has informally advised us that he has the originals of all deeds and instruments except one, and that he plans to go to Bernalillo, New Mexico, within a few days to check the records of Sandoval County. Mr. Seth said the courthouse at Bernalillo burned about 10 years ago, and it may be difficult to obtain a complete chain of title without court action, or some proceedings in the Office of the State Engineer.

To date, we have not obtained further information from Mr. Seth. As soon as further information is obtained regarding this matter, we will correspond with you immediately.

/s/ Milton J. McColm
Associate Regional Director.

(thro[illegible] Supt., S.[illegible]Mon.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

660-05.7

April 24, 1942.

MEMORANDUM for the Regional Director, Region Three:

I am enclosing herewith a copy of Mr. Dunn's memorandum of April 14 to me concerning the water rights at Bandelier National Monument. We would be pleased to have your comments thereon, especially if you have found further evidence as to Mrs. Frey's title to water right and whether or not any of the past deeds to her have segregated the water right from the land.

We have always assumed since the inception of the Water Rights Section in 1936 that Mrs. Frey had a good water right title derived from Judge Abbott. I believe Mr. Taylor's first report on this subject made in 1935 prior to the creation of the Water Rights Section bore out that contention. How much of a water right Mrs. Frey had has always been doubtful, however.

We are prepared to file for an appropriative water right as Mr. Dunn says, but I think Mrs. Frey's rights would ultimately have to be bought. I know that she convinced me on my only visit to Bandelier in 1940 that she had a complete chain of title to such a water right. The mere fact that there might have been some instruments in the chain of title lost would not invalidate her title.

I would like to have expression further from you and the Regional Attorney as to these private water rights at Bandelier.

Attorney.

Enclosure 2121961.

cc: Director) with copy of
Supt., S.W.Mon.) Mr. Dunn's memo
Act. Cust., Bandelier Nat.Mon.) of April 14, 1942.
(through Supt.,S.W.Mon.))

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

April 14, 1942.

MEMORANDUM for Attorney Albert L. Johnson:

Reference is made to Mr. McColm's memorandum of April 6, 1942, regarding the water rights at Bandelier National Monument.

Under "D - Change of Ownership - Assignment," page 15 of the Manual of Rules and Regulations for water rights in New Mexico, we have:

> "No irrigation right which is appurtenant to the land shall be assigned or transferred apart from the land excepting in the manner specially provided by law. Neither may title to land be transferred apart from any water right which is appurtenant thereto unless such right has been previously alienated from the land in the manner provided by law."

The water right was initiated by Judge Abbott. It was perfected by Mr. Boyd. It is a right to irrigate certain specific lands occupied under lease from the Forest Service and Mr. Frey now occupies part of that land from the Park Service. Through the Boyd occupancy, the right was certainly appurtenant to the leased federal land. Without the deed from Davenport to Frey we do not know whether the water right was severed from the land at that time or not, but if it was not severed in accordance with the law at that time Mrs. Frey had just as much title to the right when the area became part of the Monument as either Abbott or Boyd ever did.

Hence I wonder if the Regional Director is not assuming an undue burden in trying to claim Mrs. Frey does not have title. His real problem is to try to prove that she did not have title.

We also lack copies of either Forest Service or Park Service leases to Mrs. Frey, but the correspondence seems to indicate that the Park Service did recognize her interest in some rights. Apparently, however, she and Mr. Frey never severed any of the rights from the land. Hence why would she not still have good title to that portion of the right irrigating portions of her present lease area under the original ditches?

The next question is whether part of the balance of the right may not be federal property now if actual irrigation is still made from the original ditches on areas not now leased to Mrs. Frey. If the United States does not have such title, then perhaps those portions of the right have lapsed.

Finally, nothing in the right grants diversion at the intake to the National Park Service pipe line, but any owners of portions of the right could transfer their shares to that point to the extent of their use from the pipe line. By referring the question of title to Mrs. Frey's attorney, Mr. Seth, the Regional personnel have indirectly called his attention to this further possibility. It is now a question of who files first.

Hence, I propose to file on the full capacity of the National Park Service pipe line in the name of the United States for use both at the Monument areas and the lodge. I think I should do it in the next few weeks, and that no further suggestions should be given to Mr. Seth until the filing is accepted by the State Engineer. Please indicate wherein you may not agree, or advise Mr. Tillotson of our plan.

I agree with Mr. McColm's penultimate paragraph that we should buy out such rights as Mrs. Frey may have. Before this is done we should properly define and evaluate her rights. Their value does not seem to be high, but their definition will depend on the proposed further investigation.

[illegible] V. BUSH
Hydraulic Engineer.

cc: Director.
Region Three.
Supt., S.W.Mon.
Act. Cust.,Bandelier Nat. Mon. (through Supt.,S.W.Mon.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

660-05.7

April 6, 1942.

MEMORANDUM for the Water Rights Section, Region Four.

Reference is made to Mr. Johnson's memorandum of October 21, 1941, transmitting Mr. Dunn's report of October 14, 1941, on water claims at Bandelier National Monument in Santa Fe and Sandoval Counties, New Mexico.

From a review of Mr. Dunn's report and a personal examination of the official records of Santa Fe and Sandoval Counties, including the records of the State Engineer, there appears to be little, if any, evidence that Mrs. Evelyn C. Frey owns any rights in the waters of El Rito de Las Frijoles in Sandoval County, or any other water within such Monument. It seems likely that the Government could obtain sufficient water right by an independent filing because of (1) the unused waters that are or appear to be subject to filing, and (2) the probable weakness of Mrs. Frey's rights, both recorded and otherwise.

However, from a public relations standpoint, we believe and recommend that the Government should purchase such rights, if any, which Mrs. Frey actually owns of the waters and water rights within the Monument, provided they can be purchased at a reasonable price, allowing for the probable expense to the Government in perfecting such rights.

A copy of Attorney J. O. Seth's letter of April 3 is attached, which sets forth the status of Mrs. Frey's record title to such waters, and which is self-explanatory.

MILTON J. McCOLM
Acting Regional Director.

Encl. 1674557.

cc: The Director w/c encl.
Actg. Supt., S.W. Natl. Mon., w/c encl.
Actg. Cust., Bandelier Natl. Mon., w/c encl.

04-03-1942: letter to regional attorney from seth and montgomery attorneys and counselors at law regarding water right

SETH AND MONTGOMERY
ATTORNEYS AND COUNSELORS AT LAW
111 San Francisco St.,
Santa Fe, New Mexico

April 3, 1942.

Raymond Sroaf, Esq.
Regional Attorney,
National Park Service,
Santa Fe, New Mexico.

Dear Mr. Sroaf:

Mrs. Frey has handed me your letter to her of March 4th, relative to her water right at Frijoles (Bandelier).

This water right was applied for by the late A. J. Abbott in 1913 and is No. 802 in the office of the State Engineer. It was transferred by Judge Abbott to R. J. Reed. It was transferred by Reed to John Davenport and George X. Frey. John Davenport transferred his interest in it to George X. Frey, and it was awarded to Mrs. Frey in her divorce proceedings.

She has been endeavoring to locate the various transfers, but has not been able as yet to find the transfer from Abbott to Reed. I have not had an opportunity to examine the records in the office of the County Clerk at Bernalillo but will do so in the near future. In view of the fact that the Court House at Bernalillo burned some eight or ten years ago, it is doubtful whether those records will be available. In the meantime we are asking Reed and Davenport to endeavor to locate the original Abbott conveyance if possible.

Very truly yours,

/s/ J. O. Seth

JOS:JN

cc: Mrs. Evelyn C. Frey
Box 1321
Santa Fe, New Mexico

COPY

S. W. Monuments.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA
601 Sheldon Building

March 10, 1942.

MEMORANDUM for Attorney Albert L. Johnson:

Reference is made to Mr. Richey's memorandum to the Regional Director of February 26, 1942, suggesting that we file a new claim for National Park Service water use at Bandelier National Monument and that we do not attempt to acquire the rights now claimed by Mrs. Frey. It should also be noted that the copy of the license No. 802 sent by Mr. Sroaf by memorandum of March 4, 1942, is all that is required to complete our record of existing water rights and that the ditches shown on drawing NM-BAN-6975 in my report of October 14, 1941, are from the map on which that license was issued.

The following is quoted from page 15 of the New Mexico water right manual:

"D - Change of Ownership - Assignment.

"Any filing, permit or license to appropriate water may be assigned, but no such assignment shall be binding except on the parties thereto unless filed for record in the office of the State Engineer. Such filing shall be made out in duplicate on the proper Change of Ownership forms or it may be a certified copy of the actual assignment. A fee of $1.00 must accompany the filing.

"No irrigation right which is appurtenant to the land shall be assigned or transferred apart from the land excepting in the manner specially provided by law. Neither may title to land be transferred apart from any water right which is appurtenant thereto unless such right has been previously alienated from the land in the manner provided by law."

In transmitting the copy of the permit and license to the Regional Director, the State Engineer is quite emphatic in stating that he has no records of assignment or severance but:

"I have been informally advised that various deeds have been executed and transfers made purporting to convey the above water rights. If same were made, no records thereof appear in this office."

The case is similar to that at Carlsbad when the State Engineer advised the Park Service it was using Rattlesnake Springs illegally in 1936 because conveyance had not been recorded with the State Engineer. We have been assuming that the right was severed from the land, but I do not know where we got the idea. Mr. Taylor may be able to answer that. Otherwise, we should get a copy of the Deed and Abstract to cover the conveyance of the land to the United States from the Director. We should also have a copy of the permit issued to Mr. or Mrs. Frey, at least the part relating to water use. It would also help to borrow Mr. Miller's files of exhibits submitted by Mr. Attwell by letter of November 24, 1933.

The point is that Mr. Richey may be right in believing that Mrs. Frey does not have the title to the water right as she claims. If not, the water right manual seems to suggest that title may have passed to the United States. If the latter is true, we will want to file the certified copy of the deed and abstract with the State Engineer as Mr. Taylor did in the Carlsbad Case. Then we will be free to file amendments as we see fit.

On the other hand, if Mrs. Frey does have title to a severed right it is still in three ditches and not in the National Park Service pipe line which serves the hotel. Suppose we file a new claim to appropriate water for the pipe line. Have we sufficient authority to prevent Mrs. Frey from transferring part of her right, too, if she wishes to complete recordings and amendments which she should make if we do not? She would then have the senior right in the pipe line and could claim that she provided all water at the hotel under her right.

The license No. 802 is for 0.42 sec. ft. to irrigate 45 acres with an annual limit of 135 acre feet. The orchard has only 2.7 acres of area, and with her other gardening about the hotel I doubt if there is a total demand of more than 9 acre feet per annum on 3 acres. It is quite certain that not more than 10 acre feet per year have ever been used consumptively at the hotel and that assumes 40 people staying in the hotel and a demand of 225 gallons per day for each to cover those guests and the related transient demand. The Park Service may be able to justify demand for another 2.5 or 3 acre feet per year to serve its shops and employees' residences.

I am sure that with these allowances we can ignore campground use. The total water demand in the monument then, with about 15,000 visitors as in 1938, is only 22 acre feet per year. This indicates that 113 acre feet of the licensed right No. 802 has lapsed by non-use if we wish to prove it to the State Engineer.

To run irrigation water in her ditch to the orchard it will be impractical for Mrs. Frey or the United States to divert much less than the licensed 0.42 sec. ft. It might be reduced to 0.25 sec. ft., but at 0.25 sec. ft. there could be no diversions during the year for more than 20 days to cover the 9 acre feet of right.

Mr. Richey advises that the operator now exercises her water rights in the monument for the Park Service and herself and enjoys free power in exchange for water. Actually, no one is exercising a water right by diversions through the National Park Service pipe at this time. The nearest legal point of diversion is about a half mile downstream.

Since the Park Service owns the hotel buildings as well as the land, it can file a claim to divert by its pipe line to serve the hotel. If Mrs. Frey has title, but cannot transfer rights under license No. 802 to the same system, a right to 10 acre feet per year will have lapsed by non-use. Also, if the Park Service perfects its own right to another 3 acre feet for the employees' residence and utility areas, then it will no longer derive any direct water right benefits from Mrs. Frey.

Any new water right is dependent on actual beneficial use. The Park Service can prove up on only a couple of thousand gallons per day for its own use. Any further right is really by the operator. Furthermore, right No. 802 is at least five times the total monument demand and probably three or four times any future demand. The stream flow seems to be greater than the right, too.

The indication is that the Park Service can perfect ample rights by new filing, but such rights will result in lapse of part of rights under license No. 802. Finally, by using its own rights, whether part of license No. 802 or other, the Park Service will no longer derive benefit to justify granting free power to Mrs. Frey. If it already owns the licensed right the free power is already granted on a false premise.

(SGD.) A. VAN V. DU..N

Hydraulic Engineer.

cc: Director.
Reg. Director, Reg. Three.
Supt.,S.W. Monuments.
Reg. Atty. Taylor.
Custodian Thomas, through Supt.,
S.W. Monuments.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

March 4, 1942.

Mrs. Evelyn C. Frey,
c/o Mr. Cecil,
Encino, New Mexico.

Dear Mrs. Frey:

We are making a study of the water rights situation at Bandelier National Monument. This necessarily involves water rights claimed by you. It would, therefore, be appreciated if you would advise us of the date, book, page and county in which the deeds are recorded by which you claim title to such water rights. If such rights were conveyed as a part and in connection with a conveyance of certain lands, it would be appreciated if you would give us the information involving such deeds.

If you have the abstract and would be willing to permit us to make use of it for a short time, it would be appreciated if you would forward same to us at your earliest convenience. I have just called Mr. Eden at the Monument and he has stated that you will be at your father's place, in or near Encino, for about ten days yet.

Sincerely yours,

RAYMOND SROAF

Raymond Sroaf,
Regional Attorney.

cc: Mrs. Frey, Box 1721,
Santa Fe, N. M.

cc: Acting Custodian,
Bandelier Natl. Monument.

660-05.7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

March 4, 1942.

MEMORANDUM for the Water Rights Section, Region Four.

Reference is made to Mr. Dunn's report of October 14, 1941, concerning the water rights of Mrs. Evelyn C. Frey in connection with Bandelier National Monument.

Superintendent Miller while serving as Acting Regional Director reviewed Mr. Dunn's report and requested the undersigned, by his memorandum, to check the county and state records to determine the nature and extent of Mrs. Frey's water rights. On page two of such report, Mr. Dunn makes some reference to the title by which Evelyn C. Frey is alleged to have deraigned her title. However, Mr. Dunn fails to include the date, book, page and county in which such deeds by which Mrs. Frey is supposed to have obtained her title are recorded. Accordingly, it has been very difficult to obtain any record of her interest.

With the cooperation of the Chief Clerk of the State Engineer's office, we have found a certificate of construction dated October 15, 1921, and a license to appropriate water of the same date by the State Engineer in connection with Certificate No. 802. A copy of each of the above is enclosed for your study. You will note that the prior date in such license is given as January 27, 1915, and was granted to A. J. Abbott of 45 acre feet of water. There is also enclosed a copy of a letter dated February 20, 1942, to the effect that there have been no subsequent applications, licenses, or permits filed in the office of the State Engineer involving the above water rights granted to A. J. Abbott with a prior date of January 27, 1915.

With the assistance of the County Clerk's office we were unable to find any record in Santa Fe County of a deed to any of the grantors or grantees mentioned by Mr. Dunn in his report. On March 3 a search was made of the official records of Sandoval County, Bernalillo, New Mexico, and nothing could be found in the County Clerk's office, but in the office of the County Assessor we found Evelyn C. Frey to be assessed $900 on improvements on Government land and $100 on tangible personal property. There was nothing to indicate as to what the improvements on Government land consisted of. The records of 1939, 1940 and 1941 made no specific reference to lands or water rights in the

name of Evelyn C. Frey or George K. Frey, her former husband.

We are unable to make a proper determination of the status of the water rights of Evelyn C. Frey without further data. If you have data in your office of the date, book, page and county of the recording of such prior deeds, it would be appreciated if you would forward them to us at your earliest convenience. It is noted that Acting Superintendent Richey, in his memorandum of February 26, suggested a thorough study of the rights of Mrs. Frey, but without complete knowledge as to the extent of such rights the Acting Superintendent made certain recommendations in the last paragraph of his memorandum. It is not believed that we have sufficient data before us for an administrative determination of the procedure which the Service should follow. When we have completed our search of the official records, all data available will be submitted to the administrative officials of this headquarters for their review and recommendations.

RAYMOND SROAF

Regional Attorney.

Enclosure 2808573.

cc: Acting Superintendent Richey.
Acting Custodian, Pandelier Natl. Monument.

02-26-1942: memorandum to regional director from nps regarding whether the nps should file claims for a water supply

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
COOLIDGE, ARIZONA

February 26, 1942.

MEMORANDUM for the Regional Director, Region Three.

Under date of February 13, 1942, Hydraulic Engineer Dunn wrote your office in regard to his report, "Water Claims, Bandelier National Monument." Mr. Dunn in his memorandum raises the question as to whether the National Park Service should file claims for a water supply for Bandelier National Monument, or whether it would be advisable to acquire by exchange the rights which may now be held by Mrs. Evelyn C. Frey, operator of Frijoles Canyon Lodge.

Mr. Dunn seems to favor acquiring and amending Mrs. Frey's right. This solution would involve a determination of the present status of her rights. The following points should be considered in proceeding to obtain water rights from this source:

1. It would seem to be necessary to demonstrate whether Mrs. Frey actually has a perfected legal title to any water rights, or whether she merely has elements upon which a legally recognized right might be obtained.

2. Evelyn C. Frey is divorced from George Frey who is living. If Mr. Frey had a legal appropriation, was it transferred to Evelyn C. Frey in the divorce settlement?

3. There is now no privately owned property in the Frijoles Canyon. Question arises as to whether the conversion of the private property to federal property in the Canyon applied also to the conversion of the water right.

4. Suggestion is made that Mrs. Frey, if found to have a valid right, might not transfer the right or privileges to the National Park Service in consideration of the Park Service furnishing her free electric current for the operation of the Lodge. Contract No. I-lp-15088 between the Department of the Interior and Evelyn C. Frey states in

article 3, section g, "That, in view of the water rights now exercised by the operator within the monument and free use of water accorded the Government by the operator, no charge will be made by the Government to the operator for delivery of water or the disposal of sewage." The clause quoted would seem to imply that Mrs. Frey has already bargained away such rights as she might have to the Government in exchange for the services of delivery of water and disposal of sewage. At the time she signed the contract, it would seem that she considered this a fair exchange. Unless the rights which she held have become more valuable, it might now seem imprudent for the Government to offer to furnish her free electricity in addition to services already given.

Because of the uncertainties mentioned, this office highly favors the National Park Service perfecting an appropriation of waters for a four-inch pipeline at Bandelier. This could be done on the basis of the present two-inch line, a four-inch line to be extended from time to time until this line is completed. We do not favor the transfer of any water rights to the Government which might have been perfected or are subject to withdrawal by Mrs. Frey if other rights can be perfected. It is believed that every effort should be made toward perfecting a water right of our own. We would appreciate it if your office might take the necessary steps toward filing and perfection of a title independent of that held by Mrs. Frey.

CHARLES A. RICHEY
Acting Superintendent.

cc: Supt. Miller.
Hydraulic Engr. Dunn.
Custodian Thomas.

1

02-13-1942: memorandum to regional director from hydraulic engineer regarding water claims

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

660-05.7

February 13, 1942.

MEMORANDUM for the Regional Director, Region Three:

Reference is made to my report on "Water Claims, Bandelier National Monument," dated October 14, 1941.

This is to remind you that before this water right problem can be adjusted by proper appropriative filings it is necessary to determine the administrative procedure to be followed in connection with Mrs. Frey and her interests in the source of supply and older water rights. In other words, is it going to be possible to acquire her water rights in exchange for the service which she receives from the Park Service water system under the water rights which we shall perfect by transfer?

If we are going to attempt to acquire her water rights and transfer them, the progress will probably be somewhat slow, and this will make very little difference, but if for any reason we are going to file on a new water right it will probably be desirable to do so at the first opportunity.

Therefore, the immediate problem is a determination of what procedure to follow, rather than the final adjustment of such procedure.

Hydraulic Engineer.

cc: Director.
Supt., Southwestern Monuments.
Custodian Thomas, through Supt.,
Southwestern Monuments.

FEB 16 1942

10-21-1941: memorandum to regional director from attorney regarding report on water claims

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

660-09.1

October 21, 1941.

MEMORANDUM for the Regional Director, Region III:

I am transmitting herewith a report on Water Claims, Bandelier National Monument, prepared by Hydraulic Engineer Dunn, for your review and comments. My first visit to Bandelier was in April of this year just prior to Mr. Dunn's visit. I was impressed by the splendid example of craftsmanship shown by the CCC work there on museum, lodge, and buildings. I was also agreeably surprised by the affability of the operator in open discussion of her water rights there. It was contrary to former impressions gained by inspection of files and reports.

I have no doubt that, after a review of this report by your technicians, it will be in order to attempt an amicable arrangement with the operator before taking any independent action.

[illegible]

Enclosure 2136792.

Attorney.

cc: Director, with copy of report.
Supt. Miller, with copy of report.
Custodian Thomas, with copy of report (through Supt. Miller).

[illegible]
OCT 23 1941
SOUTHWESTERN NAT'L MON.

10-23
(May 1929)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

---------- NATIONAL PARK

FILE NO. 257

WATER CLAIMS

BANDELIER NATIONAL MONUMENT

By

A. van V. Dunn
Hydraulic Engineer

RECEIVED
NOV 3 1941
BANDELIER NATL. MON.

IMPORTANT

This file constitutes a part of the official records of the National Park Service and should not be separated or papers withdrawn without express authority of the official in charge. All Files should be returned promptly to the File Room. Officials and employees will be held responsible for failure to observe these rules, which are necessary to protect the integrity of the official records.

ARNO B. CAMMERER,
Director.

U. S. GOVERNMENT PRINTING OFFICE 6—7410

Water Rights Section,
Office of the Chief Counsel,
601 Sheldon Building,
San Francisco, Calif.,
October 14, 1941.

NATIONAL PARK SERVICE

WATER RIGHTS SECTION, OFFICE OF CHIEF COUNSEL

WATER CLAIMS

BANDELIER NATIONAL MONUMENT

By

A. van V. Dunn
Hydraulic Engineer

601 Sheldon Building,
San Francisco, Calif.,
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Introduction

This report is the result of the writer's visit to Bandelier National Monument on April 30, 1941, in the company of Sanitary Engineer H. B. Hommon of the Public Health Service and Associate Engineer H. A. Montgomery of Region III. The writer made the trip to make a visual appraisal of the water right situation previously reported by various Park Service officials and technicians, while the other two called to consider moving the National Park Service water system diversion upstream and to select a site for the new septic tank. Any change in point of diversion which the Park Service may have made since the visit will be important in the final perfection of Park Service water rights, but does not affect the procedure to be followed. Hence this report does not consider any changes which may have taken place during the summer.

Conclusions

The following discussion indicates that the Park Service lacks water rights at this time and should perfect them at once. On the other hand Mrs. Frey, the operator, has adequate rights for her own needs and probably sufficient which can be salvaged to cover all monument needs, but she is likely to lose most by lapse if they are not properly amended. These features have been pointed out since at least June 1937, when Attorney Albert L. Johnson reported by memorandum on his trip to the Southwest.

Procedure, however, involves both legal and administrative problems. Before making any filings for federal water rights the following questions should be settled:

1. Is a federal water right priority of 1941 or 1942 ample in the Rio Grande drainage, or will it pay in money or services for a 20 year old priority?

2. Does the Park Service wish to be consistent with regard to lapse of rights under the statute of limitations at Bandelier and at Carlsbad Caverns?

3. Does the Park Service care to cancel the operator's permit and issue a new one to eliminate those features relating to irrigation and garden plots?

4. Can, or would, the Park Service provide electric light service for a limited time in exchange for Mrs. Frey's water right?

The writer sees no danger in initiating a new right at this time, but favors the alternate of acquiring and amending Mrs. Frey's right. Such acquisition, however, should be conditional on successful amendment, and the writer wishes a complete outline of procedure before taking any further routine action.

Land Title

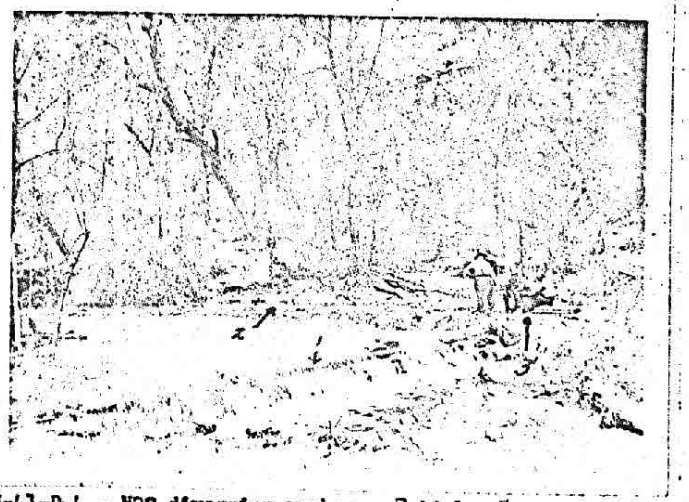
By letter of November 24, 1933, Associate Engineer Walter Attwell reported to Superintendent Pinkley that Judge A. J. Abbott occupied most of the developed area of the monument prior to survey of the land by the General Land Office in 1906, but that he did not subsequently apply for a patent. The same letter reports that Judge Abbott held occupancy under lease from the Forest Service as early as 1907 when the 29th annual report of the Bureau of American Ethnology mentions it.

Judge Abbott is reported to have deeded his interests, including about 101 acres, to John Boyd on September 5, 1919. Mr. Boyd deeded 45 acres to Davenport and Reed on February 26, 1923. Mr. Reed deeded his interest to George K. Frey on May 22, 1925, but Mr. Attwell could find no record of deed from Mr. Davenport to Mr. Frey.

Bandelier National Monument was established during 1932, and on October 1, 1933, the Park Service granted a permit to Mr. Frey for a hotel or camp site. This permit is reported to have recognized Mr. Frey's title to certain water rights, but to have excluded any reference to the right to continue irrigation of any land under



BAW-41-D-3 – Looking easterly along Frijoles Creek, April 30, 1941. Arrow indicates intake of Ditch No. 3.



BAW-41-D-4 – NPS diversion works on Frijoles Creek, consisting of:

1. Diversion dam (sand bags to raise water level to increase percolation at intake pipe).
2. Ditch with buried intake pipe to collect water seeping from creek.
3. Control gates and main pipe inlet.

that right until Mr. Frey added it himself when signing the lease. It is assumed herein that the irrigated area is an accepted part of the present lease.

Vested Water Rights

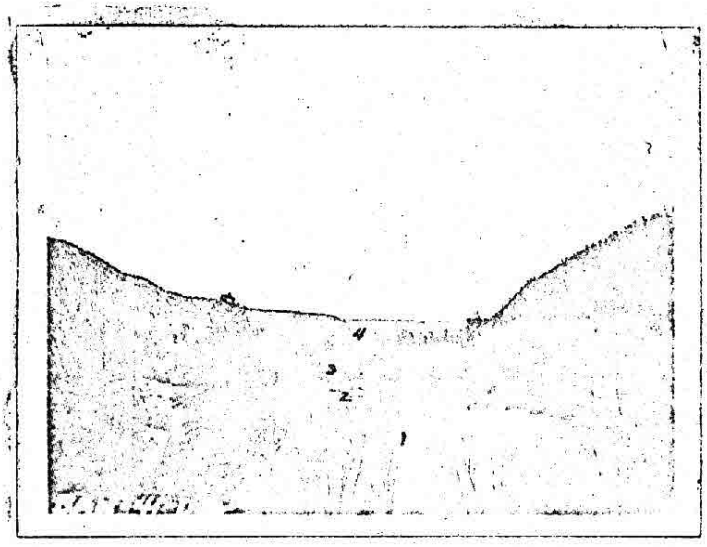
Mr. Attwell's letter further advises that Judge Abbott filed a Notice of Intention to file an application to appropriate waters of Frijoles Creek with the State Engineer on July 3, 1913, establishing that date of priority. The application was filed December 4, 1913, and the statement on the map accompanying that application states that work was commenced by survey on October 14, 1913, and that there were to be three ditches to irrigate about 30 acres, of which the two lower, Nos. 2 and 3, were completed many years before. The claim was for 0.5 sec. ft. for rotational use in the three ditches. A license was granted May 5, 1915.

Mr. Attwell advises that the filing was by Judge Abbott as the map indicates, but that the right was perfected by Mr. Boyd. Note, however, that the land was not deeded to Mr. Boyd until 4 years after the water right license was granted.

Mr. Frey's widow now claims 0.5 sec. ft. of water under that right. The writer has not obtained a copy of the license nor investigated the status of conveyances to determine that Mrs. Frey now has the right properly assigned to her, but it can be assumed for this report that she did acquire title in accordance with the water code.

Drawing NM-BAN-6975

Accompanying drawing NM-BAN-6975, Water Diversions and Claims, Bandelier National Monument, has been compiled from the water right map filed by Judge Abbott and Park Service drawings Nos. BAN-4932 and 4991. The ditches from the filed map are projected on BAN-4932 by superimposing the ruin between the present garden and administration area and orienting according to the north point. The present Park Service development from BAN-4991 is projected according to the writer's best recollection of distances along the stream and may be as much as 1000 feet off. The NPS pipe line diversion is as shown on BAN-4932 as there spotted roughly by the Superintendent of the Southwestern Monuments in 1935 to illustrate the report on existing water systems in the monument. Drawing BAN-6975 is thus only a sketch, but believed to be sufficiently accurate for the present purpose.



BAN-41-D-5 - Looking easterly across Mrs. Frey's orchard.

1. Orchard.
2. Community House ruin.
3. Lodge — Administration Area.
4. Monument approach road.

History of Water Use

Since Mr. Boyd is reported to have deeded only 45 acres to Davenport and Reed in 1923, there is some question as to whether all of the original 30 acres of irrigated area have been used at any time in the past 18 years. At all events, the only irrigated area shown to the writer in April was a small orchard and garden across the creek from the original lodge, comprising about 2.7 acres. Apparently the agricultural area was reduced from 30 to 2.7 acres about the time of the issuance of the NPS lease to Mr. Frey in 1933, and part of the reduction in area may have been made as early as 1923. Since the statute of limitations covering water rights in New Mexico is four years, either date offers reasonable proof of abandonment of all irrigation rights under ditches Nos. 1 and 2, and a reduction in the quantity of water proportionate to the portion of the original 30 acres under these ditches.

Mrs. Frey, however, was entitled to domestic use at the original lodge or ranch under this right. Her source of domestic and industrial use is reported to have been a cistern which seems to have been served by a lateral from Ditch No. 2. Since a farm tract of half an acre with house and limited stock usually demands about 0.025 sec. ft., this would seem to be the limit of rights to serve the old lodge unless a change in place and method of use of part of the irrigation quantity was made. There is nothing in the correspondence to show such a transfer.

The map shows the Park Service development to be under the lower end of Ditch No. 3. This includes the new lodge built for Mrs. Frey since 1933, and Mrs. Frey is very active in maintaining flower gardens about this lodge. The Park Service is also doing a little planting about its buildings. Mrs. Frey also maintains her orchard and garden on the 2.7 acres across from the original lodge. All water used for present irrigation is therefore in accordance with Mrs. Frey's water right so far as the place and method of use apply. However, Ditch No. 3 seems to have been abandoned below the orchard and ruin of the Community House, and irrigation in the lodge and administration area is now from the National Park Service pipe system. Thus no irrigation other than on the 2.7 acre orchard tract complies with the Frey right as to point of diversion.

Mrs. Frey's domestic use, not including industrial or hotel operation, is also in accordance with her right. The place of such personal domestic use has been changed, but is still on the area covered by license and therefore entirely legal.

All water use by Mrs. Frey, including industrial at the lodge, could have been made to comply with her water right by following the normal procedure for changing point of diversion, place and method of use. This does not seem to have been done. The changes can still be made if the right has not been recognized as lapsing. Since the physical changes have been made and use has been continuous, Mrs. Frey has strong arguments for proving all of her use to be continuous under her right with a mere delay in amendment. If the Park Service owned the right, it would probably amend it now under that claim and would probably be successful.

Park Service Water Use

Federal water use started at the old ranger station north of the old lodge, perhaps prior to the creation of the monument, when the area was under Forest Service supervision. This use has expanded until the Park Service now owns the whole monument water system except the portion of Ditch No. 3 serving Mrs. Frey's orchard. The contention has been that the Park Service is not operating under Mrs. Frey's right, and that it must perfect a water right which it now lacks. This is potentially true only to the extent that Mrs. Frey's right does not apply, or cannot be made to apply. Water for the museum, public comfort stations, campground, federal employees' residences, utility area and CCC Camp, does not now come under her right because there is no conveyance of right and no contract by her to serve the federal interests. However, there is no reason why all such use could not be covered by Mrs. Frey's right if she can prove that her right has not lapsed as suggested. The Park Service would then be obtaining water from her free, and without contract just as it now obtains water from the Utah Parks Company for use at Cedar Breaks and Bryce Canyon.

Supply and Demand

New Mexico recognizes a duty of water of 1 second foot to 70 acres and an annual limit of 3 acre feet per acre for irrigation. Industrial use is variable. The following constitutes a fairly close estimate of water demand in 1940 if all ultimate facilities had existed, broken down according to private and federal interest.

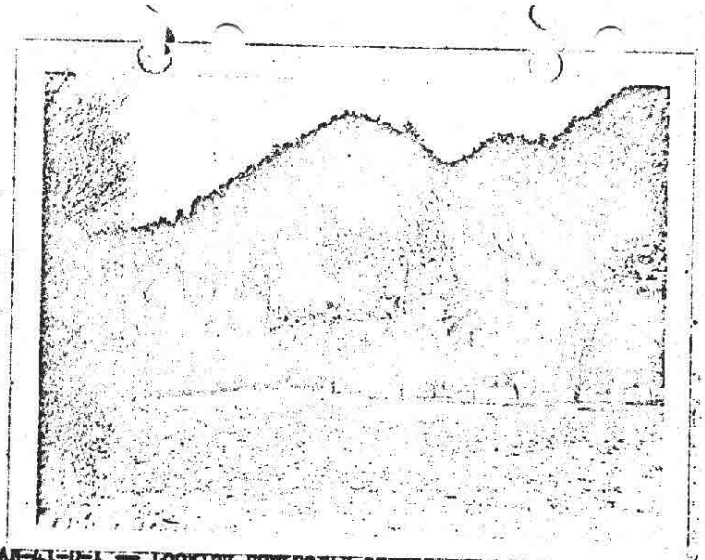
Item	NPS or Public Use	Mrs. Frey's Private Use
Irrigation:		
Mrs. Frey's orchard 2.7 acres		0.039 s.f.
Probable NPS at various areas, 15 acres	0.215 s.f.	
Domestic use (Mrs. Frey's home)		0.010 s.f.
CCC Camp at 11,000 gpd	0.017 s.f.	
NPS Utility Area @ 1,000 gpd	0.002 s.f.	
4 NPS families, 14 people @ 110 gpc	0.002 s.f.	
Ranger dormitory:		
Estimate, 12 people at 85 gpc.	0.002 s.f.	
Hotel, 65 people @ 175 gpc	0.017 s.f.	
Campground, 190 people @ 25 gpc	0.008 s.f.	
Total	0.263 s.f.	0.049 s.f.

Monument attendance has been as follows:

Year	Attendance
1932	4164
1933	3906
1934	9457
1935	12381
1936	12944
1937	14380
1938	14619
1939	10998
1940	13689

With better approach roads the attendance can be expected to increase materially, but due to the close proximity of Santa Fe and slightly more remote Albuquerque, it is doubtful if the water demand will more than double. The so-called private use is certainly only temporary. In other words, Mrs. Frey's water right is probably ample for the monument use for a long time to come.

The minimum stream flow is reported to be about 2 second feet, although the flood of the past April, shown in the accompanying picture, is much more. The monument employees were reasonably certain that there were no other rights or claims to Frijoles Creek, but Frijoles Creek is tributary to the Rio Grande at the mouth of the canyon a few miles



BAN-41-D-1 — Looking northerly across Mrs. Frey's orchard and garden — orchard to right, fallow land to left normally in garden.



BAN-41-D-2 — Looking southerly along concrete lateral of Ditch No. 3 at north end of Mrs. Frey's orchard.

below. The Rio Grande is both an inter-state and international river administered under compact. Hence, although the creek is more than ample for the claims of both Mrs. Frey and the Park Service, there would be some value in having the Park Service rights established with Mrs. Frey's priority of 23 years standing.

The Ditch No. 3 was conveying approximately 1 sec. ft. on April 30, 1941, divided equally between two laterals. One lateral, shown in the picture, is a concrete header at the upper end of the orchard; and the other parallels the north side of the orchard conveying part of the water on toward the Community House ruin. Thus Mrs. Frey is definitely diverting all the water to which she is entitled, regardless of the limit of beneficial use. She further advised the writer that she planned to make "full beneficial use" at the orchard and garden this summer.

The NPS pipe line is roughly 7000 feet long with a fall of 199 feet between diversion and lodge, and the lodge reservoir is 100 feet higher. The diameter is 2 inches. Its capacity to the said reservoir is about 0.04 sec. ft., and to the area without passing through the reservoir is about 0.057 sec. ft. There will be little change in capacity if the diversion is moved to the point selected during the visit of April 30. In other words, the Park Service is in no position to prove up on more than 20% of even its present potential demand without enlarging the whole system if it is to file a new application at this time. The capacity is just about equal to the NPS demand exclusive of any irrigation, however.

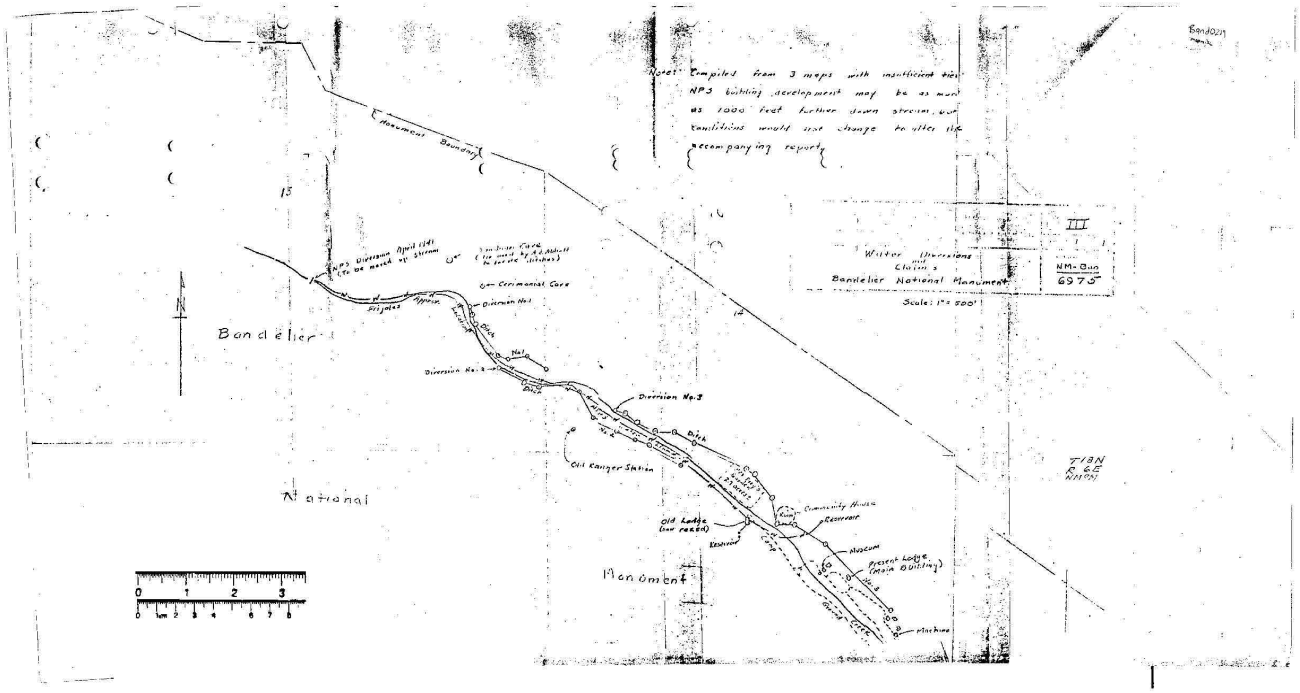
A new application by the Park Service is thus bound to be a conditional claim with frequent requests for extension of time, while to cover the use with the existing Frey right would result in immediate perfection of the full amount. In the latter case, however, there would be a complementary problem to keep any of the perfected right from lapsing. The writer favors the second procedure because there will be little question of full use as long as excessive conflicting local appropriations are not made.

Availability of Frey Right to the Park Service

Mrs. Frey and her husband have both defended their right with vigor in the past. It is an asset. Mrs. Frey is also an ardent gardener. There is some question whether her protection of the right is chiefly as an investment or as a means to satisfy her hobby.

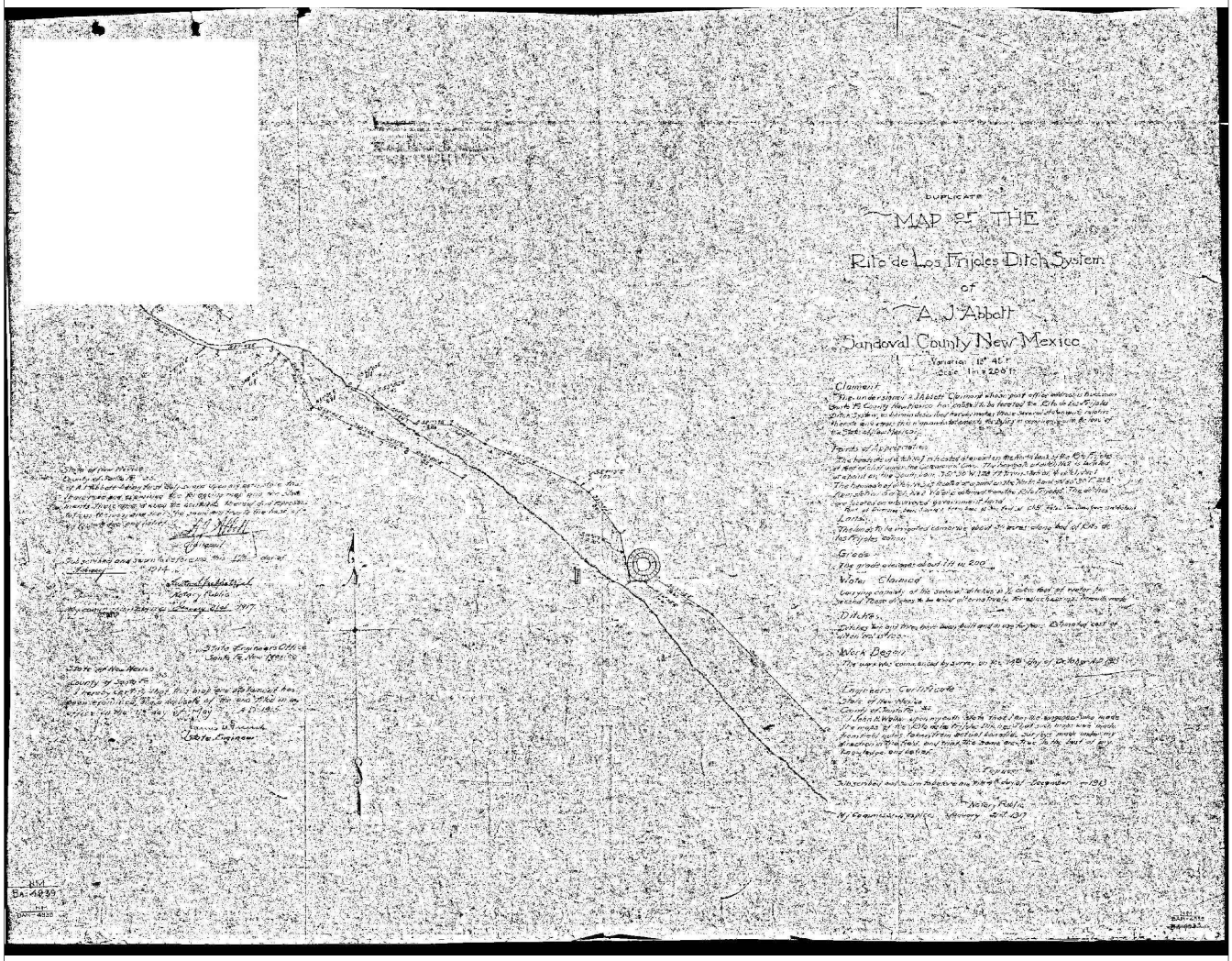
Be that as it may, she expressed regret to the writer that she had not exchanged the water right for NPS electric light service. She evidently realizes that the right is subject to loss at any time the lease is renewed. It is only necessary to cancel all permit to lands for a garden, provided the Park Service first establishes its rights to the full pipe capacity and does not allow re-establishment of the ditch right of way from the orchard to the lodge and administrative area. The writer feels that the Park Service can obtain the rights relatively easily if proper terms are offered.

As a final word of caution, the United States is now amending its right to Rattlesnake Springs for use at that area and Carlsbad Caverns to prevent a lapse which has become almost as real as that of Mrs. Frey. To acquire and salvage the Frey right is consistent with the rest of the Park Service activities. On the other hand, to force Mrs. Frey to lose her right would mean federal admission of points which would jeopardize its rights to Rattlesnake Springs. Hence, any action at Bandelier should either agree with that at Carlsbad, or be delayed until the latter is settled, a few months hence.



Maps and Miscellaneous Information

02-17-1914: map of rito de los frijoles ditch systems



Docket Information

Number of Documents in Docket 168

Documents Dated from 7/5/1913 to 3/24/1975

Docket Compiled: 1/31/2011