WATER-RIGHT DOCKET

Bent's Old Fort National Historic Site

Docket No: 3

WELL #3.

Preliminary Docket Information

00-00-0000: issues and concerns; 1987

WATER RIGHTS BRANCH INFORMATION TRACKING SYSTEM

ISSUES AND CONCERNS

February 5, 1987

REGION: RMR UNIT: BEOL DATE RECEIVED: 12/17/86 MODE: Telephone

CONTACTS:

Name Don Hill Title Acting Superintendent Phone 303/384-2596

Name Don Currie Title Chief of Maintenance Phone 303/384-2596

Name Bill Gwaltney Title Chief Ranger Phone 303/384-2596

WRB Lead Contact Scott Brown

LAST UPDATE: _____-____-_____

ISSUE/CONCERN:

On December 17, 1986, RMR Contact, Ron Hermance, notified the Water Rights Branch of problems associated with claims for water rights at Bent's Old Fort NHS. Mr. Clyde Young, a Water Court Referee, has raised questions concerning the amounts claimed for two wells and whether the rights should be recognized as absolute or conditional. Mr. Young suggested that amendments should be submitted to the Court based on actual usage and the purposes served by each well.

ACTION PLAN:

The Water Rights Branch will:

1. Research all BEOL water right dockets to determine which wells are in use, the purposes served by each well, and whether a distribution system exists.
2. Call the Chief of Maintenance to ask any questions not answered by researching dockets.
3. Discuss findings with Water Referee.
4. Recommend action to the Superintendent.

ACTION SCHEDULE

Action	Due Date	Completion Date	Responsible Person(s)
1	01/08/87	01/08/87	Debi Cox
2	01/08/87	01/09/87	Debi Cox
3	01/23/87	01/23/87	Scott Brown
4	01/27/87		Stan Ponce

COMMENTS

01/08/87 Debi called Don Currie to ask specific questions about the wells. Don was not familiar with our identification of the wells, nor did he have a copy of the map that showed the location of the wells.

01/12/87 Received diagram maps from Don. They helped explain which wells are actually in use.

01/15/87 Debi tried to call Don but he was in training. She spoke with Chief Ranger, Bill Gwaltney to clear up a couple of questions in relation to wells and usage. Debi still has one question (has Well No. 2 been capped and covered?) to ask Don.

01/20/87 Don Currie called and Debi was able to confirm that Well No. 2 has been capped and covered and that the irrigation well that is in use is on the Alma Day land.

01/23/87 Scott called the Water Referee with our findings. They decided what could be claimed for each well. The WRB will prepare all paperwork for the Justice Department to submit an amended application to the court.

02/05/87 Paperwork to amend application sent to DOJ 02/05/87

COMPLETION SUMMARY

04/23/87 - Talked to Clyde Young (Div 2 Water Referee) He noted that amended claim had not been filed

04/28-87 - Talked to John Hill. He questioned amended claim + said he had to file a motion (Need to smark) explaining why amended claim filed.

04/29/27 - Reviewed dockets + spoke to Don Currie. He cleared up situation pertaining to use.

4/29/27 - Talked to John Hill again. He wants absolute right for #3 / nothing for # 2. Suggested I call Clyde Young

4/30/87 - Spoke w/ Clyde Young (Div. 2 Referee). He said that he could not rule our claim absolute w/o an amendment being filed, but suggested that we maintain our present claim (#2 - none #3 - 140 absolute /10 conditional) which he will approve and then claim an absolute right @ the next diligence filing.

5/6/87 - Spoke w/ John Hill. He told me to have Clyde rule for former amendment. We will make conditional right absolute later.

5/6/87 - Spoke w/Clyde Young - He will rule on the amendment before the court. Scotts amendment then will not be acted upon.

11/5/87 - John Hill called. He's preparing the final decree for an absolute and conditional underground water right for NPS Bent's Old Fort Well No. 3. He wanted to clarify some points with the park so I had Don Currier call John. John called me again and expressed concern because Don told him the well pumps a lot more than the 10 gpm that will be decreed absolute. apparently since Walter Rusinek's conversation with Clyde Young 4/30/87, the requested (in 2/5/87 letter) 110 gpm absolute for sanitary waste disposal and 150 gpm absolute for fire protection were disregarded. In May it was apparently decided that if the court decrees the 140 (or 150) gpm conditional, the U.S. can change the conditional to absolute. John agreed that is the route to follow and requested that the Water Rights Branch begin preparing an application for making a Conditional Water Right absolute. pmd

TRACKING SHEET NUMBER _____.

DATE	ACTIVITY/COMMENTS
6/2/88	Met with John Hill regarding several issues and discussed the situation concerning this well decree. He said he believes this issue has a low priority because "the water is there if we need it." He suggested the NPS attempt to work out a volume limitation with the State Engineer prior to filing the application to Make absolute a Conditional Water Right. (The Court does not require any filing until 1991 when the application for Quadrennial Finding of Reasonable Diligence is due.) pmd [John Hill also recommended that the NPS set up a system to remind us of filings that need to be taken care of in the future.] pmd

WATER RIGHT RECORD

Park: BEOL

Docket Number:
Federal 3

IDENTIFICATION NO: BEOL W,14,23,54,C ,F,03,

DITCH/WATER SYSTEM: Bent's Old Fort

SOURCE OF SUPPLY: Well #3

LOCATION: SW¼ of SW¼ of Sec. 14, T23S, R54W, 6th PM

WATER RIGHT:

Appropriator: United States of America, National Park Service

Application/Permit Number: 9082-F

Certificate Record Number:

Date of Priority: March 31, 1965

Quantity of Water: 350 gpm

Purpose: Fire protection and irrigation

Irrigated Land Description: Well at maintenance bldg.
In use, 1987.

SUMMARY OF STATUS: This is an acquired water right. The land was acquired November 9, 1962 from J. H. & Martha L. Baldridge.
See Issue File for amended claim 2/87.
Well #3 granted absolute 10gpm - sanitation
conditional 140gpm - fire
in 81CW142
decreed 5/18/87

BEOL
Docket 003
"State Water
Rights
Documentation"



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FROM: Department of Justice
Environment and Natural Resources Division
ENRD/GL

Fax No. 312-7331
Voice No. 312-7351

SENT BY: Judy A. Tetreault

TO: Chuck Pettee
National Park Service

FAX No. 970-225-9965

RE: **Water Division No. 2, Case No. 00CW61**

Please review the attached **Amended** Ruling of the Referee for accuracy. If there are any changes or corrections you deem necessary, please contact me. Thanks, J.

FILE

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO NOV 08 2000 CLERK
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **THE UNITED STATES OF AMERICA** **IN OTERO COUNTY, STATE OF COLORADO.**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	Case Number: **00CW61(80CW142)** **C/R 80CW142**

AMENDED RULING OF THE REFEREE

Pursuant to Order of Referral filed and entered in the above case on July 3, 2000, the undersigned Water Referee, having investigated the matter of the Application on file herein, hereby makes the following findings and amended ruling thereon:

FINDINGS OF FACT

1. An Application to Make Absolute a Conditional Water Right was filed on June 30, 2000. The name and address of the applicant is:

   United States of America
   National Park Service
   Attn: Charles W. Pettee
   Water Resources Division-Water Rights Branch
   1201 Oak Ridge Drive, Suite 250
   Fort Collins, CO 80525

2. The Water Clerk caused publication of such filing as provided by statute, and publication costs have been paid.

3. The time for filing Statements of Opposition expired on the last day of August 2000, and no Statements of Opposition were filed.

4. The Application claims to make absolute the following conditional water right decreed in this Court on December 15, 1987, in Case No. 80CW142:

a) Name: NPS Bent's Old Fort No. 3

b) Location: SW ¼ SW ¼ Section 14, T. 23 S., R. 54 W., 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.

c) Source: Groundwater tributary to the Arkansas River.

d) Appropriation Date: July 31, 1965

e) Amount: 10 gpm absolute; 140 gpm conditional

f) Use: Fire protection

g) Depth: 50 feet

The Application makes no claim to make absolute the sanitary disposal use or to continue said use in full force and effect.

5. That the Application was filed prior to the expiration of the time allotted for such filing with respect to the fire protection use. The conditional water right for sanitary disposal use should be canceled.

6. With the cancellation of sanitary disposal as a decreed use for NPS Bent's Old Fort No. 3, said well's only decreed use is fire protection. Therefore, Bent's Old Fort No. 3 is an exempt well pursuant to C.R.S. 37-92-602(1).

7. That the Applicant has furnished acceptable proof as to claims made.

8. This Amended Ruling of the Referee is entered to clarify that NPS Bent's Old Fort No. 3 is now an exempt well pursuant to C.R.S. 37-92-602(1).

IT IS, THEREFORE, ORDERED AS FOLLOWS: That the conditional water right awarded in Case No. 80CW142 for NPS Bent's Old Fort No. 3 for an additional 140 g.p.m. for fire protection purposes be, and is hereby, made absolute.

IT IS FURTHER ORDERED that the additional 140 g.p.m. awarded to NPS Bent's Old Fort Well No. 3 for sanitary disposal use is hereby canceled. Said order does not affect the 10 g.p.m. awarded as an absolute water right for said use.

IT IS FURTHER ORDERED that Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed

essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 8th day of November, 2000.

BY THE REFEREE:

Mardell R. Cline
Water Referee, Water Division No. 2
State of Colorado

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO NOV 08 2000 CLERK
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **THE UNITED STATES OF AMERICA** **IN OTERO COUNTY, STATE OF COLORADO.**	**COURT USE ONLY**
	Case Number: 00CW61(80CW142)

NOTICE OF TRANSMITTAL AND CERTIFICATE OF MAILING

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Ruling to:

Division Engineer, 310 East Abriendo, Suite B, Pueblo, CO 81004;

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203;

James J. DuBois, U.S. Department of Justice, Environment and Natural Resources Division, 999 – 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court. Date: November 8, 2000.

Mardell R. Cline, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003-2940
Telephone: (719) 583-7048

By: Mardell R. Cline
Clerk

U.S. Department of Justice

Environment and Natural Resources Division

00CW61

WMC:mdd

Misty DeSalvo
General Litigation Section
999 Eighteenth Street
Suite 945, North Tower
Denver, Colorado 80202

Telephone (303) 312-7307
Facsimile (303) 312-7331
misty.desalvo@usdoj.gov

June 29, 2000

via Federal Express

Ms. Mardell Cline
Clerk of the Court
Water Division No. 2
320 West 10th Street, #207
Pueblo, Colorado 81003

Re: New Case

Dear Ms. Cline:

Enclosed for filing is an original and three copies of each APPLICATION TO MAKE ABSOLUTE A CONDITIONAL WATER RIGHT. Please note that the filing fee will be sent under from the National Park Service under separate cover.

I have also provided one additional copy of the document which I would appreciate your file stamping and returning to us in the envelope provided herewith.

If you have any questions, please call.

Sincerely,

Misty DeSalvo
Legal Support Assistant

Enclosures

cc: National Park Service

DISTRICT COURT, WATER DIVISION 2, COLORADO

CASE NO. _____ (C/R Case Nos. 80CW142, 93CW84)

APPLICATION TO MAKE ABSOLUTE A CONDITIONAL WATER RIGHT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA IN, OTERO COUNTY, STATE OF COLORADO

---

1. Name, address, telephone number of applicant:

United States of America ("United States")
C/O James DuBois, Attorney
Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone (303) 312-7341

Charles W. Pettee
National Park Service
Water Resources Division-Water Rights Branch
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

2. Names of structures (ditch, well, springs, reservoir, etc.):

a.) Bent's Old Fort Well No. 3

3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:

1. Date of Original Decree as to all structures: December 15, 1987.

Case No.: Case No. 80CW142
District Court, Water Division No. 2

B. Location of Points of Diversion:
SW1/4SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.

C. Source: Groundwater tributary to the Arkansas River.

D. Appropriation Date: July 31, 1965.

Amount Conditionally Decreed: 140 g.p.m.

E. Use: Fire protection.

F: Depth of well: 50 feet.

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: (add additional sheets if necessary)

The well necessary for the beneficial use of the conditional water right was constructed prior to the commencement of this diligence period. During the diligence period, water has been diverted and applied to beneficial use, and conditional water rights made absolute to the extent needed for beneficial use.

5. If claim to make absolute:

Water applied to beneficial use: June 21, 2000 in the amount of 140 g.p.m. for fire fighting purposes.

Description of use: On Wednesday, June 21, 2000 at approximately 6:00 p.m. the Bent's Old Fort Well No. 3 was used to assist the La Junta Rural Volunteer Fire Department suppress a fire near Bent's Old Fort. The well was used to fill the La Junta fire trucks, and the water was used for fire protection.

WHEREFORE, the United States of America requests that this Court enter a decree determining that reasonable diligence has been shown in the development of the conditional water right described herein and that the conditional appropriation has been completed, and the water right described herein made ABSOLUTE.

Dated this 29th day of June, 2000.

THOMAS L. STRICKLAND
United States Attorney

By: _____

JAMES J. DUBOIS, #13206
Attorney
U. S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7341

ATTORNEYS FOR APPLICANT
UNITED STATES OF AMERICA

VERIFICATION

STATE OF COLORADO)
) **SS.**
COUNTY OF LARIMER)

I, Charles W. Pettee, Chief, Water Rights Branch of the Water Resources Division, National Park Service, states under oath that I have read this amended application and verify that the information contained therein is true and correct to the best of my knowledge, information and belief.

Applicant, Charles W. Pettee, Agent for
National Park Service

Subscribed under oath before me on: June 29, 2000

My commission expires: Flora B. Romero, Notary Public
~~State of Colorado~~
My Commission Expires 7/30/2002

Notary Public

Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/30/2002

BENT'S OLD FORT NATIONAL HISTORIC SITE

Memorandum of Phone ConversationS

Contact: Janet Kuzmiak, Colorado State Engineer's Office, Division No. 2
(719) 542-3368 x101

June 13, 2000:

Contacted Janet Kuzmiak regarding the status of Well #3 at BEOL. In Case No. 80CW142, the Water Court issued a decree dated December 15, 1987 which decreed 10 gpm absolute for sanitation use and 140 gpm conditional for fire protection. In order to avoid the need for augmentation of the Arkansas River system, in 1996 the Water Rights Branch sought to convert this well to exempt status. After recently receiving a notice from the Water Court that a diligence filing was required on the conditional portion of the water right, I contacted Janet Kuzmiak to better understand the status of the water right.

She indicated that both the 10 gpm for sanitation and the 140 gpm for fire protection are exempt by definition, and that our new well permits—201942 and 201943—reflect this status. She indicated we should respond to the Water Court indicating that the conditional portion of the right is for fire protection only, and this would be considered exempt by definition.

June 19, 2000:

I contacted Janet Kuzmiak again to better understand the requirements of "capping, sealing and locking" the well, as required by statute in order to qualify as exempt. She indicated, after talking to Dick Wolf in the Denver Office, that the main concern of the state engineer is that the well head be closed to avoid contamination of the aquifer. She indicated that a locked pumphouse would be sufficient to meet the "locked" requirement. I described the system at BEOL and she indicated that it should be acceptable to meet the exempt requirements.

June 21, 2000:

Contacted Don Hill-Superintendent at BEOL and informed him of what Janet Kuzmiak said. Told him that Dan McGlothlin would talk the issue over with Jim Dubois at the conference in Boulder this week, and then we'd get back to him. Told him we might need an affidavit re the "locked, capped, sealed" status of the fire protection well. He indicated that they used their fire truck to fight a neighbor's fire—told him to document that, that it might be useful in quantifying these rights for absolute status if the exempt conversion fails.

July 6, 2000:

Discussed the issue with Jim DuBois of DOJ at the Water Conference in Boulder week of June 21. Based on that discussion, I contacted the Park and had them fax up all the documentation pertaining to the fighting of the fire—particularly how well water was used. Faxed the info on to Jim DuBois and he prepared the Application for an Absolute Water Right. Application was filed with Court June 29, and the filing fee was received by water court July 5. (Had spoken to Mardell Cline at Court and she said late filing of fee was OK (719) 583-7048).

Emailed Nancy Keohane, new Resource Management Specialist at BEOL (719) 383-5016, about the filings. Said I would update her after the referee rules, and then we could try to pin down the exempt status.

About November 1, 2000:

We received the Ruling of the Referee in this case. The only problem was that the decree contained no indication that the well was considered to be exempt. I contacted Steve Kastner of the State Engineer's office regarding this issue. He stated that the well and rights are considered by their office to be exempt. He said he had no problem with having the referee put in a statement regarding exempt status of the well. I contacted Mardell Cline, the Division 2 Referee, and talked with her. She said she would put in a statement regarding exempt status.

November 21, 2000:

We received the Amended Ruling of the Referee. She did place a statement in the ruling that the well was exempt but portions of the ruling are conflicting. In the findings, she states that the only decreed use of the well is for fire-protection, but in the order portion she states that this ruling does not affect the 10 gpm absolute which had already been decreed from the well for sanitary disposal. Discussed this with Bill Hansen, and we agreed to talk to Mardell again. Had Peter Fahmy review the amended ruling and he agreed that we needed to get it straightened out.

November 22, 2000:

Spoke to Mardell Cline this morning regarding the conflict between the findings of fact and the order in her Amended Ruling. She said that she was concerned because there is only one well and we were seeking two exempt uses for the well and that such does not fit the statutory requirements very well. She said that she had talked it over with Steve Kastner of the State Engineer's office, and he said that they had issued two permits for the same well so that there could be two exempt uses. She told me she would do a second amended ruling to clarify what we have.

USBV

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **THE UNITED STATES OF AMERICA** **IN OTERO COUNTY, STATE OF COLORADO.**	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO NOV 22 2000 ▲ CLERK ▲ **COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	Case Number: **00CW61(80CW142)** **C/R 80CW142**

SECOND AMENDED RULING OF THE REFEREE

Pursuant to Order of Referral filed and entered in the above case on July 3, 2000, the undersigned Water Referee, having investigated the matter of the Application on file herein, hereby makes the following findings and second amended ruling thereon:

FINDINGS OF FACT

1. An Application to Make Absolute a Conditional Water Right was filed on June 30, 2000. The name and address of the applicant is:

   United States of America
   National Park Service
   Attn: Charles W. Pettee
   Water Resources Division-Water Rights Branch
   1201 Oak Ridge Drive, Suite 250
   Fort Collins, CO 80525

2. The Water Clerk caused publication of such filing as provided by statute, and publication costs have been paid.

3. The time for filing Statements of Opposition expired on the last day of August 2000, and no Statements of Opposition were filed.

4. The Application claims to make absolute the following conditional water right decreed in this Court on December 15, 1987, in Case No. 80CW142:

a) Name: NPS Bent's Old Fort No. 3

b) Location: SW ¼ SW ¼ Section 14, T. 23 S., R. 54 W., 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.

c) Source: Groundwater tributary to the Arkansas River.

d) Appropriation Date: July 31, 1965

e) Amount: 10 gpm absolute; 140 gpm conditional

f) Use: Fire protection

g) Depth: 50 feet

The Application makes no claim to make absolute the conditional sanitary disposal use or to continue said use in full force and effect.

5. That the Application was filed prior to the expiration of the time allotted for such filing with respect to the fire protection use. The conditional water right for sanitary disposal use should be canceled.

6. The State Engineer has issued two exempt well permits for Bent's Old Fort No. 3: Permit No. 201492 for 10 gpm for drinking and sanitation purposes; and Permit No. 201493, issued pursuant to C.R.S. 37-92-602(1)(d), for 140 gpm for fire fighting purposes.

7. That the Applicant has furnished acceptable proof as to claims made.

8. This Second Amended Ruling of the Referee is entered to correct the finding in the Amended Ruling that fire protection is the only decreed use for Bent's Old Fort No. 3.

IT IS, THEREFORE, ORDERED AS FOLLOWS: That the conditional water right awarded in Case No. 80CW142 for NPS Bent's Old Fort No. 3 for an additional 140 g.p.m. for fire protection purposes be, and is hereby, made absolute.

IT IS FURTHER ORDERED that the additional 140 g.p.m. awarded to NPS Bent's Old Fort Well No. 3 for sanitary disposal use is hereby canceled. Said order does not affect the 10 g.p.m. awarded as an absolute water right for said use.

IT IS FURTHER ORDERED that Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed

essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 22nd day of November, 2000.

BY THE REFEREE:

Mardell R. Cline
Water Referee, Water Division No. 2
State of Colorado

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO NOV 22 2000 CLERK
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **THE UNITED STATES OF AMERICA** **IN OTERO COUNTY, STATE OF COLORADO.**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	Case Number: 00CW61(80CW142)

NOTICE OF TRANSMITTAL AND CERTIFICATE OF MAILING

To: All Parties

Second Amended Ruling of Referee enclosed. If you wish to protest said Second Amended Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Second Amended Ruling to:

Division Engineer, 310 East Abriendo, Suite B, Pueblo, CO 81004;

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203;

James J. DuBois, U.S. Department of Justice, Environment and Natural Resources Division, 999 – 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court. Date: November 22, 2000.

Mardell R. Cline, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003-2940
Telephone: (719) 583-7048

By: _____
Clerk

Author: Eric Lord at NP-WASO-WR
Date: 11/07/2000 10:06 AM
Priority: Normal
TO: Bill Hansen
CC: Nancy Keohane at NP-BEOL
Subject: BEOL Well No. 3

Bill,

I reviewed the ruling and proposed decree regarding BEOL Well No. 3, and my only concern was that there be some language that states the well and rights are considered to be exempt wells (exempt from needing to augment the Arkansas). I called Steve Kastner of the State Engineer's office and he said the well and rights are considered to be exempt by them. I then called the Div. 2 Water Court and requested that the ruling and decree be amended to reflect that the well/rights are exempt. She expected the ruling in about 20 days.

Looks like smooth sailing from here.

Eric

Nancy--will send you a copy of the signed decree when I get one.



IMPORTANT: This facsimile is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or it's contents is strictly prohibited. If you have received this transmission in error, please notify us by telephoning and return the original transmission to us at the address given below.

FROM: Department of Justice
Environment and Natural Resources Division
ENRD/GL

Fax No. 312-7331
Voice No. 312-7351

SENT BY: Judy A. Tetreault

TO: Chuck Pettee
- Water Rights Branch
National Park Service

FAX No. 970-225-9965

RE: WD 2 - 2000CW61

Attached please find the Ruling of the Referee in the above case. The Court should sign off on it in the next 2 weeks, and I will forward you a copy of the Decree. Any questions, please call me. Thanks, J.

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO OCT 27 2000 CLERK
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE UNITED STATES OF AMERICA IN OTERO COUNTY, STATE OF COLORADO.	COURT USE ONLY
Attorney or Party Without Attorney (Name and Address): Phone Number: FAX Number: E-mail: Atty. Reg.#:	Case Number: 00CW61(80CW142) C/R 80CW142

RULING OF THE REFEREE

Pursuant to Order of Referral filed and entered in the above case on July 3, 2000, the undersigned Water Referee, having investigated the matter of the Application on file herein, hereby makes the following findings and ruling thereon:

FINDINGS OF FACT

1. An Application to Make Absolute a Conditional Water Right was filed on June 30, 2000. The name and address of the applicant is:

   United States of America
   National Park Service
   Attn: Charles W. Pettee
   Water Resources Division-Water Rights Branch
   1201 Oak Ridge Drive, Suite 250
   Fort Collins, CO 80525

2. The Water Clerk caused publication of such filing as provided by statute, and publication costs have been paid.

3. The time for filing Statements of Opposition expired on the last day of August 2000, and no Statements of Opposition were filed.

4. The Application claims to make absolute the following conditional water right decreed in this Court on December 15, 1987, in Case No. 80CW142:

a) Name: NPS Bent's Old Fort No. 3

b) Location: SW ¼ SW ¼ Section 14, T. 23 S., R. 54 W., 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.

c) Source: Groundwater tributary to the Arkansas River.

d) Appropriation Date: July 31, 1965

e) Amount: 10 gpm absolute; 140 gpm conditional

f) Use: Fire protection

g) Depth: 50 feet

The Application makes no claim to make absolute the sanitary disposal use or to continue said use in full force and effect.

5. That the Application was filed prior to the expiration of the time allotted for such filing with respect to the fire protection use. The conditional water right for sanitary disposal use should be canceled.

6. That the Applicant has furnished acceptable proof as to claims made.

IT IS, THEREFORE, ORDERED AS FOLLOWS: That the conditional water right awarded in Case No. 80CW142 for NPS Bent's Old Fort No. 3 for an additional 140 g.p.m. for fire protection purposes be, and is hereby, made absolute.

IT IS FURTHER ORDERED that the additional 140 g.p.m. awarded to NPS Bent's Old Fort Well No. 3 for sanitary disposal use is hereby canceled. Said order does not affect the 10 g.p.m. awarded as an absolute water right for said use.

IT IS FURTHER ORDERED that Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 27th day of October, 2000.

BY THE REFEREE:

Mardell R. Cline
Water Referee, Water Division No. 2
State of Colorado

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO OCT 27 2000 CLERK
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE UNITED STATES OF AMERICA IN OTERO COUNTY.	COURT USE ONLY
Attorney or Party Without Attorney (Name and Address): Phone Number: FAX Number: E-mail: Atty. Reg.#:	Case Number: 00CW61(80CW142)...

NOTICE OF TRANSMITTAL AND CERTIFICATE OF MAILING

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Ruling to:

Division Engineer, 310 East Abriendo, Suite B, Pueblo, CO 81004;

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203;

James J. DuBois, U.S. Department of Justice, Environment and Natural Resources Division, 999 – 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court. Date: October 27, 2000.

Mardell R. Cline, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003-2940
Telephone: (719) 583-7048

By: _____
Clerk

U.S. Department of Justice

Environment and Natural Resources Division

WMC:JATetreault

Judy A. Tetreault
Denver Field Office
999 18th Street
Suite 945 North Tower
Denver, CO 80202

Telephone (303) 312-7351
Facsimile (303) 312-7331

October 23, 2000

VIA FACSIMILE

Peter Fahmy, Esq. (303) 231-5363
U.S. Department of Interior
Solicitor's Office
P.O. Box 25007, DFC
Denver, CO 80225

Chuck Pettee, Chief (970) 225-9965
Water Rights Branch
National Park Service
1201 Oak Ridge Dr., #250
Ft. Collins, CO 80525

Re: Water Division No. 2
Case No. 00CW61

Gentlemen:

Enclosed for your information, review and comment please find a Consultation Report in the aforementioned case. The Division Engineer is recommending we apply to amend the permit number for fire protection to match the proposed decreed flow rate. If you do amend the permit, please copy our office.

If you have any questions, or if we can be of further assistance, please feel free to contact Jim at (303) 312-7341 or myself.

Sincerely,

Judy A. Tetreault
Paralegal

Encls.

FILE

STATE OF COLORADO

WATER DIVISION 2
OFFICE OF THE STATE ENGINEER
310 East Abriendo, Suite B
Pueblo, Colorado 81004
Phone: (719) 542-3368
FAX: (719) 544-0800

http://water.state.co.us/default.htm

Bill Owens
Governor

Greg E. Walcher
Executive Director

Hal D. Simpson, P.E.
State Engineer

Steven J. Witte, P.E.
Division Engineer

October 19, 2000

CONSULTATION REPORT CASE NO. 00CW061

JUNE 2000 RESUME, SUMMARY OF CONSULTATION HELD SEPTEMBER 6, 2000 CONCERNING THE APPLICATION FOR WATER RIGHTS OF: UNITED STATES OF AMERICA, CHARLES W. PETTEE, NATIONAL PARK SERVICE, WATER RESOURCES DIVISION - WATER RIGHTS BRANCH, IN OTERO COUNTY.

Applicant seeks to make absolute an tributary underground conditional water right for fire protection purposes which was originally granted by the court in case 80CW142. No claim for diligence or to make absolute the conditional sanitary uses from this well were made in this application.

The Division Engineer has the following comments on the application which should be considered by the court:

N.P.S. Bent's Old Fort No. 3 well was granted a water right for fire protection and sanitary uses at a total flow rate of 150 gallons/minute (gpm), 10 gpm absolute and 140 gpm conditional. In order to avoid the need to augment out-of-priority diversions from this non-exempt tributary well under the rules and regulations governing groundwater use in the Arkansas River basin, the National Park Service elected to cancel the original non-exempt well permit number 9082F in 1997 and in return were issued two exempt well permits for this well by the State Engineers Office. Permit 201492 was issued for 10 gpm of sanitary use and permit 201493 issued for 140 gpm for fire protection use.

The Division Engineer has no objection to the granting of a ruling or decree making absolute an additional 140 gpm for the fire protection claim. The 140 gpm conditional right for sanitary uses should however be canceled.

The applicant should apply to the State Engineer to amend permit number 201493 from 140 gpm to 150 gpm for fire protection uses to match the proposed decreed flow rate.

Any decree entered for this well should specify that; "The said well is an exempt well as defined in C.R.S. 37-92-602(1)."

If not already in place, adequate control and measuring devices, acceptable to the Division Engineer or Water Commissioner and properly maintained may be required for the administration of this water right.

As necessary, please provide a written response to the following concerns, to Water Court: 207 Judicial Building, 10th & Court Streets, Pueblo Colorado 81003, Phone: (719) 583-7048.

CRS 1973, 37-92-302(4), PROVIDES THAT THE DIVISION ENGINEER SHALL MAIL A COPY OF THIS CONSULTATION TO THE APPLICANT OR THE APPLICANT'S ATTORNEY AND ALSO PROVIDES THAT THE APPLICANT OR THE APPLICANT'S ATTORNEY SHALL MAIL OR DELIVER A COPY OF THIS CONSULTATION TO ALL PARTIES OF RECORD TO THIS APPLICATION, (IF ANY). THIS STATUTE ALSO REQUIRES THAT THE APPLICANT OR HIS ATTORNEY SHALL FILE A CERTIFICATE OF MAILING WITH THE WATER CLERK OF WATER DIVISION II IF THIS SUMMARY OF CONSULTATION IS MAILED TO OPPOSING PARTIES.

Kastner X104

Steven J. Witte, P.E.
Division Engineer

SJW:SJK/sjk

xc: Hal D. Simpson, State Engineer
Don Taylor, Water Commissioner

10/23/00 MON 14:47 FAX 303 312 7330 DOJ ENRD/DFO ☑004

FORM NO. GWS-12N 10/88

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
618 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

For Office Use only
PERMIT NUMBER 201492

REGISTRATION OF DECREED EXISTING WELL
PURSUANT TO C.R.S.37-92-304(8)

1. WELL OWNER
NAME(S) : DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE
Mailing Address: 1201 OAK RIDGE DRIVE, SUITE 250
City, St. Zip : FORT COLLINS, CO 80525-5596
Phone: (970) 225-3536

30295 A

2. WELL LOCATION: COUNTY: OTERO OWNER'S WELL NUMBER: BENT'S OLD FORT
35110 HWY 194 EAST, LAJUNTA, CO 81050
(Address) (City) (State) (Zip)
SW 1/4 of the SW 1/4, Sec. 14, Twp. 23 S., Rng. 54W., 6 th P.M.
Located ~~at 1310 feet from South~~ Section Line, ~~735 feet from West Section~~ line.

3. The well has historically been used for the following purpose(s): Drinking and sanitation for employees and visitors at an historic site.

4. Water from the well was first used beneficially by the original owner for the above described purpose(s) on April 1, 1965.

5. The total depth of this well is 41.5 feet.

6. The pumping rate is 10 gallons per minute for drinking and sanitation purposes.

7. The average annual amount of water diverted is one (1) acre foot.

8. The land area irrigated from this well is: none acres described as:
(Legal Description)
or as Subdivision Lot(s) Block Filing/Unit

FOR OFFICE USE ONLY

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 37-92-304(8), CRS, THE STATE ENGINEER HAS ENTERED INTO HIS RECORDS, UNDER THE ABOVE ASSIGNED WELL PERMIT NUMBER, THE DETERMINATIONS MADE BY THE DIVISION 2 WATER COURT IN CASE NO. 80CW142 FOR WELL NO. 3

THE REGISTRATION FOR THIS WELL HAS BEEN AMENDED TO REFLECT CURRENT OWNER,ADDRESS AND LOCATION INFORMATION.

State Engineer

Bruce E. DeBrine
By

3-7-97
Date

Court Case No. 80CW142 Div. 2 Co. 45 WD 17 Basin MD Use 3

FORM NO. GWS-12N 10/89

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
618 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

For Office Use only
PERMIT NUMBER 201493

REGISTRATION OF DECREED EXISTING WELL
PURSUANT TO C.R.S.37-92-304(8)

1. WELL OWNER

NAME(S) : DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE
Mailing Address: 1201 OAK RIDGE DRIVE, SUITE 250
City, St. Zip : FORT COLLINS, CO 80525-5596
Phone: (970) 225-3536

302058

2. WELL LOCATION: COUNTY: OTERO OWNER'S WELL NUMBER: BENT'S OLD FORT
35110 HWY 194 EAST, LAJUNTA, CO 81050
(Address) (City) (State) (Zip)
SW 1/4 of the SW 1/4, Sec. 14, Twp. 23 S., Rng. 54 W., 6 th P.M.
Located at 1310 feet from South Section Line, 735 feet from West Section line.

3. The well has historically been used for the following purpose(s): Fire fighting as described in C.R.S. 37-92-602(1)(d).

4. Water from the well was first used beneficially by the original owner for the above described purpose(s) on April 1, 1965.

5. The total depth of this well is 41.5 feet.

6. The pumping rate is 140 gallons per minute for fire fighting.

7. The average annual amount of water diverted is -- acre foot.

8. The land area irrigated from this well is: none acres described as:
(Legal Description)
or as Subdivision Lot(s) Block Filing/Unit

FOR OFFICE USE ONLY

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 37-92-304(8), CRS, THE STATE ENGINEER HAS ENTERED INTO HIS RECORDS, UNDER THE ABOVE ASSIGNED WELL PERMIT NUMBER, THE DETERMINATIONS MADE BY THE DIVISION 2 WATER COURT IN CASE NO. 80CW142 FOR WELL NO. 3
THE REGISTRATION FOR THIS WELL HAS BEEN AMENDED TO REFLECT CURRENT OWNER,ADDRESS AND LOCATION INFORMATION.

Hal D. Simpson
State Engineer

Bruce E. DeBruine
By

3-7-97
Date

Court Case No. 80CW142 Div. 2 Co. 45 WD 17 Basin MD Use 7

CERTIFICATE OF MAILING

CASE NUMBER 00CW061

This is to certify that a true and correct copy of the Consultation Report was deposited in the U.S. mail, postage prepaid, at Pueblo, Colorado this 20th day of October 2000, addressed as follows:

Hal Simpson, State Engineer
Room 818
State Centennial Building
1313 Sherman Street
Denver, CO 80203

Don Taylor, Water Commissioner
301 Colorado Ave., Suite 303
P. O. Box 767
La Junta, CO 81050-0767

James DuBois
Depart of Justice
Environment & Natural Resources Division
General Litigation Section
999 18th St., Ste. 945
Denver, CO 80202

Wendy Bogard

Wendy Bogard
Program Assistant
Division of Water Resources
Division 2
Pueblo, Colorado

Emailed to Jim DuBois for filing with Water Ct. 6/29/00. ELord

DISTRICT COURT, WATER DIVISION 2, COLORADO

CASE NO. _____ (C/R Case Nos. 80CW142, 93CW84)

APPLICATION TO MAKE ABSOLUTE A CONDITIONAL WATER RIGHT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA IN, OTERO COUNTY, STATE OF COLORADO

1. Name, address, telephone number of applicant:

United States of America ("United States")
C/O James DuBois, Attorney
Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone (303) 312-7341

Charles W. Pettee
National Park Service
Water Resources Division-Water Rights Branch
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 08525

2. Names of structures (ditch, well, springs, reservoir, etc.):

a.) Bent's Old Fort Well No. 3

3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:

1. Date of Original Decree as to all structures: December 15, 1987.

Case No.: Case No. 80CW142
District Court, Water Division No. 2

B. Location of Points of Diversion:
SW1/4SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.

C. Source: Groundwater tributary to the Arkansas River.

D. Appropriation Date: July 31, 1965.

Amount Conditionally Decreed: 140 g.p.m.

E. Use: Fire protection.

F: Depth of well: 50 feet.

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: (add additional sheets if necessary)

The well necessary for the beneficial use of the conditional water right was constructed prior to the commencement of this diligence period. During the diligence period, water has been diverted and applied to beneficial use, and conditional water rights made absolute to the extent needed for beneficial use.

5. If claim to make absolute:

Water applied to beneficial use: June 21, 2000 in the amount of 140 g.p.m. for fire fighting purposes.

Description of use: On Wednesday, June 21, 2000 at approximately 6:00 p.m. the Bent's Old Fort Well No. 3 was used to assist the La Junta Rural Volunteer Fire Department suppress a fire near Bent's Old Fort. The well was used to fill the La Junta fire trucks, and the water was used for fire protection.

WHEREFORE, the United States of America requests that this Court enter a decree determining that reasonable diligence has been shown in the development of the conditional water right described herein and that the conditional appropriation has been completed, and the water right described herein made ABSOLUTE.

Dated this 29th day of June, 2000.

THOMAS L. STRICKLAND
United States Attorney

By: _____
JAMES J. DUBOIS, #13206
Attorney
U. S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7341

ATTORNEYS FOR APPLICANT
UNITED STATES OF AMERICA

VERIFICATION

STATE OF COLORADO)
) **SS.**
COUNTY OF LARIMER)

I, Charles W. Pettee, Chief, Water Rights Branch of the Water Resources Division, National Park Service, states under oath that I have read this amended application and verify that the information contained therein is true and correct to the best of my knowledge, information and belief.

Applicant, Charles W. Pettee, Agent for
National Park Service

Subscribed under oath before me on: June 29, 2000.

My commission expires: Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/30/2002

Notary Public

Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/30/2002

Memorandum

Date: 6/27/00

To: Water Rights

From: Chief Resource Management Bent's Old Fort Historic Site

Subject: Water use of BEOL Well #3

The staff involved in fire control at Bent's Old Fort National Historic Site remember that the nonpotable water source Well #3 has been used to control wildfires on an average of once a year for the last 5 years. The only Case Incident Report that has been located to date is the incident on 6/21/00 (see attached). The La Junta Fire Department also tests the well annually with fire equipment as permitted through a memorandum of understanding between the BEOL and the La Junta Fire Department. The BEOL well records maintained by the Maintenance staff at BEOL is also attached for the well #3. The meter readings reflect gallons pumped.

1/3/00 – 6/27/00	171,100 gallons
1/4/99 – 12/16/99	284,800 gallons
1/5/98 – 12/31/98	157,800 gallons
1/2/97 – 12/12/97	95,300 gallons
1/1/96 – 12/31/96	286,800 gallons
1/3/95 – 12/31/95	30,500 gallons

If we can be of further assistance please contact Nancy Keohane (719) 383-5016.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▸ 15

To Eric Lorde	From Nancy Keohane
Dept./Agency	Phone # (719)383-5016
Fax # 970-225-3526	Fax #

NSN 7540-01 317-7968 5099-101 GENERAL SERVICES ADMINISTRATION

Park Name BEOL

UNITED STATES DEPARTMENT OF INTERIOR
NATIONAL PARK SERVICE
INCIDENT RECORD

Incident Number	Incident Date	Incident time	Report date used as incident date?
BEOL0000000016	June 21, 2000	1800 Hrs	No

Clearance: Closed (All Other Reasons)

Cleared Exceptionally
Not Applicable/Not Cleared Exceptionally

Exceptional Clearance Date

Primary Agency: NPS

Reporting Officer ID: KDZ00

Primary Location: AREAS OUTSIDE PARK

Offense/Incident Code	Description of Offense/Incident	A/C	Location Code and Type
89-30-00	FIRES	Completed	0700 N/A

Type Of Hate Crime Bias? N/A

Method Of Entry (If Burglary)? N/A

Number of Premises entered if location is a hotel/motel/lodging: N/A

Type of Criminal Activity: N/A

Type of Weapon/Force Involved

Type Code	Quantity
N/A	N/A
N/A	N/A
N/A	N/A

N/A

Witness Name | Date of Birth | Phone Business

Address | City | State | Zipcode | Phone Residence

Name of Investigator Notified | Date | Time

Reporting Officer's Name
KARL D ZIMMERMANN

Supervisor's Name (Please Print)
Nancy Keohane

Reporting Officer's Signature | Date
6/26/00

Supervisor's Signature | Date
Nancy Keohane 6/27/00

NARRATIVE SHEET

Incident Number: BEOL0000000016

☐ Supplemental sheet used (if more narrative)

Narrative

On Wednesday, June 21,2000, at 1800 hrs the La Junta Rural Volunteer Fire Department call Park Ranger Karl Zimmermann at his home to request assistance in a wildland fire near Bent's Old Fort NHS. The Fire was reported to the fire Department as a river bottom fire.

Karl Zimmermann arrived at Bent's Old Fort NHS at 1820 hrs and drove the park's fire truck to the fire location. The fire was contained on the Ferguson's property, a park neighbor on the northeast boundary along Hwy 194.

The fire was started through spontaneous combustion in a hay stack. And because of the quick response by the La Junta Rural Volunteer Fire Department and Bent's Old Fort NHS the fire was limited to the hay stack, an area of about a 1/10 of an acre.

The fire did spread to a dead standing cottonwood. The Fire Chief for the La Junta Volunteer Fire Department request that Ranger Karl Zimmermann cut the tree. Ranger Zimmermann dropped the tree with the use of an NPS chain saw.

During the duration of the fire the La Junta Fire Trucks filled twice at Bent's Old Fort NHS's fire hydrant located east of the maintenance shop. Both trucks have five hundred gallon tanks.

The fire was declared out at 2030 hrs.

Bent's Old Fort NHS has a Memorandum of Understanding with the La Junta Rural Volunteer Fire Department for mutual support.

Reporting Officer's Name
KARL D ZIMMERMANN

Supervisor's Name (please print)

Reporting Officer's Signature — Date
6-26-00

Supervisor's Signature — Date

(Well #3) Well Permit No. 9082F

2000

1-12-00 - 1306800
1-13-00 - 1307200
1-14-00 - 1310700
1-18-00 - 1317500
1-19-00 - 1318600
1-20-00 - 1319500
1-21-00 - 1319900
1-24-00 - 1324500
1-25-00 - 1325200
1-26-00 - 1326000
1-27-00 - 1327400
1-28-00 - 1328000
1-31-00 - 1330600
2-1-00 - 1330900
2-2-00 - 1331400
2-3-00 - 1331700
2-4-00 - 1332700
2-7-00 - 1334100
2-8-00 - 1334600
2-9-00 - 1335500
2-10-00 - 1335900
2-11-00 - 1336500
2-14-00 - 1338900
2-15-00 - 1339200
2-16-00 - 1343900
2-17-00 - 1345500
2-18-00 - 1345800
2-22-00 - 1353500
2-23-00 - 1355200
2-24-00 - 1356400
2-25-00 - 1357000
2-28-00 - 1359000
2-29-00 - 1359500
3-1-00 - 1360000
3-2-00 - 1360400
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4-28-00 - 1441100
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5-5-00 - 1449200
5-8-00 - 1450100
5-9-00 - 1451200
5-10-00 - 1451500
5-11-00 - 1451700
5-12-00 - 1451900
5-15-00 - 1453000
5-16-00 - 1453300
5-17-00 - 1454000
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5-23-00 - 1455700

2000

-24-00 1456000
-25-00 1456500
-26-00 1456900
-30-00 1458200
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-6-00 1460700
-7-00 1462300
-8-00 1463200
-9-00 1463500
-12-00 1465000
-13-00 1465400
-14-00 1466100
-15-00 1466700
-16-00 1467000
-19-00 1468200
-20-00 1469300
-21-00 1470800 ←
-22-00 1471100
-23-00 1471500
-26-00 1472800
-27-00 1473300

JUN-27-00 TUE 4:27 PM BENTS OLD FORT P.

7-1 -	1120300	8-26-1176700	10-29-1248700		
7-2 -	1121100	8-27-1177900	11-1 - 1250200		
[illegible]	[illegible]	8-30-1179300	11-2 - 1251400		
7-6-	1123000	8-31-1180200	11-3- 1251750		
7-7-	1123700	9-1 - 1181000	11-4- 1252200		
7-8-	1124100	9-2 - 1181600	11-5- 1252600		
7-9-	1125000	9-3 - 1182700	11-8- 1254500		
[illegible]	[illegible]	9-7- 1189400	11-9- 1255000		
7-13-	1127400	9-10- [illegible]	11-10- 1255500		
7-14-	1129100	9-13- 1196800	11-12- 1260400		
7-15-	1129200	9-15- [illegible]	11-15- 1262100		
7-16-	1130000	9-16- 1199800	11-16- 1263700		
7-19-	1134600	9-17- [illegible]	11-17- 1264300		
7-20-	1136600	[illegible]	11-18- 1264700		
7-21-	1137500	[illegible]	11-19- 1265200		
7-22-	1138400	9-[illegible]	11-22- 1268900		
7-23-	1141500	9-[illegible]	11-23 - 1269400		
7-26-	1142600	9-27- 1218100	11-24 - 1270000		
7-27-	1143800	9-28- 1219100	11-25 - 1270700		
7-28-	1144800	9-29- 1221900	11-29- 1274000		
7-29-	1148700	9-30- 1223500	11-30 - 1275300		
7-30-	1150500	10-1- 1224100	12-1 - 1275900		
8-2-	1154100	10-4- 1226300	12-2 - 1276300		
8-3-	1155400	10-5 1227000	12-3- 1277100		
8-4-	1158200	10-6 [illegible]	12-6- 1280100		
8-5-	1156900	10-7 [illegible]	12-7- 1280600		
8-6-	1157700	10-[illegible]	12-8- 1281000		
8-9-	1160700	10-12- 1233300	12-9- 1281500		
8-10-	1161400	10-13- 1238900	12-10- 1282000		
8-11-	1162200	10-14- 1239900	12-13- 1286400		
8-12-	1163000	10-15- 1240800	12-14- 1286900		
8-13-	1163800	10-18- 1242200	12-15- 1287200		
8-14	[illegible]	10-19- 1242600	12-16- 1288300		
[illegible]	1165300	10-20- 1243200	1- 3- 1302200 ← JAN 2000		
7-[illegible]	[illegible]	10-21- 1243700	1-4- 1302600		
8-19	1171[illegible]	10-22- 1244300	1-5- 1303000		
8-20	1172300	10-25- 1246600	1-6- 1303500		
8-23 -	1174400	10-26- 1247000	1-7- 1303800		
8-24-	1175600	10-27- 1247500	1-10- 1305900		
8-25-	1175900	10-28- 1248200	1-11- 1306200		

	X108				
15 -	1006700	3-15-1062700	5-5 - 1085600		
19 -	1007400	3-16-1063300	5-6 - 1085900		
20 -	1008300	3-17-1063500	5-7 - 1090000		
21 -	1008500	3-18-1064700	5-10 - 1090100		
22 -	1013100	3-19-1065000	5-11 - 1090200		
25 -	1010000	3-22-1065400	5-12 - 1091200		
26 -	1020100	3-23-1065900	5-13 - 1091800		
27 -	1021400	3-24-1066400	5-14 - 1092400		
28 -	1025300	3-25-1066600	5-17 - 1093600		
29 -	1026800	3-26-1066800	5-18 - 1094200		
1 -	1027400	3-29-1067500	5-19 - 1094900		
2 -	1028700	3-30-1067700	5-20 - 1095400		
3 -	1029200	3-31-1067900	5-21 - 1096000		
4 -	1029500	4-1 - 1068300	5-24 - 1097600		
5 -	1030[illegible]	4-2 - 1068500	5-25 - 1098300		
8 -	1030500	4-5 - 1071600	5-26 - 1098[illegible]00		
9 -	1031600	4-6 - 1072000	5-27 - 1099100		
10 -	1035900	4-7 - 1072500	5-28 - 1099500		
11 -	1036700	4-8 - 1073200	6-1 - 1101700		
12 -	1036900	4-9 - 1074700	6-2 - 1102000		
16 -	1037400	4-12 - 1075700	6-3 - 1102400		
17 -	1038900	4-13 - 1075800	6-4 - 1102800		
18 -	1038900	4-14 - 1075900	6-7 - 1104300		
19 -	1042500	4-15 - 1076000	6-8 - 1104900		
22 -	1054100	4-16 - 1081[illegible]00	6-9 - 1105900		
23 -	1051600	4-[illegible]	6-10 - 1106100		
24 -	1052200	4-[illegible]	6-11 - 1107200		
25 -	1052700	4-[illegible]	6-14 - 1108700		
26 -	1054500	4-21-1078500	6-15 - 1109400		
1 -	1060200	4-22 - 1078600	6-16 - 1110200		
2 -	1060500	4-23 - 1078800	6-17 - 1111000		
5 -	1060700	4-26 - 1079300	6-18 - 1111500		
4 -	1060800	4-27 - 1081800	6-21 - 1113300		
5 -	1060900	4-28 - 1084700	6-22 - 1113800		
8 -	1061100	4-29 - 1085100	6-23 - 1114700		
9 -	1061600	4-30 - 1085300	6-24 - 1115400		
10 -	1061800	5-3 - 1085500	6-25 - 1115900		
11 -	1062300	5-4 - 1085600	6-28 - 1118600		
12 -	1062400		6-29 - 1119000		
			6-30 - 1119600		

JUN-27-00 TUE 4:28 PM BENTS OLD FORT P.

1-27 -	904300	9-21 - 958400	11-17-96	3300	
7-28 -	905100	9-22- 939100	11-18-96	2500	
7-29 -	965900	9-23- 934400	11-19-96	3900	
8	905900	9-24- 939700	11-20-96	4300	
8-	904300	9-25- 940400	11-23-96	5300	
8-3-	908100	9-28- 940800	11-24-96	5600	
8-4-	908700	9-29- 941100	11-25-96	5700	
8-5-	909000	9-30- 941400	12-01-96	8400	
8-6-	910000	10-1- 941700	12-02-96	8900	
8-7-	910400	10-2- 941800	12-03-96	9000	
8-10-	911900	10-5- 943000	12-04- 971100		
8-11-	912500	10-6- 942400	12-7- 971000		
8-12-	913000	10-7- 944400	12-8- 971100		
8-13-	913500	10-8- 944700	12-9- 971200		
8-14-	915200	10-9- 944900	12-10- 971400		
8-17-	919700	10-13- 946600	12-11- 973000		
8-18 -	919700	10-14- 946900	12-14- 978400		
8-19-	919900	10-15- 947300	12-15- 978500		
8-20-	920300	10-16- 947500	12-16- 979200		
8-21-	921000	10-19- 948400	12-17- 979400		
8-24-	923500	10-20- 948700	12-18- 97 92		
8-25-	922900	10-21- 949000	12-21- 980600		
8-26-	923100	10-22- 950100	12-22- 980800		
8-27-	923500	10-23- 950900	12-23- 981000		
8-28-	923800	10-26- 950600	12-24- Xmas Eve		
8-31-	925400	10-27- 956800	12-25- Xmas		
9-1-	926800	10-28- 957100	12-28- 987200		
9-2-	927300	10-29- 958500	12-29- 987800		
9-3-	927600	10-30- 958800	12-30- 988200		
9-4-	927900	11-2- 959700	12-31- 988800		
9-8-	930300	11-3- 960100	1-4- 1003500	1999	
9-9-	931000	11-4- 960200	1-5- 1004200		
9-10-	931400	11-5- 960300	1-6- 1004300		
9-11-	932100	11-6- 960500	1-7- 1004500		
9-14-	932800	11-9- 960800	1-8- 1004700		
9-15-	933200	11-10- 961000	1-11- 1005400		
9-16-	933400	11-12- 961300	1-12- 1005500		
9-17-	933900	11-13- 961600	1-13- 1005600		
9-18-	934200	11-16- 962200	1-14- 1006500		

2-4-98- 833800	4-1-98 - 841000	6-1 - 869000			
2-9-98- 833800	4-2-98 - 841000	6-2 - 868600			
2-10-98- 834100	4-3-98- 842800	6-3- 869100			
2-11-98- 834100	[illegible]	[illegible]			
2-12-98- 834200	[illegible]	[illegible]			
2-13-98- 834200	[illegible]	[illegible]			
2-17-98- 834800	4-9-98- 844500	6-9- 873600			
2-18-98- 834900	4-10-98- 845100	6-10- 874100			
2-19-98 - 835100	4-13-98- 845600	6-11 - 874500			
2-20-98 - 835100	4-14-98 - 845800	6-12- 874900			
2-23-98- 835400	4-15-98 - 846000	6-15- 876200			
2-24-98- 835600	4-16-98- 846200	6-16- 876600			
2-25-98- 835700	4-17-98- 847200	6-17- 876900			
2-26-98- 835900	[illegible]	[illegible]			
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3-2-98 - 836500	4-22-98 - 848800	6-19- 877700			
3-3-98 - 836600	4-23-98- 849200	[illegible]			
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3-5-98 - 836900	4-27-96 - [illegible]	6-24-98- 880200			
3-6-98 - 836900	4-28-96 - [illegible]	6-25- 880900			
3-9-98- 839100	4-29-96 - [illegible]	6-26- 881500			
-10-98- 837500	4-30-96 - 852800	6-29-98 3100			
-11-98- 837500	5-1-98 - 855100	6-30- 883500			
-12-98 - 837600	5-4-98 - 855800	7-1- 883900			
-13-98- 837800	5-5-98 - 855500	7-2 - 884200			
-16-98- 838500	5-6-98 - [illegible]	7-6- 885500			
-17-98- 838800	5-7-98 - [illegible]	7-7- 886900			
3-18-98- 839800	5-8-98 - [illegible]	7-8- 887300			
3-19-98- 839800	5-11-98 [illegible]	7-9- 887600			
3-20-98- 840100	5-12- [illegible]	7-10- 890100			
3-23-98- 840500	5-13 - [illegible]	7-13- 893200			
3-24-98 - 840700	5-14 - [illegible]	7-14- 895500			
3-25-98 - 841100	5-15 - [illegible]	7-15- 896100			
3-26-98 - 841200	5-18 - [illegible]	7-16- 896700			
3-27-98- 841300	5-19 - [illegible]	7-17- 897200			
3-30-98- 842100	5-20 - [illegible]	7-20 - 898900			
3-31-98- 842300	5-21 - [illegible]	7-21- 899400			
	5-22 - [illegible]	7-22- 899800			
	5-29 - [illegible]	7-23- 900600			
		7-24- 9010 00			

1998

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07-02-96 - 556800
07-03-96 - 557300

JUN-27-00 TUE 4:30 PM BENTS OLD FORT P. 13

12-14-96 – 725...

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New water line

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12-29-95 - 442100

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01-24-96 - 454000
01-25-96 - 454200
01-26-96 - 454600
01-27-96 - 454800

JUN-27-00 TUE 4:31 PM BENTS OLD FORT P. 15

NON POTABLE Pumps

8-08-95 - 339300
8-09-95 - 340200
8-10-95 - 341500
8-11-95 - 342500
8-12-95 343600
8-13-95 345000
8-14-95 345700
8-15-95 346800
8-16-95 - 347700
8-17-95 - 348700
8-18-95 - 349600
8-19-95 350800
8-20-95 351760
8-21-95 353500
8-22-95 353300
8-23-95 - 354100
8-24-95 355800
8-25-95 - 357000
8-26-95 358100
8-27-95 - 358700
8-28-95 - 359800
8-29-95 - 360700
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8-31-95 362400
9-1-95 363900
9-2-95 365700
9-3-95 366500
[illegible] 367500
[illegible] 370000

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9-7-95 368900
9-8-95 369800
9-9-95 371000
9-10-95 371700
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9-20-95 380200
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9-29-95 - 388400
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10-03-95 391600
10-04-95 392400

10-05-95 - 393300
10-06-95 - 393800
10-07-95 394400
10-08-95 395100
10-09-95 395800
10-10-95 396?
10-11-95 - 3977
10-12-95 - 3986
10-13-95 - 3990
10-14-95 3996
10-15-95 4002
10-16-95 4010
10-17-95 - 4017
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10-23-95 - 405700
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10-25-95 - 407000
10-26-95 - 407600
10-27-95 - 408300
10-28-95 - 408700
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10-30-95 - 410200
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11-01-95 - 411600
11-02-95 - 412300

COPY
FILED IN THE OFFICE OF THE CLERK,
DISTRICT COURT WATER DIV. NO. 2
STATE OF COLORADO
JUL 06 2000
CLERK

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JUNE 2000

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during June 2000, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 00CW6 - LAGUNA RANCH COMPANY, LLC, a Colorado Limited Liability Company, Post Office Box 1221, Westcliffe, CO 81252 (M. E. MacDougall, MacDougall, Woldridge & Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

Amended Application for Change of Water Rights

Pueblo County

The Application filed in this Case 00 CW 6 is amended in its entirety as follows:

2. **Decreed name of structure for which change is sought:** Well No. 16, Case No. W-2927, (State Engineer I.D. No. 1406001); Well No. 21, Case No. W-2927, (State Engineer I.D. No. 1406000); Well No. 17, Case No. W-2927, (State Engineer I.D. No. 1405687); Well No. 18, Case No. W-2927, (State Engineer I.D. No. 1405685); Well No. 20, Case No. W-2927 and Case No. 97 CW 49, (State Engineer I.D. No.1406002); Well No. 22, Case No. W-2927, (State Engineer I.D. No. 1405674); Well No. 25, Case No. W-2927, (State Engineer I.D. No. 1406003); and Well No. 27, Case No. W-2927, (State Engineer I.D. No. 1406008). **3. From previous Decree: A. Date entered:** September 20, 1974; Case No.: W-2927; **Court:** District Court, Water Division 2, State of Colorado, Hon. William L. Gobin, Water Judge, for both Well No. 16 and Well No. 21. **B. Decreed points of diversion:** (shown on map attached to Application filed with Clerk of Water Court): Well No. 16, Case W-2927, (State Engineer's Permit No. 1743) (Note: In Decree it states "Permit is in error as to well location). SE1/4 NE1/4 of Section 13, T. 21S., R. 62W. of the 6th P.M., in Pueblo County, Colorado. The well is actually located in SW 1/4 SE 1/4 of Section 13, T. 21S, R. 62W., of the 6th P.M., Pueblo County, Colorado. Well No. 21, Case W-2927, (State Engineer's Permit No. 12415). NW1/4 of NE1/4 of Section 24 T. 21S., R. 62W. of the 6th P.M., in Pueblo County, Colorado. Well No. 17, Case W-2927, (State Engineer's Permit No. 1742), SE1/4 of NE1/4 of Section 13, T.21S., R.62W of the 6th P.M., in Pueblo County, Colorado. Well No. 18, Case W-2927 (State Engineer's Permit No. 1744), (Note: In Decree it states "Permit is in error as to well location), SE1/4 of NE1/4 of Section 13, T.21S., R.62W of the 6th P.M., in Pueblo County, Colorado. Well No. 20, Case W-2927 and Case 97 CW 49 (State Engineer's Permit No. 12414), NW1/4 of NW1/4 of Section 24, T.21S., R.62W of the 6th P.M., in Pueblo County, Colorado. Well No. 22, Case W-2927, (State Engineer's Permit No. 12416), SW1/4 of SW1/4 of Section 13, T.21S., R.62W of the 6th P.M., in Pueblo County, Colorado. Well No. 25, Case W-2927, (State Engineer's Permit No. 12422), NW1/4 of NE1/4 of Section 23, T.21S., R.62W. Of the 6th P.M., in Pueblo County,

property, pursuant to 37-92-305(11), C.R.S. and Denver Basin Rule 9.A; B. The groundwater in the Dawson and Denver aquifers is not nontributary and ground water in the Arapahoe and Laramie-Fox Hills aquifers is nontributary ground water; C. Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein; D. The post-pumping depletions caused by pumping of the not nontributary Dawson aquifer wells is noninjurious. FURTHER, Applicants pray that this Court grant such other relief as seems proper in the premises.
(Application and attachments, 6 pages)

CASE NO. 00CW61(80CW142) – UNITED STATES OF AMERICA, Charles W. Pettee, National Park Service, Water Resources Division – Water Rights Branch, 1201 Oak Ridge Drive, Suite 250, Fort Collins, CO 80525 (James DuBois, Attorney for Applicant, Department of Justice, Environment and Natural Resources Division, General Litigation Section, 999 18th Street, Suite 945, Denver, CO 80202)
Application to Make Absolute a Conditional Water Right
Otero County
2. Names of structures: a.) Bent's Old Fort Well No. 3. **3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree: 1. Date of Original Decree as to all structures:** December 15, 1987. **Case No.:** Case No. 80CW142, District Court, Water Division No. 2. **B. Location of Points of Diversion:** SW1/4SW1/4 Section 14, T. 23 S., R. 54 W., 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site. **C. Source:** Groundwater tributary to the Arkansas River. **D. Appropriation Date:** July 31, 1965. **Amount Conditionally Decreed:** 140 g.p.m. **E. Use:** Fire protection. **F. Depth of well:** 50 feet. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The well necessary for the beneficial use of the conditional water right was constructed prior to the commencement of this diligence period. During the diligence period, water has been diverted and applied to beneficial use, and conditional water rights made absolute to the extent needed for beneficial use. **5. If claim to make absolute: Water applied to beneficial use:** June 21, 2000 in the amount of 140 g.p.m. for fire fighting purposes. **Description of use:** On Wednesday, June 21, 2000 at approximately 6:00 p.m. the Bent's Old Fort Well No. 3 was used to assist the La Junta Rural Volunteer Fire Department suppress a fire near Bent's Old Fort. The well was used to fill the La Junta fire trucks, and the water was used for fire protection. WHEREFORE, the United States of America requests that this Court enter a decree determining that reasonable diligence has been shown in the development of the conditional water right described herein and that the conditional appropriation has been completed, and the water right described herein made ABSOLUTE.
(Application, 4 pages)

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS

MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 2000, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee $45.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 6th day of July, 2000.

STATE OF COLORADO DISTRICT COURT WATER DIV. No. 2

Mardell R. Cline, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)
Published: July _____, 2000

FILE

DISTRICT COURT, WATER DIVISION 2, COLORADO

Case No. 80CW142 C/R 93CW84(80CW142)

NOTICE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

IN OTERO COUNTY.

FILED IN THE OFFICE OF THE CLERK DISTRICT COURT WATER DIV. 2 STATE OF COLORADO

APR 19 2000

CLERK

YOU ARE HEREBY GIVEN NOTICE pursuant to C.R.S. 37-92-305(7), regarding conditional water right or rights awarded by this Court or which have been the subject of showing diligence in this Court as described in the above case or cases.

Application for Finding of Reasonable Diligence or To Make Absolute is required to be filed with the Clerk during June 2000, as reflected by the rulings entered by this Court in said case or cases. (Forms are available at Clerk's office).

Failure to file said application and show diligence shall result in said conditional water right or rights being considered abandoned and an order canceling same will be entered.

Dated: April 19, 2000.

Mardell R. Cline, Clerk
District Court Water Div. 2
203 Judicial Building
320 West 10th Street
Pueblo, CO 81003
(719) 583-7048

By: Mardell R. Cline
Clerk

CERTIFICATE OF MAILING

I hereby certify that I mailed by certified mail, (or regular mail as indicated) a true and correct copy of the Notice pursuant to C.R.S. 37-92-305(7), to each of the following, postage prepaid at Pueblo, Colorado, at the last known address appearing on the records of this Court, to-wit:

Division Engineer, 310 East Abriendo, Suite B, Pueblo, CO 81004 (by regular mail);

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203 (by regular mail);

United States of America, National Park Service, Water Resources Division, 1201 Oak Ridge Drive, Suite 250, Fort Collins, CO 80525;

James J. DuBois, U.S. Department of Justice, Environment and Natural Resources Division, 999 – 18th Street, Suite 945, Denver, CO 80202;

Witness my hand and the seal of this Court.

Dated: April 19, 2000.

Clerk

FORM NO. GWS-12N 10/89

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

For Office Use only
PERMIT NUMBER **201492**

REGISTRATION OF DECREED EXISTING WELL
PURSUANT TO C.R.S.37-92-304(8)

1. WELL OWNER
NAME(S) : DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE
Mailing Address: 1201 OAK RIDGE DRIVE, SUITE 250
City, St. Zip : FORT COLLINS, CO 80525-5596
Phone: (970) 225-3536

MAY 1997

30295A

2. WELL LOCATION: COUNTY: OTERO OWNER'S WELL NUMBER: BENT'S OLD FORT
35110 HWY 194 EAST, LAJUNTA, CO 81050
(Address) *(City)* *(State)* *(Zip)*
SW 1/4 of the SW 1/4, Sec. 14, Twp. 23 S., Rng. 54 W., 6 th P.M.
Located at 1310 feet from South Section Line, 735 feet from West Section line.

3. The well has historically been used for the following purpose(s): Drinking and sanitation for employees and visitors at an historic site.

4. Water from the well was first used beneficially by the original owner for the above described purpose(s) on April 1, 1965.

5. The total depth of this well is 41.5 feet.

6. The pumping rate is 10 gallons per minute for drinking and sanitation purposes.

7. The average annual amount of water diverted is one (1) acre foot.

8. The land area irrigated from this well is: none acres described as:
(Legal Description)
or as Subdivision Lot(s) Block Filing/Unit

FOR OFFICE USE ONLY

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 37-92-304(8), CRS, THE STATE ENGINEER HAS ENTERED INTO HIS RECORDS, UNDER THE ABOVE ASSIGNED WELL PERMIT NUMBER, THE DETERMINATIONS MADE BY THE DIVISION 2 WATER COURT IN CASE NO. 80CW142 FOR WELL NO. 3
THE REGISTRATION FOR THIS WELL HAS BEEN AMENDED TO REFLECT CURRENT OWNER,ADDRESS AND LOCATION INFORMATION.

OWNER'S COPY

State Engineer *By* Bruce E. DeBrine *Date* 3-7-97

Court Case No. 80CW142 Div. 2 Co. 45 WD 17 Basin MD Use 3

FORM NO. GWS-12N 10/89

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

For Office Use only
PERMIT NUMBER 201493

REGISTRATION OF DECREED EXISTING WELL
PURSUANT TO C.R.S.37-92-304(8)

1. WELL OWNER

NAME(S) : DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE
Mailing Address: 1201 OAK RIDGE DRIVE, SUITE 250
City, St. Zip : FORT COLLINS, CO 80525-5596
Phone: (970) 225-3536

302056

2. WELL LOCATION: COUNTY: OTERO OWNER'S WELL NUMBER: BENT'S OLD FORT
35110 HWY 194 EAST, LAJUNTA, CO 81050
(Address) (City) (State) (Zip)
SW 1/4 of the SW 1/4, Sec. 14, Twp. 23 S., Rng. 54 W, 6 th P.M.
Located at 1310 feet from South Section Line, 735 feet from West Section line.

3. The well has historically been used for the following purpose(s): Fire fighting as described in C.R.S. 37-92-602(1)(d).

4. Water from the well was first used beneficially by the original owner for the above described purpose(s) on April 1, 1965.

5. The total depth of this well is 41.5 feet.

6. The pumping rate is 140 gallons per minute for fire fighting.

7. The average annual amount of water diverted is -- acre foot.

8. The land area irrigated from this well is: none acres described as:
(Legal Description)
or as Subdivision Lot(s) Block Filing/Unit

FOR OFFICE USE ONLY

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 37-92-304(8), CRS, THE STATE ENGINEER HAS ENTERED INTO HIS RECORDS, UNDER THE ABOVE ASSIGNED WELL PERMIT NUMBER, THE DETERMINATIONS MADE BY THE DIVISION 2 WATER COURT IN CASE NO. 80CW142 FOR WELL NO. 3
THE REGISTRATION FOR THIS WELL HAS BEEN AMENDED TO REFLECT CURRENT OWNER,ADDRESS AND LOCATION INFORMATION.

OWNER'S COPY

Hal D. Simpson — *State Engineer*
Bruce E. DeBrine — *By*
3-7-97 — *Date*

Court Case No. 80CW142 Div. 2 Co. 45 WD 17 Basin MD Use 7

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

IN REPLY REFER TO:

March 24, 1997

L54(2380)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Monument

From: Acting Chief, Water Rights Branch

Subject: Exempt Well Permits for Well Number Three

Please find copies of permit numbers 201492 (for domestic purposes) and 201493 (for fire suppression purposes) for Bent's Old Fort Well Number 3 attached for your records. The original permits will be kept in our office in the water right docket for this well. As you recall from our May 17, 1996, correspondence, this office requested the State Engineer to cancel the existing permit (9082-F) and to reclassify Well Number 3 as commercial-exempt.

Although it is difficult to determine from glancing at these permits, they have been classified as exempt under Colorado Statute 37-92-602. This was confirmed in a March 17, 1997, telephone conversation between Peter Fahmy of the Office of the Solicitor and Bruce DeBrine of the Office of the State Engineer. As a result of this classification, this well is exempt from having to replace out-of-priority depletions to the Arkansas River system as described in the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin, Colorado, approved September 27, 1995.

If you have any questions concerning these permits, please contact either me or Jeff Hughes at (970) 225-3536 or (970) 225-3527 respectively.

Chuck Lutter

Attachments
cc: (all w/Attachments)
SOL (Denver) - Fahmy
Colorado State Engineer's Office, Water Division 2 - Ward
DoJ (Denver) - DuBois
RMRO - Wylie
Rocky Mountain Cluster Leadership Chair - Nickels (GRTE)
2380 - Hughes, BEOL Docket 3

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

IN REPLY REFER TO:
L54(2380)
BEOL/Water Rights

September 11, 1996

Ms. Janet Garoutte
Division of Water Resources
Water Division 2
219 W. 5th Street
P.O. Box 5728
Pueblo, Colorado 81002

RE: Well Permit 9082-F

Dear Ms. Garoutte:

Enclosed is a completed signature page for a request to cancel the above-captioned well permit. It is my understanding that, upon the National Park Service's completion and return of this document, the existing permit will be cancelled and a new, commercial-exempt permit will be issued by the Office of the State Engineer. It is also my understanding, pursuant to your September 6, 1996, telephone conversation with Dan McGlothlin of my staff, that there is no fee attached to this action.

If you have any questions regarding the permit, please contact Dan at (970) 225-3536.

Sincerely,

Owen R. Williams

Owen R. Williams, Chief
Water Rights Branch

Enclosure

cc: BEOL - Superintendent
2380 - McGlothlin
Docket - BEOL-0003

Return to: Water Resources Division 2, 219 W. 5th Street, P.O. Box 5728 Pueblo, CO 81002

Date September 11, 1996

State Engineer
1313 Sherman St., Rm. 818
Denver, CO 80203

Re: Well Permit No. 9082 F

To Whom it May Concern:

Please consider this a formal request to cancel the non-exempt well permit number 9082 F.

Sincerely,

Owen R. Williams

Signature

Owen R. Williams
Print Name

National Park Service, 1201 Oak Ridge Dr. Ste.250
Address

Fort Collins, CO 80525
City, State, Zip

(970) 225-5500
Phone

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER
Division of Water Resources
Department of Natural Resources
1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

Roy Romer
Governor
James S. Lochhead
Executive Director
Hal D. Simpson
State Engineer

August 30, 1996

Owen R. Williams, Chief Water Rights Branch
National Park Service
Water Resource Division
1201 Oak Ridge Drive, Suite 220
Fort Collins, CO 80525-5596

RE: Well Permit No. 9082-F

Dear Mr. Williams:

I apologize for the delay in responding to your letter regarding replacing permit no. 9082-F with a permit for commercial exempt uses and fire protection. The Division 2 field inspection identified the well was equipped with two pumps. A small pump for the drinking and sanitary uses and a larger pump for fire protection. Because the well was used for exempt commercial use in the amount of 10 gpm before May 8, 1972, and in the amounts of less than one acre-foot per year, it appears that well can be late registered for commercial exempt uses for drinking and sanitary uses within the facilities. The fire protection outlet will have to be capped and locked as required by statutes.

To standardize the process, the Division office in Pueblo has developed commercial exempt forms for requesting the cancellation of a permit and the registration of the well for exempt uses. This office will process all the applications first before forwarding them to the Denver office. To receive the forms and assistance in completing them, please contact either Ms. Janet Garoutte or Mr. Alan Ward. The telephone number of the Division office is (719) 542-3368.

If I can be of any assistance, you should also feel also free to contact me.

Sincerely,

D. William McCaw
Engineering Technician

enclosure
cc: wellfile
Division 2

Dan McGlothlin

Owen Williams

May 17, 1996

L54(2380)
BEOL/Water Rights

Mr. Hal D. Simpson, State Engineer
Office of the State Engineer
Division of Water Resources
1313 Sherman Street, Room 821
Denver, Colorado 80203

RE: Well Permit No. 9082-F (Case No. 80CW142), Bent's Old Fort National Historic Site

Dear Mr. Simpson:

The National Park Service (NPS) operates the above-captioned well (hereafter referred to as Well No. 3) at Bent's Old Fort National Historic Site (BEOL) for the beneficial uses of fire protection and sanitary waste removal. The Division Engineer, Water Division 2, notified the NPS on April 5, 1996, that Well No. 3 (and two additional wells which the NPS has since placed in inactive status) was not included in any plan to replace out-of-priority depletions to senior surface water rights and/or depletions to usable stateline flows. The Division Engineer advised that, in order to continue this water use, an approved replacement plan is needed, otherwise use of this well may be curtailed.

The NPS, in response to this notice and to the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin, Colorado, as approved September 27, 1995, has reviewed the status of the above-captioned well permit with staff of the Division Engineer for Water Division 2. Upon examining the facts pertaining to the decreed right in the above-captioned case [1] and seeking advice from Office of the State Engineer's staff [2], we believe that Well No. 3, should be reclassified as a commercial-exempt well. A commercial-exempt classification, if granted for Well No. 3,

---

[1] The decreed uses and amounts of water for Well No. 3 are 10 gallons per minute (absolute) and 140 gallons per minute (conditional). The total amount of water pumped for the period November 1, 1994, to October 31, 1995 as reported to the Division Engineer for Water Division 2 is approximately 280,100 gallons (Form 6.1, submitted October 31, 1995). The source of water is groundwater tributary to the Arkansas River.

[2] Telephone conversations between Dan McGlothlin of this office and the Office of the State Engineer (May 9, 1996, with Rich Bell) and Division Engineer, Water Division 2 (May 10, 1996, with Alan Ward) addressed the possibility of obtaining commercial-exempt status for Well No. 3, for the combined purposes of fire protection and sanitary waste removal.

would exempt this well from the above-described amended rules. The alternatives for NPS are to participate with one of several well associations in an approved augmentation plan or submit a plan of its own by June 1, 1996.

Based upon the facts provided herein and the recommendation of the Division Engineer's staff, the NPS hereby requests Permit No. 9082-F be cancelled and replaced with a new commercial-exempt well permit, issued in accordance with the decree in Case No. 80CW142 [3]. This request for permit cancellation is made subject to the State Engineer's approval and issuance of a new permit. Therefore, if the State Engineer declines to issue the new commercial-exempt well permit, the NPS withdraws this request. However, the NPS believes that the diversion and use of water from this well conforms to the provisions of section 37-92-602, 14 C.R.S. If the State Engineer concurs with the request and issues a commercial-exempt permit for Well No. 3, NPS would be able to continue the operation of BEOL facilities without a potential interruption of services.

If you require additional information or have any questions concerning this request, please contact Dan McGlothlin of my staff at (970) 225-3536.

Sincerely,

Owen R. Williams, Chief
Water Rights Branch

cc: Division Engineer (Pueblo) - Ward
BEOL - Superintendent
Rocky Mountain Cluster Leadership Chair - Nickels (GRTE)
RMSO - Wylie
SOL (Denver) - Averill
DoJ (Denver) - DuBois
2380 - McGlothlin, Hansen
FNP:DMcGlothlin:mf:5/17/96:S:\WRB\DJM\WELL3LTR

[3] As articulated by the Division Engineer's staff, the basis for approval of a commercial-exempt permit is contained in the language of Findings of Fact No. 5 in the decree for the above-captioned case.

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY REFER TO:

L54

October 31, 1995

Steven J. Witte
Division Engineer
Water Division 2
Office of the State Engineer
P.O. Box 5728
Pueblo, CO 81002

Dear Mr. Witte:

Enclosed is the annual data from October 31, 1994 to October 31, 1995 on Well Permit No. 9083F, Decree No. 90CW142, Well Location: SW 1/4, SW 1/4, Sec. 14, T23, S, R54, W 6th P.M.

If you have questions or comments about this report we will be glad to answer them.

Sincerely,

Donald C. Hill
Superintendent

cc: Dan McGlothlin

Form 6.1 Water Use Data Submittal Form (Totalizing Flow Meter)

To be Filed in Compliance with Rule 6 of the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

To: Division Engineer, Water Division No. 2
P.O. Box 5728, Pueblo, Co 81002

Owner Information

Name Bent's Old Fort NHS

Address 35110 Highway 194 East

City, State, Zip La Junta, CO 81050

Phone (719) 384-2596

User Info (If not same as owner)

Well Location and Information:

SW ¼, SW ¼, Section 14, Township 23, S (NorS), Range 54, W (EorW), 6 PM

Distances from section lines:

_____ feet from the _____ (NorS) Section line and _____ feet from the _____ (EorW) Section line

Well Permit No. 9082F

Case or Decree No. 80CW142

Meter Data:

Meter units: Gal ✓, Acre feet_____, Acre inches___, Other_____(specify)

Multiplier: 000_____, 00 ✓, 0_____, none_____, (check one)

Table for Reporting Monthly Meter Readings

Date	Water Meter Reading (include multiplier)	Electric Meter Reading (include multiplier)	Comment
11/30/94	130900		
12/31/94	148900		
1/31/95	169206		
2/28/95	188200		
3/31/95	214100		
4/30/95	239500		
5/31/95	263200		
6/30/95	297800		
7/31/95	329600		
8/31/95	362400		
9/30/95	388900		
10/31/95	411000		

Total Amount Pumped 280100 from 11/30/94 (date) to 10/31/95 (date)

The above information is true and correct to the best of my knowledge. I agree to the release of information including Current Transformer factor, Potential transformer factor, and electric meter readings to the Colorado Division of Water Resources by my electrical supplier for purposes of determining or verifying water use from the well.

Signed: _____ _____
(Owner of designated agent) (Date)

00-00-0000: monthly meter readings; 1995

U.S. Department of Justice

Environment and Natural Resources Division

WMC:CAFrink
90-1-2-941

General Litigation Section
Denver Field Office

Carol A. Frink, Paralegal Specialist
U. S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
Telephone: (303) 294-1900
Telecopier: (303) 294-1931

June 30, 1994

Owen R. Williams
Chief, Water Rights Branch
United States Department of the Interior
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

Re: Water Division No. 2, Case No. 93CW84
Bent's Old Fort National Historic Site

Dear Owen:

Enclosed is a copy of the Judgment and Decree Adjudicating Conditional Water Right in the referenced matter entered by Judge Tracey on June 23, 1994. If you keep a long-term calendar, you should note that the next due diligence application comes due in June 2000.

Sincerely,

Carol A. Frink

Carol A. Frink
Paralegal Specialist

Encl.

COPY

JUN 23 '94 AM

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado.

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 93CW84(80CW142)

CERTIFICATE OF MAILING

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

CLERK

THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE IN OTERO COUNTY

I HEREBY CERTIFY that I mailed by United States Regular Mail, postage prepaid at Pueblo, Colorado, on the date of this certificate shown below, a true and correct copy of the JUDGMENT AND DECREE ADJUDICATING CONDITIONAL WATER RIGHT entered June 23, 1994, the original of which is on file herein, to each of the following addressed as follows, to-wit:

Division Engineer, P. O. Box 5728, Pueblo, CO 81002;

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203;

James J. DuBois, Environment and Natural Resources Division, U. S. Department of Justice, 999 - 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court this 23rd day of June, 1994.

MARDELL R. TRIVISONNO, CLERK
DISTRICT COURT WATER DIVISION 2

By: _____
Clerk

COPY

JUN 23 '94 AM

Filed in the office of the Clerk of District Court, Water Division No. 2, State of Colorado

CLERK

DISTRICT COURT, WATER DIVISION 2, COLORADO

CASE NO. 93CW84(80CW142)

JUDGMENT AND DECREE ADJUDICATING CONDITIONAL WATER RIGHT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE IN OTERO County.

THE COURT FINDS That no protest has been filed to the Ruling of the Water Referee within the time provided by law, and that said Ruling should be confirmed, approved and adopted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED That the Ruling of Referee entered on May 25, 1994, be and is incorporated herein by reference and is confirmed, approved and adopted as the judgment of this Court.

IT IS FURTHER ORDERED that the owner or user of the conditional water right, if he desires to maintain the same, shall file an application with the Water Court for Water Division No. 2 during the month of June, 2000, for finding of reasonable diligence or to make this conditional water right absolute, pursuant to C.R.S. 37-92-302.

Dated: June 23, 1994.

BY THE COURT:

JOHN R. TRACEY, WATER JUDGE

RECEIVED
MAY 27 1994
DEPT. JUSTICE-ENVIRONMENT DIV.
DENVER, COLO.
MAY 25 94 AM
I hereby certify that this instrument is a true copy of the original on file in the office of the Clerk, District Court, Water Division No. 2, State of Colorado.
CLERK

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 93CW84(80CW142) C/R 80CW142

RULING OF REFEREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:
THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE,
IN OTERO COUNTY.

Pursuant to Order of Referral filed and entered in the above case on December 29, 1993, the undersigned Water Referee having investigated the matter of the Application on file herein, hereby makes the following findings and ruling thereon:

FINDINGS OF FACT

1. That the said Application was filed on December 29, 1993.

2. That the Water Clerk caused publication of such filing as provided by statute; that publication costs have been paid; that the time for filing Statements of Opposition expired on the last day of February, 1994, and that none has been filed.

3. That the said Application concerns a claim for reasonable diligence for Bent's Old Fort Well No. 3 decreed in this Court on December 15, 1987, in Case No. 80CW142.

4. That the said Application was filed prior to the expiration of the time allotted for such filing.

5. That the Applicant has expended approximately $2,300.00 in general maintenance and has used an undetermined amount for fire suppression.

6. That the Applicant has shown reasonable diligence in the development of this conditional water right.

IT IS, THEREFORE, ORDERED AS FOLLOWS: The Applicant be, and is hereby, awarded a finding of reasonable diligence and a continuation of said conditional rights.

NAME AND ADDRESS: United States of America
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

IT IS FURTHER ORDERED that the owner of the conditional water right, or rights, concerned herein shall comply with Uniform Local Rule 9, to-wit:

(a) Upon the sale or other transfer of a conditional water right, the transferee shall file with the water court having jurisdiction a notice of transfer which shall state:

(1) The title and case number of the case in which the conditional decree was issued;

(2) The description of the conditional water right transferred;

(3) The name of the transferor;

(4) The name and mailing address of the transferee; and

(5) A copy of the recorded deed.

(b) The owner of any conditional water right shall notify the clerk of the water court having jurisdiction of any change in mailing address.

(c) The clerk shall place any notice of transfer or change of address in the case file in which the conditional decree was entered and in the case file in which the court first made a finding of reasonable diligence.

IT IS FURTHER ORDERED that, as to the conditional water right awarded herein, the owner of that conditional right, if he desires to maintain the same, shall file an application for finding of reasonable diligence with the Water Clerk of this Court six (6) years after a finding of reasonable diligence has been decreed, pursuant to C.R.S. Section 37-92-302.

IT IS FURTHER ORDERED that Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 25th day of May, 1994.

BY THE REFEREE:

Clyde B. Young, Jr.
Water Referee, Water Division 2
State of Colorado

FILE

RECEIVED
MAY 27 1994
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO.

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

CASE NO. 93CW84(80CW142) C/R 80CW142

NOTICE OF TRANSMITTAL AND CERTIFICATE OF MAILING

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

IN OTERO COUNTY.

Filed in the Office of the Clerk, District Court Water Division No. 2, State of Colorado.
MAY 25 '94 AM

CLERK

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Ruling to:

Division Engineer, P. O. Box 5728, Pueblo, CO 81002;

State Engineer, 818 Centennial Bldg., 1313 Sherman St., Denver, CO 80203;

James J. DuBois, Environment and Natural Resources Division, U. S. Department of Justice, 999 - 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court. Date: May 25, 1994

Mardell R. Trivisonno, Clerk
District Court Water Div. 2
207 Judicial Bldg., 320 W. 10th St.
Pueblo, CO 81003-2940
Telephone: (719) 546-1791, ext. 5048
Referee: (719) 543-1941

By: _____
Clerk

June 8, 1994

L54(479)
BEOL/Water Rights

James DuBois, Attorney
U.S. Department of Justice
Environment and Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202

Re: Ruling of Referee For Finding of Reasonable Diligence - Bent's Old Fort National Historic Site - Water Division No. 2 - Case No. 93CW84

Dear James:

Pursuant to your letter of June 1, 1994 to Dan McGlothlin of my staff, we have reviewed the above captioned ruling and find no errors or problems with it.

If you have any questions, please contact Dan McGlothlin at (303) 225-3536.

Sincerely,

Owen R. Williams
Chief, Water Rights Branch

cc: BEOL - Superintendent (w/DoJ Ltr. dtd. 1 June 94)
RMR - Wise
SOL - Canaday
479(E:Mail) - Kimball, McGlothlin, Johns

bcc: Docket 03 (w/DoJ Ltr. dtd. 1 June 94)

U.S. Department of Justice

Environment and Natural Resources Division

WMC:CAFrink
90-1-2-941

General Litigation Section
Denver Field Office

Carol A. Frink, Paralegal Specialist
U. S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
Telephone: (303) 294-1900
Telecopier: (303) 294-1931

June 1, 1994

Mr. Dan McGlothin
National Park Service
1201 Oak Ridge Drive, #250
Ft. Collins, Colorado 80525

Re: Bent's Old Fort National Historic Site
Water Division No. 2
Case 93CW84

Dear Mr. McGlothin:

Enclosed is a copy of the Ruling of Referee in the referenced matter awarding a finding of reasonable diligence and a continuation of the conditional rights, together with Notice of Transmittal and Certificate of Mailing. Please review the Ruling and advise either Jim DuBois or me of any errors or problems with the Ruling by no later than June 13, 1994. We have until June 17, 1994 to protest the Referee's Ruling.

Sincerely,

Carol A. Frink

Carol A. Frink
Paralegal Specialist

Encls.

RECEIVED
MAY 27 1994
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO.
MAY 25 '94 AM
I hereby certify that this instrument is a true copy of the original on file in the office of the Clerk, District Court, Water Division No. 2, State of Colorado.
CLERK

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 93CW84(80CW142) C/R 80CW142

RULING OF REFEREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:
THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE,
IN OTERO COUNTY.

Pursuant to Order of Referral filed and entered in the above case on December 29, 1993, the undersigned Water Referee having investigated the matter of the Application on file herein, hereby makes the following findings and ruling thereon:

FINDINGS OF FACT

1. That the said Application was filed on December 29, 1993.

2. That the Water Clerk caused publication of such filing as provided by statute; that publication costs have been paid; that the time for filing Statements of Opposition expired on the last day of February, 1994, and that none has been filed.

3. That the said Application concerns a claim for reasonable diligence for Bent's Old Fort Well No. 3 decreed in this Court on December 15, 1987, in Case No. 80CW142.

4. That the said Application was filed prior to the expiration of the time allotted for such filing.

5. That the Applicant has expended approximately $2,300.00 in general maintenance and has used an undetermined amount for fire suppression.

6. That the Applicant has shown reasonable diligence in the development of this conditional water right.

IT IS, THEREFORE, ORDERED AS FOLLOWS: The Applicant be, and is hereby, awarded a finding of reasonable diligence and a continuation of said conditional rights.

NAME AND ADDRESS: United States of America
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

IT IS FURTHER ORDERED that the owner of the conditional water right, or rights, concerned herein shall comply with Uniform Local Rule 9, to-wit:

(a) Upon the sale or other transfer of a conditional water right, the transferee shall file with the water court having jurisdiction a notice of transfer which shall state:

(1) The title and case number of the case in which the conditional decree was issued;

(2) The description of the conditional water right transferred;

(3) The name of the transferor;

(4) The name and mailing address of the transferee; and

(5) A copy of the recorded deed.

(b) The owner of any conditional water right shall notify the clerk of the water court having jurisdiction of any change in mailing address.

(c) The clerk shall place any notice of transfer or change of address in the case file in which the conditional decree was entered and in the case file in which the court first made a finding of reasonable diligence.

IT IS FURTHER ORDERED that, as to the conditional water right awarded herein, the owner of that conditional right, if he desires to maintain the same, shall file an application for finding of reasonable diligence with the Water Clerk of this Court six (6) years after a finding of reasonable diligence has been decreed, pursuant to C.R.S. Section 37-92-302.

IT IS FURTHER ORDERED that Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 25th day of May, 1994.

BY THE REFEREE:

Clyde E. Young, Jr.
Water Referee, Water Division 2
State of Colorado

FILE

RECEIVED
MAY 27 1994
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO.

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

CASE NO. 93CW84(80CW142) C/R 80CW142

NOTICE OF TRANSMITTAL AND CERTIFICATE OF MAILING

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

IN OTERO COUNTY.

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado.
MAY 25 '94 AM

CLERK

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Ruling to:

Division Engineer, P. O. Box 5728, Pueblo, CO 81002;

State Engineer, 818 Centennial Bldg., 1313 Sherman St., Denver, CO 80203;

James J. DuBois, Environment and Natural Resources Division, U. S. Department of Justice, 999 - 18th Street, Suite 945, Denver, CO 80202.

Witness my hand and the seal of this Court. Date: May 25, 1994

STATE OF COLORADO DISTRICT COURT WATER DIV. NO. 2

Mardell R. Trivisonno, Clerk
District Court Water Div. 2
207 Judicial Bldg., 320 W. 10th St.
Pueblo, CO 81003-2940
Telephone: (719) 546-1791, ext. 5048
Referee: (719) 543-1941

By: Mardell R. Trivisonno
Clerk

Jim

STATE OF COLORADO

WATER DIVISION 2
OFFICE OF THE STATE ENGINEER
219 W. 5th Street, Room 223
P.O. Box 5728
Pueblo, CO 81002
Phone (719) 542-3368
FAX (719) 544-0800

RECEIVED
APR 18 1994
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO

Roy Romer
Governor
James S. Lochhead
Executive Director
Hal D. Simpson
State Engineer
Steven J. Witte, P.E.
Division Engineer

C.R.S. 37-92-302(4)provides that the applicant (or his attorney) shall mail or deliver a copy of this report to all other parties of record (if any) and file a certificate (show case number and caption) with the Water Clerk, at 207 Judicial Building, 10th & Court Streets, Pueblo, CO 81003

OFFICE OF THE DIVISION ENGINEER

CONSULTATION REPORT CASE NO. 93CW84

CONCERNING THE APPLICATION FOR A FINDING OF REASONABLE DILIGENCE

FILED BY THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICES

IN OTERO COUNTY

In compliance with C.R.S. 1973, 37-92-302 (4), the undersigned submits the following:

Having reviewed the application and the statements contained therein. It is the Division Engineer's recommendation that a finding of reasonable diligence be awarded in this case.

Dated: April 15, 1994

Division Engineer

Copy sent to: James J. DuBois, Attorney

Water Referee
State Engineer

03/02/94
Date Consulted

CASE NO. 93cw84

CONSULTATION REPORT

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the Consultation Report was deposited in the U.S. Mail, postage prepaid at Pueblo, Colorado, this 15th day of April, 1994, addressed as follows:

James J. DuBois
Environment and Natural
Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202

Name: L Gallegos
of the Division of Water Resources
Division II

U.S. Department of Justice

Environment and Natural Resources Division

WMC:JATetreault

Telephone: (303) 294-1951
Facsimile: (303) 294-1931

Judy A. Tetreault
Paralegal Specialist
General Litigation Section
999 18th St., Suite 945
Denver, CO 80202

March 9, 1994

Ms. Mardell Cline
Clerk of the Water Court
320 W. 10th St.
Pueblo, CO 81003

Re: Case No. 93CW84
Bent's Old Fort Well, No. 3

Dear Mardell:

Enclosed for processing, please find the National Park Service's personal check from Denise Newberry in the amount of $80.00 for filing fee in the above-referenced case. Our application was filed on December 29, 1993 without this fee.

As you are no doubt aware, the United States is currently deciding whether to appeal Judge Brown's adverse ruling on the payment of filing fees. In the interim, pending a final resolution of the filing fees issue, the United States will be paying the filing fees under protest so that the subject cases can go forward without further disruption. these fees should be transmitted to the State treasury Department and accounted for as fees paid under protest pursuant to C.R.S. 24-36-116, so that the United States can seek a refund of these fees at a later date.

Please forward the appropriate receipt to the National Park Service's office in the self-addressed envelope provided. If you have any questions, please do not hesitate to contact me.

Sincerely,

Judy A. Tetreault
Paralegal Specialist
General Litigation Section

Encls.
cc: Dan McGlothlin, NPS

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

CASE NO. 93CW84 C/R 80CW142

CERTIFICATE OF SERVICE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE UNITED STATES OF AMERICA, NATIONAL PARK SERVICE,

IN OTERO COUNTY.

I hereby certify that on this 4th day of May 1994, the attached **Consultation Report** was mailed to all parties of record by depositing same into the United States mail, postage prepaid, as follows:

Hal Simpson
Colorado State Engineer
1313 Sherman Street, Room 818
Denver, Colorado 80203

Carol Angel
Office of Attorney General
Natural Resources Division
State of Colorado
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

Carol A. Frink
Paralegal Specialist

00-00-0000: cover letter for certificate of service of the consultation report; 1994

U.S. Department of Justice

Environment and Natural Resources Division

WMC:CAFrink
90-1-2-941

General Litigation Section
Denver Field Office

Carol A. Frink, Paralegal Specialist
U. S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
Telephone: (303) 294-1900
Telecopier: (303) 294-1931

May 4, 1994

Ms. Mardell Cline
Clerk of the Water Court
207 Judicial Building
10th & Court Streets
Pueblo, Colorado 81003

Re: Case No. 93CW84
Concerning the Application for a Finding of Reasonable Diligence Filed by the United States of America, National Park Services in Otero County

Dear Ms. Cline:

Enclosed for filing in the above matter are an original and three copies of Certificate of Service of the Consultation Report. Please file stamp the additional copy I have provided and return in the enclosed envelope.

If you have any questions, please call me.

Sincerely,

Carol A. Frink

Carol A. Frink
Paralegal Specialist

Encls.
cc: Dan McGlothlin, NPS (w/encls: Report & COS)

00-00-0000: cash receipt; 1994

[redacted]	DATE	CASE NUMBER	RECEIVED FROM	DESCRIPTION	NUMBER	REC'D BY	A B	AMOUNT	
	3-11-94	93CW84	Denise Newberry Bents Old Fort	DF TX	37024	jm	B	80.-	
JDF-101	①	②	③	④	⑤	⑥	⑦	⑧	

COMBINED COURT OF PUEBLO COUNTY
10TH JUDICIAL DISTRICT
PUEBLO, COLORADO 81003

CASH RECEIPT O 37024

MAIL TO:

_____ _____

VS.

_____ _____

_____ _____

_____ CLERK _____

00-00-0000: notice that application must contain information on reasonable diligence; 1993

U.S. Department of Justice

Environment and Natural Resources Division

WMC:CAFrink
90-1-2-941

Denver Field Office
General Litigation Section

Carol A. Frink, Paralegal Specialist
U. S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone: (303) 294-1900
Telefax: (303) 294-1931

October 13, 1993

Mr. Owen Williams
Chief, Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

Re: Concerning the Application for Water Rights of The United States of America in Otero County
Water Rights at Bent's Old Fort National Historic Site

Dear Mr. Williams:

Enclosed is a Notice dated October 7, 1993 received from the Division 2 Clerk advising that an Application must be filed no later than **December 30, 1993**, in compliance with C.R.S. 37-92-301(4)(a). The application must evidence that the NPS has exercised reasonable diligence in attempting to complete the water right or that any conditional water right was made absolute by placing water to beneficial use for the decreed purposes. If nothing is filed, the water right or conditional water right will be deemed abandoned and will be lost.

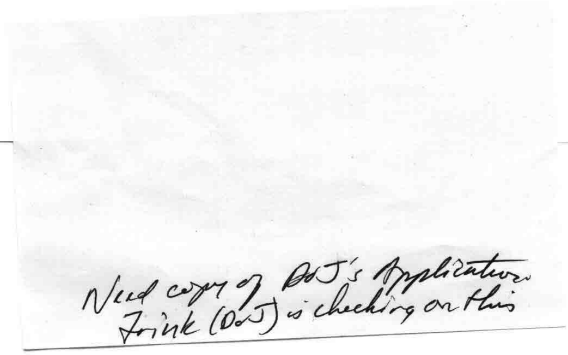
It is our understanding from the Office of the Solicitor that we will be filing the diligence application on your behalf. In that regard, please have all necessary information to our office by **no later than December 3, 1993.**

If you have any questions or comments, please call. Thank you.

Sincerely,

Carol A. Frink
Paralegal Specialist

Encl.
cc: Ralph Canaday, Esq. (w/encl.)



00-00-0000: notice of content to show reasonable diligence; 1993

RECEIVED
OCT 8 1993
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO.

DISTRICT COURT, WATER DIVISION 2, COLORADO

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado.
OCT - 7 '93 AM
CLERK

CASE NO. 80CW142

N O T I C E

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA in OTERO County.

YOU ARE HEREBY GIVEN NOTICE pursuant to C.R.S. 37-92-305(7), regarding conditional water right or rights awarded by this Court or which have been the subject of showing diligence in this Court as described in the above case or cases.

Application For Finding of Reasonable Diligence or To Make Absolute is required to be filed with the Clerk during December, 1993, as reflected by the rulings entered by this Court in said case or cases. (Forms are available at Clerk's office).

Failure to file said application and show diligence shall result in said conditional water right or rights being considered abandoned and an order cancelling same will be entered.

Dated: October 7, 1993.

DISTRICT COURT WATER DIV. 2 STATE OF COLORADO

Mardell R. Trivisonno, Clerk
District Court Water Div. 2
207 Judicial Building
320 West 10th Street
Pueblo, CO 81003
(719) 546-1791, ext. 5048

By: Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that I mailed by certified mail, (or regular mail as indicated) a true and correct copy of the Notice pursuant to C.R.S. 37-92-305(7), to each of the following, postage prepaid at Pueblo, Colorado, at the last known address appearing on the records of this Court, to-wit:

Division Engineer, P. O. Box 5728, Pueblo, CO 81002 (by regular mail);

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203 (by regular mail);

United States of America, c/o James J. DuBois, Department of Justice, Land and Natural Resources Division, 999 - 18th Street, Suite 945, Denver, CO 80202

Witness my hand and the seal of this Court.

Dated: October 7, 1993.

DISTRICT COURT WATER DIV.

Clerk

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado.

OCT - 7 '93 AM

CLERK

00-00-0000: cover letter for findings of fact; 1988

U.S. Department of Justice

Land and Natural Resources Division

WMC:JRHill,Jr.
90-1-2-941

Denver Field Office
Federal Bldg., 1961 Stout Street
Drawer 3607
Denver, Colorado 80294

Commercial Number
(303) 844-3627
FTS/564-3627

March 2, 1988

Dr. Stanley Ponce
Water Resources Branch
National Park Service
Federal Building, Room 335
301 S. Howes
Fort Collins, CO 80521

Re: Water Division No. 2, Case No. 80CW142
(Bent's Old Fort)

Dear Stan:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law and Decree for the referenced case. I apologize for not having forwarded it to you sooner.

Sincerely,

Diane

Diane K. Fairbanks
Legal Technician
General Litigation Section

Enclosure

Filed in the office of the Clerk, District Court, Water Division No. 2, State of Colorado
RECEIVED
DEC 18 1987
DEPT. JUSTICE LANDS DIVISION
DENVER, COLO.
DEC 15 1987
Clerk
COPY

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO
Case No. 80CW142

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA, FOR WATER RIGHTS IN THE ARKANSAS RIVER, IN OTERO COUNTY, COLORADO

THIS MATTER comes before the Court for the entry of Findings of Fact, Conclusions of Law and Decree, the parties of record having consented hereto, the Applicant, the United States of America, by John R. Hill, Jr., attorney, Department of Justice; and Objector, State of Colorado, by Carol D. Angel, Assistant Attorney General; and the Court having examined the records and files herein, and being now fully and sufficiently advised in the premises, enters these Findings of Fact, Conclusions of Law and Decree:

FINDINGS OF FACT

1. That the United States of America was joined as a party in Water Division No. 2 pursuant to the McCarran Amendment, 43 U.S.C. §666.

2. That the United States of America filed its original Application for Reserved Rights and Appropriative Rights in Case No. 79CW176 on December 20, 1979.

3. That subsequently, the United States of America amended its Application of the United States of America for Reserved Rights and Appropriative Rights in Case No. 79CW176 on December 19, 1980, by filing an Application for Water Rights assigned Case No. 80CW142. This Court, by Order of October 13, 1981, nunc pro tunc, October 5, 1981, determined that applications filed as amendments to Case No. 79CW176 until March 31, 1982, relate back to Case No. 79CW176.

4. That an Amended Application for Underground Water Right was filed in the captioned case on March 26, 1984.

5. That the appropriation was initiated by drilling a well and applying the water to the beneficial uses of fire protection and sanitary disposal.

6. That an Order setting Pretrial Conference on September 23, 1982, was filed on March 9, 1982. Pursuant to that Order, and the Court's Order of September 16, 1981, nunc pro tunc, September 8, 1981, Objectors State of Colorado, Catlin Canal Company and Arkansas Valley Ditch Association timely filed

Supplemental Statements of Opposition. The time for filing said Supplemental Statements of Opposition has expired.

7. That Pueblo West Metropolitan District and St. Charles Mesa Water Association filed Amendments to their Statements of Opposition to Case No. 79CW176 and that said Amendments were intended as Statements of Opposition to Case No. 80CW142. Pueblo West Metropolitan District and St. Charles Mesa Water Association did not, however, file Supplemental Statements of Opposition to Case No. 80CW142.

8. That a Statement of Opposition to Case No. 80CW142 was filed by the Southeastern Colorado Water Conservancy District. Said Statement of Opposition was later withdrawn.

9. That the Catlin Canal Company and Arkansas Valley Ditch Association, in their Motion to be Excused from Pretrial Conference dated September 22, 1987, have declined participation in the trial of the above-captioned matter and are therefore dismissed from this action.

10. The following Objectors filed Statements of Opposition in Case No. 79CW176, but failed to file Supplemental Statements of Opposition in this case, in compliance with the Order of September 16, 1981, nunc pro tunc, September 8, 1981:

Buffalo Mutual Irrigation Company
The High Line Canal Company
Holbrook Mutual Irrigation Company
Oxford Farmers Ditch Company
Rocky Ford Ditch Company
The Colorado Canal Company
Board of Water Works of Pueblo, Colorado
Southern Colorado Power Company
Lamar Canal and Irrigation Company
Las Animas Consolidated Canal Company
Bluepond Associates
Southeastern Colorado Water Conservancy District
City of Colorado Springs
Twin Lakes Reservoir and Canal Co.
John and Frances M. May
Gary Potter
City of Victor
Public Service Company of Colorado
Bessemer Irrigation Ditch Company
Colorado River Water Conservancy District
Colorado Water Protective & Development Association
Woodmoor Water and Sanitation District No. 1
Town of Aguilar
W. Barry Hill
Purgatoire River Water Conservancy District
Harold C. Ingersoll

Fort Lyon Canal Co.
City of Fountain
John L. and Catherine C. Taggart
Conquistador, Inc.
Louis Magnino
James G. Penchoff
Dennis R. and Connie D. Herndon
City and County of Denver
Mr. and Mrs. Harry W. Wareham
Lowell D. and Delores J. Peterson
Eric J. and Mary Ann Bransby
Jewell Sall
Shirley DeAndrea
Goemmer Brothers
City of Trinidad
John Vucetich
CF&I Steel Corp.
Cucharas Sanitation and Water District
Amity Mutual Irrigation Co.
District 67 Irrigation Canal Association
Colorado City Metropolitan District, Inc.
Randall Allmendinger
Harlan-Bismuth Associates
Trout Creek Associates
Pinerose Associates
New Colorado Associates
Huerfano County Water Conservancy District
Thomas R. Crocker
Ben Donahue and Jan Donahue and Sons
Judith A. Feagler
Merlyn S. Heimbecker and Ellen I. Heimbecker
Max H. Horne and Rose M. Horne
Charles E. Irwin and Mary Catharyne Irwin
Jimmie A. Keeton, Sr.
Edgar J. Oliver and Wilma Jean Oliver
Leland E. Payne and Martha C. Payne
Nancy Dean Riegel and Son
Roderick C. Senko and Lynda G. Senko
John C. Taggart and Rebecca E. Taggart
Vernon L. Watkins
Rock Creek Association
Randall L. Schranz and Patricia Ann Schranz
Lowell D. Peterson and Delores J. Peterson

CONCLUSIONS OF LAW

11. That all notices required by law for filing and publication of each application in the Resume of Water Division No. 2 have been fulfilled.

12. The Court has jurisdiction of the subject matter of these

proceedings and over all parties affected thereby, whether or not they have appeared.

13. This Court, in its Order dated September 2, 1983, has previously ruled that the United States is entitled to antedate its appropriative rights. Accordingly, this Decree is entitled to antedate prior decrees.

14. Applicant, United States of America, is entitled to this Decree as a matter of law.

15. A Ruling of the Referee was filed on May 13, 1987, and a Protest thereto was filed by the State of Colorado on June 1, 1987.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Findings of Fact and Conclusions of Law contained herein are incorporated by reference and made a part of this Decree.

2. The United States of America is entitled to water rights in the following structures, as of the following dates, and in the following amounts:

NAME OF STRUCTURE:	NPS Bent's Old Fort No. 3
TYPE OF STRUCTURE:	Well
DEPTH:	50 ft.
SOURCE:	Groundwater tributary to the Arkansas River.
POINT OF DIVERSION:	SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.
DESCRIPTION OF DITCH, PUMP OR PIPELINE:	150 gpm pump.
USE:	Fire protection and sanitary disposal.
AMOUNT:	10 gpm (0.022 cfs) absolute 140 gpm (0.312 cfs) conditional
PRIORITY DATE:	July 31, 1965

3. The rights decreed herein are subject to administration by the State Engineer in accordance with such rules, regulations or procedures currently in force or which the State Engineer may, from time to time, prescribe, and in accordance with such informal procedures as the State Engineer may choose to follow pursuant to law.

4. The Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

5. The Ruling of the Referee filed May 13, 1987, is set aside, and the Protest filed thereto is dismissed.

6. As to any conditional right awarded hereunder, the owner thereof if he decides to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court during the month of December, 1991, and every four (4) years thereafter until the right is decreed final, such application to be filed pursuant to C.R.S. 37-92-302.

7. Concerning any transfer of the conditional water right awarded herein and change of address:

a. Upon the sale or other transfer of any conditional water right decreed herein, the transferee shall file with the this court a notice of transfer which shall state:

i. The title and case number of the case in which the conditional decree was issued;

ii. The description of the conditional water right transferred; and a copy of the document effecting the transfer shall be attached;

iii. The name of the transferor; and

iv. The name and mailing address of the transferee.

b. The transferor of any conditional water right shall notify the transferee of the requirement of Rule 15(a), Local Rules of this Court.

c. The owner of any conditional water right shall notify the clerk of this court of any change in mailing address.

d. The clerk shall place any notice of transfer or change of address in the case file for the captioned case and in the case file in which the court last made a finding of reasonable

diligence, and the court shall enter an order of substitution of parties.

8. The water clerk shall serve a copy of this Decree upon the parties, the Division Engineer, Water Division No. 2 and the State Engineer.

DONE this 15 day of Dec, 1987.

BY THE COURT:

JOHN R. TRACEY, Water Judge
Water Division No. 2

The undersigned consent to this decree:

DATED: November 25, 1987

ROBERT N. MILLER
United States Attorney

By _____
JOHN R. HILL, JR. #10214
Attorney
Department of Justice
Land and Natural Resources Division
1961 Stout St., Drawer 3607
Denver, CO 80294
(303) 844-2892

ATTORNEYS FOR APPLICANT
UNITED STATES OF AMERICA

DATED: December 3, 1987

FOR THE ATTORNEY GENERAL

By _____
CAROL D. ANGEL #13123
Assistant Attorney General
Natural Resources Section
1525 Sherman Street, 3rd Floor
Denver, CO 80203
(303) 866-5114

xc: John R. Hill, Jr.
Carol D. Angel
Rexford L. Mitchell
Division Engineer
State Engineer

COPY

Filed in the office of the Clerk, District Court, Water Division No. 2, State of Colorado

SEP 25 1987

Priscilla A. Lopez
Clerk

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 80CW142

ORDER

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA, FOR WATER RIGHTS IN THE ARKANSAS RIVER,

IN OTERO COUNTY, COLORADO.

THIS MATTER coming to the attention of the Court upon the Motion to be Excused from Pretrial Conference filed by the Arkansas Valley Ditch Association and the Catlin Canal Company, and the Court having reviewed the Motion, there being no objections to said Motion, and being otherwise fully advised in the premises,

IT IS ORDERED that the Arkansas Valley Ditch Association and the Catlin Canal Company are hereby excused from appearance at the pretrial conference in the above-captioned matter.

DATED this 25 day of Sept., 1987.

BY THE COURT:

Water Judge

c: John R. Hill, Jr.
Carol D. Angel
Rexford L. Mitchell
State Engineer
Division Engineer

25

00-00-0000: cover letter for referee ruling; 1987

U.S. Department of Justice

Land and Natural Resources Division

WMC:JRHill,Jr.
90-1-2-977

Denver Field Office
Federal Bldg., 1961 Stout Street
Drawer 3607
Denver, Colorado 80294

Commercial Number
(303) 844-3627
FTS/564-3627

May 18, 1987

Dr. Stan Ponce
National Park Service
Water Resources Branch
Federal Building Room 335
301 South Howes
Fort Collins, Colorado 80521

Re: Water Division No. 2. Case No. 81CW142.

Dear Dr. Ponce:

Enclosed for your files please find a copy of REFEREE'S RULING for the above-referenced case.

Sincerely,

John Hill by JH

John R. Hill, Jr., Attorney
General Litigation Section

Enclosure

RECEIVED
MAY 15 1987
DEPT. JUSTICE LANDS DIVISION
DENVER, COLO.
COPY

DISTRICT COURT, WATER DIVISION 2, COLORADO

CASE NO. 80CW142 C/R 79CW176

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado
MAY 13 1987
Priscilla S. Lucero
County Clerk

NOTICE OF TRANSMITTAL

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA in Otero County.

To: All Parties

Ruling of Referee enclosed. If you wish to protest said ruling, a pleading in protest must be filed within the time provided by statute which shall state the factual and legal grounds therefor. (Forms available at Clerk's office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away.

In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same after the expiration of the time for protests.

Priscilla S. Lucero, Clerk
District Court Water Div. 2
308 Judicial Building
Pueblo, CO 81003-2940
(303) 546-5048

CERTIFICATE OF MAILING:

I certify that I mailed by certified mail, postage prepaid, a true and correct copy of the foregoing and Ruling to:

Division Engineer, P.O. Box 5728, Pueblo, CO 81002

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203

John R. Hill, Jr., Attorney, Department of Justice, Land & Natural Resources Division, 1961 Stout Street, Drawer 3607, Denver, Colorado 80294.

Wendy C. Weiss, First Assistant Attorney General, Natural Resources Section, 1525 Sherman Street, 3rd Floor, Denver, Colorado 80203.

Rexford L. Mitchell, Mitchell and Mitchell, Attorneys at Law, 512 North Main Street, Rocky Ford, Colorado 81067.

Witness my hand and the seal of this Court.

Sally Vargas
Deputy Clerk

Date: MAY 13 1987

RECEIVED
MAY 15 1987
JUSTICE LANDS DIVISION
DENVER, COLO.
COPY

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 80CW142 C/R 79CW176

RULING OF REFEREE

IN THE MATTER OF THE APPLICATION OF

THE UNITED STATES OF AMERICA

FOR WATER RIGHTS IN THE ARKANSAS RIVER

IN OTERO COUNTY.

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado

MAY 13 1987

Clerk

Pursuant to Order of the Court to Re-refer to the Water Referee filed and entered in the above case on April 8, 1983, and a subsequent Order Transferring and Assigning Case to the undersigned Water Referee filed and entered on June 3, 1986, the undersigned having investigated the matter of the application on file herein, hereby makes the following findings and ruling thereon:

FINDINGS OF FACT

1. That the said Application was filed on December 19, 1980, and was amended on March 26, 1984.

2. That the Water Clerk caused publication of the original filing as provided by statute; that the time for filing Statements of Opposition on the Amended Application expired on the last day of May, 1984, and that pursuant to Order of the Court entered on September 16, 1981, nunc pro tunc September 8, 1981, three Supplemental Statements of Opposition have been filed by the State of Colorado, Department of Natural Resources; Catlin Canal Company; and the Arkansas Valley Ditch Association.

3. That the said Amended Application concerns two wells located in Otero County, Colorado; that it withdraws NPS Bent's Old Fort Well No. 2; and reduces the claim for NPS Bent's Old Fort Well No. 3 from 340 g.p.m. to 140 g.p.m. and that the use is claimed for fire protection and sanitary disposal absolutely and conditionally.

4. That the Applicant, in discussions with the Referee, has elected to accept an award of 10 g.p.m. absolutely for sanitary disposal and a conditional award of 140 g.p.m. for fire protection.

5. That the said well is an exempt well as defined in C.R.S. 37-92-602(1), for sanitary disposal at the rate of 10 g.p.m.

6. That Applicant has furnished acceptable proof as to claims made.

IT IS, THEREFORE, ORDERED AS FOLLOWS: That Applicant be, and is hereby, awarded an absolute and conditional underground water right, to-wit:

NAME AND ADDRESS: United States of America
c/o John R. Hill, Jr., Attorney
Department of Justice
Land and Natural Resources Division
1961 Stout Street
Drawer 3607
Denver, CO 80294

ABSOLUTE AND CONDITIONAL
UNDERGROUND WATER RIGHT

NAME OF WELL: NPS BENT'S OLD FORT WELL NO. 3.

LOCATION OF WELL: SW¼ SW¼ of Section 14, Township 23 South, Range 54 West of the 6th P.M., in Otero County, Colorado.

DEPTH: 50 feet.

PRIORITY DATE: July 31, 1965.

AMOUNT OF WATER: 10 g.p.m. absolute for sanitary disposal
140 g.p.m. conditional for fire protection
(for a total of 150 g.p.m.)

STATE ENGINEER'S WELL NUMBER: 9082-F

MEANS OF DIVERSION: Well and pump.

IT IS FURTHER ORDERED That the conditional water right, or rights, concerned herein shall comply with Local Rule 15, to-wit:

(a) Upon the sale or other transfer of a conditional water right, the transferee shall file with the Water Court a notice of transfer which shall state:

1. The title and case number of the case in which the conditional decree was issued.
2. The description of the conditional water right transferred, and a copy of the document effecting the transfer shall be attached.
3. The name of the transferor.
4. The name and mailing address of the transferee.

(b) The transferor of any conditional water right shall notify the transferee of the requirement of Local Rule 15(a).

(c) The owner of any conditional water right shall notify the Clerk of the Court of any change in mailing address.

IT IS FURTHER ORDERED That, as to any conditional right awarded hereunder, the owner thereof if he desires to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court during the month of May, 1991, and every four (4) years thereafter until the right is decreed final, such application to be filed pursuant to C.R.S. 37-92-302.

IT IS FURTHER ORDERED That Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

IT IS FURTHER ORDERED That copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 13th day of May, A. D. 1987.

BY THE REFEREE:

Clyde B. Young, Jr., Water Referee
Water Division No. 2
State of Colorado

00-00-0000: proposed changes of the well no. 2 and 3; 1987

DRAFT

February 5, 1987

L54 (479)
RMR/BEOL

Clyde Young, Water Referee
Water Division 2
308 Judicial Building
420 West 10th Street
Pueblo, CO 81003

Dear Mr. Young:

We submit for the Court's consideration an amendment to Water Right Claim 80CW142 at Bent's Old Fort National Historic Site. The amendment proposes changes to the application for water rights associated with two wells:

Well No. 2

The current claim for fire protection is for 100 gpm absolute and 35 gpm conditional. We propose to amend the claim to 135 gpm absolute. The basis for the proposal is that the well is in place and has in the past been available for fire protection. Thus, the amended claim will read:

135 gpm absolute - fire protection

Well No. 3

The current claim for sanitary waste disposal is 10 gpm absolute and for fire protection it is 340 gpm conditional. This claim for sanitary waste disposal should remain at 10 gpm absolute; however, we propose to amend the claim for fire protection to 150 gpm absolute. The basis for the proposal is that the well is in place, its capacity is rated at 150 gpm, the water is piped to sanitary waste facilities and hydrants, and it is ready for use at all times. Thus, the amended claim will read:

10 gpm absolute - sanitary waste disposal

150 gpm absolute - fire protection

If you need further information, please call me at (303) 844-2892.

Sincerely yours,

John Hill, Jr.
Attorney

FNP:DCox:cs:2/4/87:221-5341:20204bwk.cox

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

Case No. 80CW142

AMENDED APPLICATION FOR UNDERGROUND WATER RIGHT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR UNDERGROUND WATER RIGHTS IN BENT'S OLD FORT NATIONAL HISTORIC SITE IN OTERO COUNTY.

1. Name and address of Applicant:

United States of America
c/o John R. Hill, Jr.
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, Colorado 80294

2. The United States of America claims rights in two wells aggregating 295 gpm located within Bent's Old Fort National Historic Site in the watershed of the Arkansas River, more fully described below.

3. Appropriation was initiated on each of the wells in this application by drilling and applying the water to the beneficial uses of fire protection, sanitary disposal, and other related purposes.

4. The original application, No. 79CW176, as amended by No. 80CW142, is hereby further amended by substituting a new paragraph as follows:

Legal description and data pertaining to each well:
T. 23 S, R54W, 6th P.M.

Legal description: SE 1/4 SW 1/4 Sec. 14 at a point 30 ft. from South Section line and 1700 ft. from West Section line.
Applicant's Well No. NPS Bent's Old Fort No. 2
Depth: 28 ft.
Date of initiation of appropriation: 1954
Date applied to beneficial use: 1954
Amount claimed: 135 gpm (0.301 c.f.s.) absolute
Use: Fire protection

Legal description: SW 1/4 SW 1/4 Sec. 14 in the maintenance building located on Bent's Old Fort National Historic Site.
Applicant's Well No. NPS Bent's Old Fort No. 3
Registration No. 9082-F
Depth: 50 ft.

Date of initiation of appropriation: July 1965
Date applied to beneficial use: July 1965
Amount claimed: 10 gpm (0.022 c.f.s.) absolute
150 gpm (0.334 c.f.s.) absolute
Use: Sanitary disposal and fire protection

5. A completed application for each well described above on the form provided by the court is on file with the water clerk along with a map showing the location of each well.

6. This amendment is a partial amendment of the original application filed by the United States in Case Nos. 79CW176 and 80CW142.

7. The United States seeks to antedate the adjudication dates of earlier decrees insofar as they, in conjunction with applicable statutes, appear or purport to preclude this court from awarding to the United States its water rights bearing their true priority dates.

Robert N. Miller
United States Attorney

By _____
JOHN R. HILL, JR.
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, CO 80294
Telephone: (303) 884-3627

STATE OF COLORADO)
) ss:
CITY AND COUNTY OF DENVER)

I, D. Scott Brown, state under oath that I have read this amended application, and verify its content.

D. Scott Brown
D. SCOTT BROWN

Subscribed and sworn to before me this 5th day of February, 1987.

My commission expires: 2-21-90

Mary Anne Atencio
Notary Public

NPS

United States Department of Justice
LAND AND NATURAL RESOURCES DIVISION
Denver Field Office
Federal Bldg., 1961 Stout Street
Drawer 3607
Denver, Colorado 80294

Commercial Number
(303) 837-4961
FTS: 327-4961

JRH/pml
90-1-2-941

May 18, 1981

Ms. Priscilla S. Lucero
Water Clerk
Water Division No. 2
308 Judicial Building
Pueblo, Colorado 81003

Re: Amended Application for Underground Water Right,
Water Division No.2, Case 80CW142

Dear Priscilla:

Enclosed is an amended application in Water Division 2, Case Number 80CW142, for filing. The National Park Service has requested that the claim for NPS Bent's Old Fort No. 2 be eliminated and that the conditional amount claimed for NPS Bent's Old Fort No. 3 be reduced.

Copies of this letter and of the amended application are being forwarded to all attorneys of record and pro se litigants.

Thank you for your cooperation in this matter.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:
John R. Hill, Jr.
Attorney
Department of Justice

Enclosures

IN THE DISTRICT COURT IN AND FOR
WATER DIVISION NO. 2
STATE OF COLORADO

Case No. 80CW142

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR WATER RIGHTS IN THE ARKANSAS RIVER, IN OTERO COUNTY	AMENDED APPLICATION FOR UNDERGROUND WATER RIGHT

1. Name and address of applicant: United States of America, c/o John R. Hill, Jr., Attorney, Department of Justice, Land and Natural Resources Division, 1961 Stout Street, Drawer 3607, Denver, Colorado 80294. Telephone (303) 837-2892.

2. This amendment withdraws the application of the United States for Bent's Old Fort Well No. 2. This well has been capped and no further use is anticipated. This amendment also reduces the amount of the conditional claim for Bent's Old Fort Well No. 3 from 340 gpm to 140 gpm. The United States of America now claims water rights in only one well located within Bent's Old Fort National Historic Site in the watershed of the Arkansas River, more fully described below.

3. Appropriation was initiated on the well in this application by drilling and applying the water to the beneficial uses of fire protection, sanitary disposal, and other related purposes.

4. Legal description and data pertaining to well:

   Legal description: SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.
   Applicant's Well No.: NPS Bent's Old Fort No. 3
   Registration No.: 9082-F
   Depth: 50 ft.
   Date of initiation of appropriation: July 1965
   Date applied to beneficial use: July 1965
   Amount claimed: 10 gpm (0.022 c.f.s.) absolute;
   140 gpm (0.312 c.f.s.) conditional
   Use: Fire protection and sanitary disposal

5. This application is a partial amendment of the application filed by the United States in Case No. 79CW176.

6. The United States seeks to antedate the adjudication dates of earlier decrees insofar as they, in conjunction with applicable statutes, appear or purport to preclude this Court from awarding to the United States its water rights bearing their true priority dates.

7. The fee which accompanies this Amended Application is paid under protest. The United States hereby claims reimbursement thereof on the grounds, inter alia, that filing fees constitute "costs" within the meaning of 43 U.S.C. 666(a), and as such are not properly taxed against the government in water adjudication proceedings.

Respectfully submitted,

JOSEPH DOLAN
UNITED STATES ATTORNEY

By _____
JOHN R. HILL, JR. (Reg. No. 10214)
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, Colorado 80294 (837-2892)

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

JOHN R. HILL, JR., being first duly sworn upon oath, deposes and says that he is one of the attorneys for Objector, that he has read the foregoing Statement, that he knows the contents thereof, and that the same are true.

_____
JOHN R. HILL, JR.

Subscribed and sworn to before me this 18 day of May, 1981.

Witness my hand and official seal.

_____
NOTARY PUBLIC

My commission expires: June 9, 1984.

CERTIFICATE OF MAILING

I hereby certify that I have placed true and correct copies of Amended Application for Underground Water Right for the United States of America, Case No. 80CW142, and letter of explanation to Water Division No. 2 Water Clerk in the United States mail, postage prepaid, this 18th day of May, 1981, addressed to:

Charles J. Beise, Esq.
Fairfield and Woods
1600 Colorado National Building
950 - 17th Street
Denver, Colorado 80202

Timothy J. Flanagan, Esq.
Kelly, Stansfield & O'Donnell
550 - 15th Street, Suite 900
Denver, Colorado 80202

David Aschkinasi, Esq.
Dennis M. Montgomery, Esq.
Assistant Attorneys General
State of Colorado
Natural Resources Section
1525 Sherman, 3rd Floor
Denver, Colorado 80203

Glenn G. Saunders, Esq.
Saunders, Snyder, Ross & Dickson
802 Capitol Life Center
225 East 16th Avenue
Denver, Colorado 80203

M. E. MacDougall, Esq.
Geddes, MacDougall, Geddes & Paxton
530 South Nevada Avenue
Colorado Springs, CO 80903

Kenneth Balcomb, Esq.
Delaney & Balcomb
P. O. Drawer 790
Glenwood Springs, CO 81601

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Davis, Graham & Stubbs
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Holland & Hart
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Denver, Colorado 80201

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Moses, Wittemyer, Harrison & Woodruff
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Boulder, Colorado 80206

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Rexford L. Mitchell, Esq.
Mitchell & Hamano, P.C.
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Rocky Ford, Colorado 81067

Wayne B. Schroeder, Esq.
Calkins, Kramer, Grimshaw & Harring
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Denver, Colorado 80293

John J. Lefferdink, Esq.
Lefferdink, Lefferdink & Stovall
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Lamar, Colorado 81052

Floyd K. Murr, Esq.
First National Bank Building
Walsenburg, Colorado 81089

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Melvin B. Sabey, Esq.
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Denver, Colorado 80203

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Boulder, Colorado 80306

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Hall & Evans
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Colorado Springs, CO 80903

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Welborn, Dufford, Cook & Brown
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Denver, Colorado 80290

Robert F. T. Krassa, Esq.
O'Callaghan & Krassa
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Pueblo, Colorado 81002

Patti F. O'Rourke, Esq.
Jenkins, O'Rourke & Breitenbach
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Pueblo, Colorado 81002

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Lamar, Colorado 81052

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Peterson & Fonda
650 Thatcher Building
Pueblo, Colorado 81003

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Patricia Ann Schranz
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Colorado Springs, CO 80906

Louis Magnino
106 North Aspen
La Veta, Colorado 81055

James G. Penchoff
55 Rock Creek Canyon Road
Colorado Springs, CO 80906

Dennis R. and Connie D. Herndon
10410 Highway 115
Colorado Springs, CO 80906

Mr. and Mrs. Harry W. Wareham
2429 Tahoe Boulevard
Colorado Spriings, CO 80910

Lowell D. and Delores J. Peterson
9325 Old Canon City Road
Colorado Springs, CO 80906

Charles and Mary Catharyne Irwin
8930 Rock Creek Lane
Colorado Springs, CO 80906

Eric J. and Mary Ann Bransby
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Van Nuys, California 91401

Shirley De Andrea
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Walsenburg, Colorado 81089

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P. O. Box 11
Leadville, Colorado 80461

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2600 Colorado National Building
P. O. Box 185
Denver, Colorado 80201

Kevin B. Pratt, Esq.
Fairfield and Woods
1600 Colorado National Building
950 Seventeenth Street
Denver, Colorado 80202

Patricia M. Larson

00-00-0000: cover letter for copies of applications; 1981

United States Department of Justice
LAND AND NATURAL RESOURCES DIVISION
Denver Field Office
Federal Bldg., 1961 Stout Street
Drawer 3607
Denver, Colorado 80294

Commercial Number
(303) 837-4961
FTS: 327-4961

Rec'd 1/7/80

January 6, 1981

Mr. Kenneth R. Ashley
Associate Regional Director
U. S. Department of the Interior
National Park Service
Rocky Mountain Region
P. O. Box 25287
Denver, Colorado 80225

Re: Amended Water Rights Applications, Water Division No. 2

Dear Mr. Ashley:

Enclosed are your copies of applications filed in amendment to the general applications of the United States of America in Water Divisions 2 and 3, as the case may be. Please refer to them in future correspondence by the case number assigned.

You can expect a hearing before the referee or water judge, or both, in the near future. Accordingly, I request that you provide me copies of any documents tending to prove any of the elements of your claims such as quantities, appropriation dates, and use of the water in the amounts claimed. Please fill out the enclosed Exhibit List and return to me with the copies of the documents. Do not fill in the exhibit number column.

In addition, please prepare a list of witnesses including full name, address (work), position, telephone number, and a brief summary of the expected testimony of the witness.

To establish our case for either a reserved or an appropriative right I will need one or more witnesses to establish the following:

a. authenticity of the documents (usually the custodian or senior person in the office of record).

b. from personal knowledge or interpretation of documents the need for, historic and present use of the water claimed.

c. how the quantities of water claimed were calculated or otherwise arrived at.

In the case of a reserved right I will also need agency witnesses to establish the necessity of water to fulfill the purpose of the reservation. One of these witnesses should be a senior line or staff person and another should be a technical person with "on the ground" knowledge.

Please describe or sketch any charts, maps, or other visual aids needed to support the testimony of any of the witnesses. I will normally require at least a large scale map of the installation to support an overview by the initial witness and to orient the court.

Upon receipt of the documents, Exhibit List, and description of visual aids, I will contact you to arrange a meeting to discuss in detail the presentation of our case. Please do not hesitate to contact me for clarification or further discussion of these requirements.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

John R. Hill, Jr.
Attorney
Department of Justice

Enclosures

cc: Regional Solicitor
~~Omaha District Corps of Engineers~~

IN THE DISTRICT COURT IN AND FOR
WATER DIVISION NO. 2
STATE OF COLORADO

Case No. 80CW142

DEC 19 1980

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR WATER RIGHTS IN THE ARKANSAS RIVER, IN ~~EL PASO~~ OTERO COUNTY	)	APPLICATION FOR UNDERGROUND WATER RIGHT

1. Name of and address of applicant: United States of America, c/o John R. Hill, Jr., Attorney, Department of Justice, Land and Natural Resources Division, 1961 Stout Street, Drawer 3607, Denver, Colorado 80294. Telephone (303) 837-2892.

2. The United States of America claims water rights in 2 wells aggregating 110 gpm (0.245 c.f.s) absolute and 375 gpm (0.0840 c.f.s.) conditional located within Bent's Old Fort National Historic Site in the watershed of the Arkansas River, more fully described below.

3. Appropriation was initiated on each of the wells in this application by drilling and applying the water to the beneficial uses of fire protection, sanitary disposal, and other related purposes.

4. Legal description and data pertaining to each well:

T. 23 S, R. 54 W, ~~N.M.~~ 6TH P.M.

Legal description: SE1/4 SW1/4 Section 14 at a point 30 ft. from South Section line and 1700 ft. from West Section line.
Applicant's Well No.: NPS Bent's Old Fort No. 2
Registration No.:
Depth: 28 ft.
Date of initiation of appropriation: 1954
Date applied to beneficial use: 1954
Amount claimed: 100 gpm (0.223 c.f.s.) absolute;
35 gpm (0.078 c.f.s) conditional
Use: Fire protection.

Legal description: SW1/4 SW1/4 Section 14 in the maintenance building located on Bent's Old Fort National Historic Site.
Applicant's Well No.: NPS Bent's Old Fort No. 3
Registration No.: 9082-F
Depth: 50 ft.
Date of initiation of appropriation: July 1965
Date applied to beneficial use: July 1965
Amount claimed: 10 gpm (0.022 c.f.s.) absolute;
340 gpm (0.758 c.f.s.) conditional
Use: Fire protection and sanitary disposal

5. A completed application for each well described above on the form provided by the court is on file with the water clerk along with a map showing the location of each well.

6. This application is a partial amendment of the application filed by the United States in Case No. 79CW176.

7. The United States seeks to antedate the adjudication dates of earlier decrees insofar as they, in conjunction with applicable statutes, appear or purport to preclude this Court from awarding to the United States its water rights bearing their true priority dates.

8. The fee which accompanies this Amended Application is paid under protest. The United States hereby claims reimbursement thereof on the grounds, inter alia, that filing fees constitute "costs" within the meaning of 43 U.S.C. 666(a), and as such are not properly taxed against the government in water adjudication proceedings.

Respectfully submitted,

JOSEPH DOLAN
UNITED STATES ATTORNEY

By _____
JOHN R. HILL, JR. (Reg. No. 10214)
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, Colorado 80294 (837-2892)

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

JOHN R. HILL, JR., being first duly sworn upon oath, deposes and says that he is one of the attorneys for Objector, that he has read the foregoing Statement, that he knows the contents thereof, and that the same are true.

_____
JOHN R. HILL, JR.

Subscribed and sworn to before me this 18 day of Dec., 1980.

Witness my hand and official seal.

_____
NOTARY PUBLIC

My commission expires: June 9, 1984.

IN THE DISTRICT COURT

IN AND FOR WATER DIVISION NO. 2

STATE OF COLORADO

COUNTY OF OTERO)
IN THE MATTER OF THE)
APPLICATION FOR WATER RIGHTS)
OF THE UNITED STATES IN) AFFIDAVIT
WATER DIVISION NO. 2)
STATE OF COLORADO)

WATER RIGHTS AT BENT'S OLD FORT NATIONAL HISTORIC SITE

Bent's Old Fort National Historic Site was authorized by Act of June 3, 1960 (74 Stat. 155). Land was acquired from sources other than the public domain. Therefore, no federal reserved water rights are involved.

The National Park Service claim is for one 45' well (well #3) located in the maintenance building in the SW¼ SW¼, Sec. 14, T23S, R54W, 6th P.M. The well was drilled in 1965 by Howerton Water Wells from Las Animas, Colorado. The State of Colorado granted a permit to use ground water, Permit No. 9082-F, on March 31, 1965. A pump test was conducted by the Ken R. White Company from Denver, Colorado on July 5, 1974. The test was conducted for a period of 12 hours with a sustained yield of 150 gallons per minute. Presently, the well is used for fire protection and sanitary disposal only since the water is not potable. Potable water is obtained by pipeline from Bent's Fort Water Company in La Junta, Colorado. The water system is not metered and no water consumption records are available.

The sanitation system consists of: five (5) commodes; one (1) urinal; six (6) sinks; and one (1) shower facility. Water requirements are estimated based on: a full time staff of fourteen (14) permanent employees; a seasonal staff of thirteen (13) additional employees during the peak visitation period; and annual visitation of about 100,000. Therefore, an absolute claim for 10 gpm is required for present operations and future growth needs.

Water for fire protection purposes does not constitute a continuous consumptive use. Therefore, a conditional claim for the use of 140 gpm is based on the instantaneous fire fighting event.

Wes Wolfe

Wes Wolfe
Acting Associate Regional Director, Park Operations, Rocky Mountain Region

File in quadruplicate

WATER FORM B

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 2

STATE OF COLORADO

Case No. W-_____

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA IN WATER DIVISION NO. 2 IN Otero COUNTY.	)	APPLICATION FOR WATER RIGHT (Underground or well)

1. Name of applicant: United States of America

   Address of applicant: c/o John R. Hill, Jr.
   Trial Attorney, Department of Justice
   Land and Natural Resources Division
   1961 Stout Street, Drawer 3607
   Denver, Colorado 80294

   Telephone number of applicant: 837-2065

2. Name or number of well, if any: WELL No.3

3. Legal description of location of well:

   The well is located within Bent's Old Fort National Historic Site in the SW¼ SW¼, section 14, T23S, R54W, 6th P.M.

4. This well is located in the watershed of Arkansas

Cimarron River.

5. Depth of well: 50'

6. A. Date of initiation of the appropriation: July 1965

B. Date water first applied to beneficial use: July 1965

C. How appropriation was initiated:

7. Amount of water claimed in gallons per minute of time: 350

A. Portion absolute: 10 gpm B. Portion conditional: 340 gpm.

8. Use or proposed use of water: Fire Protection and Sanitary Disposal

9. Number of well as registered in State Engineer's Office or, if a new well, attach copy of the permit or order of denial: 9082-F

10. In case of an irrigation priority, the number of acres being irrigated: N/A; the number of acres historically irrigated: 0; and the number of acres proposed to be irrigated 0 by the decree sought.

11. Remarks: (a) The United States seeks to antedate the adjudication dates of earlier decrees insofar as they, in conjunction with applicable statutes, appear or purport to preclude this Court from awarding to the United States its water rights bearing their true priority dates.

(b) The filing fees which accompany this application are paid under protest. The United States hereby claims reimbursement thereof on the grounds that filing fees constitute "costs" within the meaning of 43 U.S.C.A., Section 666(a), and as such are not properly taxed against the government in water adjudication proceedings.

JOSEPH DOLAN
UNITED STATES ATTORNEY

HANK MESHORER, Senior Trial Attorney,
Dept. of Justice

By

JOHN R. HILL, JR.
Trial Attorney, Dept. of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, Colorado 80294

(837-2065)

00-00-0000: conformation of kenneth ashley being sworn in; 1979

STATE OF COLORADO)
COUNTY OF JEFFERSON) SS

Kenneth R. Ashley, being first duly sworn upon oath, deposes and says that he has read the foregoing affidavit, knows the contents thereof and that the same are true to the best of his knowledge and belief.

Kenneth R Ashley
Kenneth R. Ashley

Subscribed and sworn to before me on this 21st day of December, 1979

Witness my hand and official seal

Nancy M. Ketter
Notary Public

My commission expires: My Commission Expires April 21, 1982

IN THE DISTRICT COURT

IN AND FOR WATER DIVISION NO. 2

STATE OF COLORADO

COUNTY OF OTERO

IN THE MATTER OF THE)
)
APPLICATION FOR WATER RIGHTS)
)
OF THE UNITED STATES IN) AFFIDAVIT
)
WATER DIVISION NO. 2)
)
STATE OF COLORADO)

WATER RIGHTS AT BENT'S OLD FORT NATIONAL HISTORIC SITE

Bent's Old Fort National Historic Site was authorized by Act of June 3, 1960 (74 Stat. 155). Land was acquired from sources other than the public domain. Therefore, no federal reserved water rights are involved.

The National Park Service claims two water rights. The first claim consists of a 28' well (well #2) located near the fort 30 feet from the south section line and 1,700 feet from the west section line of the SE¼ SW¼, Sec. 14, T23S, R54W, 6th P.M. National Park Service records (copy attached) indicate that the land and well was acquired by donation from the State of Colorado on October 31, 1961. A "Completion Report Narrative" (copy attached) indicates that the well was drilled in 1954 by W. C. Rains from Timpas, Colorado. The National Park Service contracted the Howerton Water Wells from Las Animas, Colorado (copy attached) to perform a pump test on September 18, 1964. The test was supervised by Mr. William A. Mott, Hydraulic Engineer of the National Park Service Midwest Regional Office. The test was conducted for a period of 13½ hours, with a sustained yield of 135 gallons per minute. Presently the well is used for fire protection.

The second claim consists of a ~~50'~~ 45' well (well #3) located in the maintenance building in the SW¼ SW¼, Sec. 14, T23S, R54W, 6th P.M. The well was drilled in 1965 by Howerton Water Wells from Las Animas, Colorado. The State of Colorado granted a permit to use the ground water (permit #9082-F, copy attached) on March 31, 1965.

A pump test was conducted by the Ken R. White Company from Denver, Colorado on July 5, 1974. The test was conducted for a period of 12 hours with a sustained yield of 150 gallons per minute (copy attached). Presently, the well is used for fire protection and sanitary disposal.

Dated: December 21, 1979

NATIONAL PARK SERVICE
DEPARTMENT OF THE INTERIOR

Kenneth R. Ashley

KENNETH R. ASHLEY
ASSOCIATE REGIONAL DIRECTOR FOR PARK OPERATIONS
ROCKY MOUNTAIN REGION

00-00-0000: application for a permit to use ground water and to construct a well; 1985

orm D (Rev.)
1 62

STATE OF COLORADO
DIVISION OF WATER RESOURCES
OFFICE OF THE STATE ENGINEER
GROUND WATER ADMINISTRATION

PERMIT

NOTE: This permit is issued for the purposes indicated in the application.

Form C Rev.
)-62/10M

STATE OF COLORADO

APPLICATION FOR: [X] A PERMIT TO USE GROUND WATER
[X] A PERMIT TO CONSTRUCT A WELL

RECEIVED
MAR 31 1965
GROUND WATER SECT.

Applicant U. S. Department of the Interior
National Park Service
P. O. Address Box 581, La Junta, Colorado
Quantity applied for 350 gpm or
AF Storage
Used for Fire Protection and Irrigation Purposes
on/at Bent's Old Fort National Historic Site
(legal description of land site)
2½ Acres lawn and plantings
Total acreage irrigated and other rts.

ESTIMATED DATA OF WELL
Hole size: 16 in. to 45 ft.
in. to ft.
Casing Plain 16 in. from 0 to 25 ft.
in. from to ft.
Open or Perf. 16 in. from 25 to 45 ft.
in. from to ft.
PUMP Outlet
DATA: Type Turbine . HP 20 Size 350 GPM

Use initiation date July 1965.
(Use Supplemental pages for additional data)

Driller to furnish Log and History (Form E) within 30 days after completion of well.

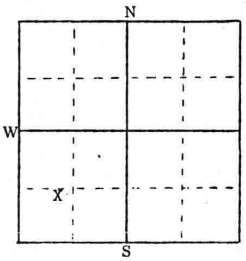
LOCATION OF WELL COLORADO
STATE ENGINEER

County Otero

SW ¼ of SW ¼ of Sect. 14, Twp. 23S,
Rge. 54W, 6 P. M. OR

Street Address or Lot & Block No.

Town or Subdivision



Locate well in 40 acre (small) square as near as possible. Large square is one section.

$25.00 fee required for uses other than Domestic or Livestock.

U. S. Department of the Interior
Applicant National Park Service
Agent ~~or~~ By: Foy L. Young, Superintendent
~~Driller~~ Bent's Old Fort National ~~Hx~~ Historic Site
Foy L. Young
Address Box 581, La Junta, Colorado 81050

THIS APPLICATION APPROVED
PERMIT NO. 9082-F
ISSUED:
DATE MAR 31 1965 19

NOTE — SATISFACTORY COMPLETION REQUIRED FOR APPROVAL OF APPLICATION

THE ABOVE APPLICATION, BEING A PART OF THIS PERMIT, IS APPROVED AS INDICATED.

J. E. Whitten
STATE ENGR.

SEAL

By Geo. W. Colburn

Supporting Hydro Data

United States Department of the Interior
NATIONAL PARK SERVICE
BENT'S OLD FORT NATIONAL HISTORIC SITE
35110 HWY 194 EAST
LA JUNTA, COLORADO 81050-9523

TAKE PRIDE IN AMERICA

IN REPLY
REFER TO:
L54

January 29, 1997

Steven J. Witte
Division Engineer
Water Division 2
Office of the State Engineer
P.O. Box 5728
Pueblo, CO 81002

Dear Mr. Witte,

Enclosed is the annual data from January 1, 1996 to December 31, 1996 on Well Permit No. 9083F, Decree No. 80CW142, Well Location: SW 1/4, SW 1/4, Sec. 14, T23, S, R54, W 6th P.M.

If you have questions or comments about this report we will be glad to answer them.

Sincerely,

Donald C. Hill
Superintendent

cc: Dan McGlothlin

NATIONAL PARK SERVICE 75 1916 - 1991 ™

Form 6.1 **Water Use Data Submittal Form (Totalizing Flow Meter)**

To be Filed in Compliance with Rule 6 of the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

To: Division Engineer, Water Division No. 2
P.O. Box 5728, Pueblo, Co 81002

Owner Information

Name Beni's Old Fort Mills

Address 35110 Hwy 194 East

City, State, Zip La Junta Co 81050

Phone (719) 384-2596

User Info (If not same as owner)

Well Location and Information:

SW ¼, SW ¼, Section 14, Township 23, S (NorS), Range 57, W (EorW), 6 PM

Distances from section lines:

_____ feet from the _____ (NorS) Section line and _____ feet from the _____ (EorW) Section line

Well Permit No. 9082F

Case or Decree No. 80CW142

Meter Data:

Meter units: Gal ✓, Acre feet____, Acre inches___, Other_____(specify)

Multiplier: 000_____, 00 ✓, 0_____, none_____, (check one)

WD ____ ID ____ PERMIT NO. 9082-F DECREE 80CW142 SEC 14 TS 23S RNG 57W

Well #3

Table for Reporting Monthly Meter Readings

Date	Water Meter Reading (include multiplier)	Electric Meter Reading (include multiplier)	Comment
1-31-96	457600		
2-29-96	471800		
3-30-96	488800		
4-30-96	507700		
5-31-96	531900		
6-30-96	554200		
7-31-96	590900		
8-31-96	641200		
9-30-96	673300		
10-31-96	709900		
11-30-96	725500		
12-31-96	730400		

Total Amount Pumped 272800 from 1-31-96 (date) to 12-31-96 (date)

The above information is true and correct to the best of my knowledge. I agree to the release of information including Current Transformer factor, Potential transformer factor, and electric meter readings to the Colorado Division of Water Resources by my electrical supplier for purposes of determining or verifying water use from the well.

Signed: [signature] (Owner of designated agent) 01/07/97 (Date)

Report Revision from submittal of January 31, 1995

Form 6.1 **Water Use Data Submittal Form (Totalizing Flow Meter)**

To be Filed in Compliance with Rule 6 of the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

To: Division Engineer, Water Division No. 2
P.O. Box 5728, Pueblo, Co 81002

Owner Information

Name Bent's Old Fort NHS

Address 35110 Highway 194 East

City, State, Zip La Junta, CO 81050

Phone (719) 384-2596

User Info (If not same as owner)

Well Location and Information:

SW ¼, SW ¼, Section 14, Township 23, S (NorS), Range 54, W (EorW), 6 PM

Distances from section lines: Located in the wellroom of the Maintenance Building at the historic site.

_____ feet from the _____ (NorS) Section line and _____ feet from the _____ (EorW) Section line

Well Permit No. 9082F

Case or Decree No. 80CW142

Meter Data:

Meter units: Gal X, Acre feet____, Acre inches___, Other_____(specify)

Multiplier: 000 100, 00_____, 0_____, none_____, (check one)

WD ____ ID ____ PERMIT NO. 9082-F DECREE 80CW142 SEC 14 TS 23S RNG 54W

Table for Reporting Monthly Meter Readings

Date	Water Meter Reading (include multiplier)	Electric Meter Reading (include multiplier)	Comment
07/31/94	0 = 0 gal		McCrometer Flowmeter, 94-4-4479 installed,07/21/94
08/31/94	246 = 24,600 gal		New pumps installed, 08/01/94, new pressure tanks,08/25/94
10/03/94	569 = 32,300 gal		
10/31/94	815 = 24,600 gal		
			*From 11/01/94 to 06/30/94 the system was down
			awaiting project funding.

Total Amount Pumped 81,500 gallons from 07/20/94 (date) to 10/31/94 (date)

The above information is true and correct to the best of my knowledge. I agree to the release of information including Current Transformer factor, Potential transformer factor, and electric meter readings to the Colorado Division of Water Resources by my electrical supplier for purposes of determining or verifying water use from the well.

Signed: Donald C. Hill 06/13/95
(Owner or designated agent) (Date)
Donald C. Hill
Superintendent, Bent's Old Fort NHS

URS/THE KEN R. WHITE COMPANY

URS CORPORATION

Home Office 3955 East Exposition Avenue
Denver, Colorado 80209

PAGE _____ OF _____

KRW JOB NO. 4095 DATE _____ BY _____ CHECKED BY _____ (Date)

CLIENT NPS PROJECT BENT'S FORT

SUBJECT DRAW DOWN TEST - MAINT. AREA WELL (FIRE PU

TIME (HRS)	FLOW (GPM)	WATER LEVEL (FEET)	REMARKS
9:00 AM	150 G.P.M.	29.2	
10:00 AM	150	29.2	
11:00 AM	150	29.2	
12:00 Noon	150	29.2	
1:00 PM	150	29.2	
2:00 PM	150	29.2	
3:00 PM	150	29.3	
4:00 PM	150	29.2	
5:00 PM	150	29.2	
6:00 PM	150	29.2	
7:00	150	29.3	
8:00	150	29.2	
9:00	150	29.2	
STATIC	WATER	LEVEL	27.5 ft. BELOW GROUND LEVEL

*

Other Supporting Information

Author: Eric Lord at NP-WASO-WR
Date: 06/19/2000 9:26 AM
Priority: Normal
CC: Dan McGlothlin
TO: Bill Hansen
Subject: Re[2]: BEOL

Dan and Bill,

I have a call into the State Engineer Div. 2 on that question. In the meantime I spoke to the State Engineer Div. 1 (I know him) and he said that the statute envisions a rural fire district in which there is some type of reservoir that is available all the time (like a tanker truck or tank) and can be tapped quickly. The statute is obviously not well suited for a hydrant system. He didn't think a waiver was likely.

Will update you after I talk to Div. 2.

Eric

_____ Reply Separator _____

Subject: Re: BEOL
Author: Dan McGlothlin at NP-WASO-WR
Date: 06/19/2000 8:47 AM

Eric -

If it's possible to have an answer re: capped and locked requirement today, that would be good. If we can't meet this requirement, it seems that some other remedy is needed.

_____ Reply Separator _____

Subject: BEOL
Author: Eric Lord at NP-WASO-WR
Date: 06/15/2000 5:08 PM

Dan and Bill,

I spoke to Don Hill at BEOL and informed him of the situation. He was very concerned about the fire protection line being capped and locked as he thought this would make the line pretty useless for any timely firefighting. Also, he indicated that the hydrants had not been tested, but that he thought he could get the fire dept out there for pressure tests quickly if needed.

I told him I would talk to the state engineer about the capping and locking requirement so we understand what that really entails. Perhaps a waiver could be conjured. Will update you as the tale unfolds.

Eric

BENT'S OLD FORT NATIONAL HISTORIC SITE

Memorandum of Phone ConversationS

Contact: Janet Kuzmiak, Colorado State Engineer's Office, Division No. 2
(719) 542-3368 x101

June 13, 2000:

Contacted Janet Kuzmiak regarding the status of Well #3 at BEOL. In Case No. 80CW142, the Water Court issued a decree dated December 15, 1987 which decreed 10 gpm absolute for sanitation use and 140 gpm conditional for fire protection. In order to avoid the need for augmentation of the Arkansas River system, in 1996 the Water Rights Branch sought to convert this well to exempt status. After recently receiving a notice from the Water Court that a diligence filing was required on the conditional portion of the water right, I contacted Janet Kuzmiak to better understand the status of the water right.

She indicated that both the 10 gpm for sanitation and the 140 gpm for fire protection are exempt by definition, and that our new well permits—201942 and 201943—reflect this status. She indicated we should respond to the Water Court indicating that the conditional portion of the right is for fire protection only, and this would be considered exempt by definition.

June 19, 2000:

I contacted Janet Kuzmiak again to better understand the requirements of "capping, sealing and locking" the well, as required by statute in order to qualify as exempt. She indicated, after talking to Dick Wolf in the Denver Office, that the main concern of the state engineer is that the well head be closed to avoid contamination of the aquifer. She indicated that a locked pumphouse would be sufficient to meet the "locked" requirement. I described the system at BEOL and she indicated that it should be acceptable to meet the exempt requirements.

05-30-2000: Site map and photos of well

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY REFER TO:

May 30, 2000

Brian Cluer
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Dear Brian:

Enclosed are the pictures of our well pump one of which I faxed to you last week. Also enclosed is the map of the park with the location of the pump and field we are attempting to revegetate. The well reading on 5-26-00 was 35040.

Sincerely,

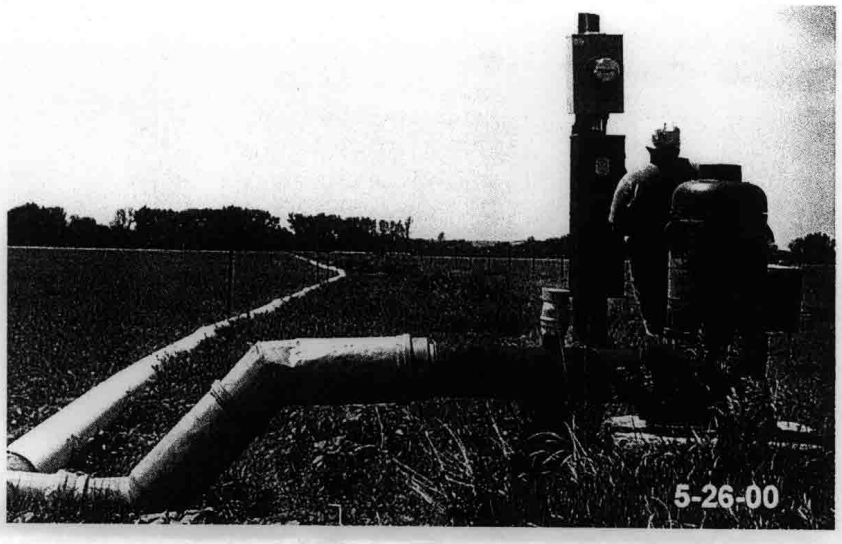
Karl Zimmermann

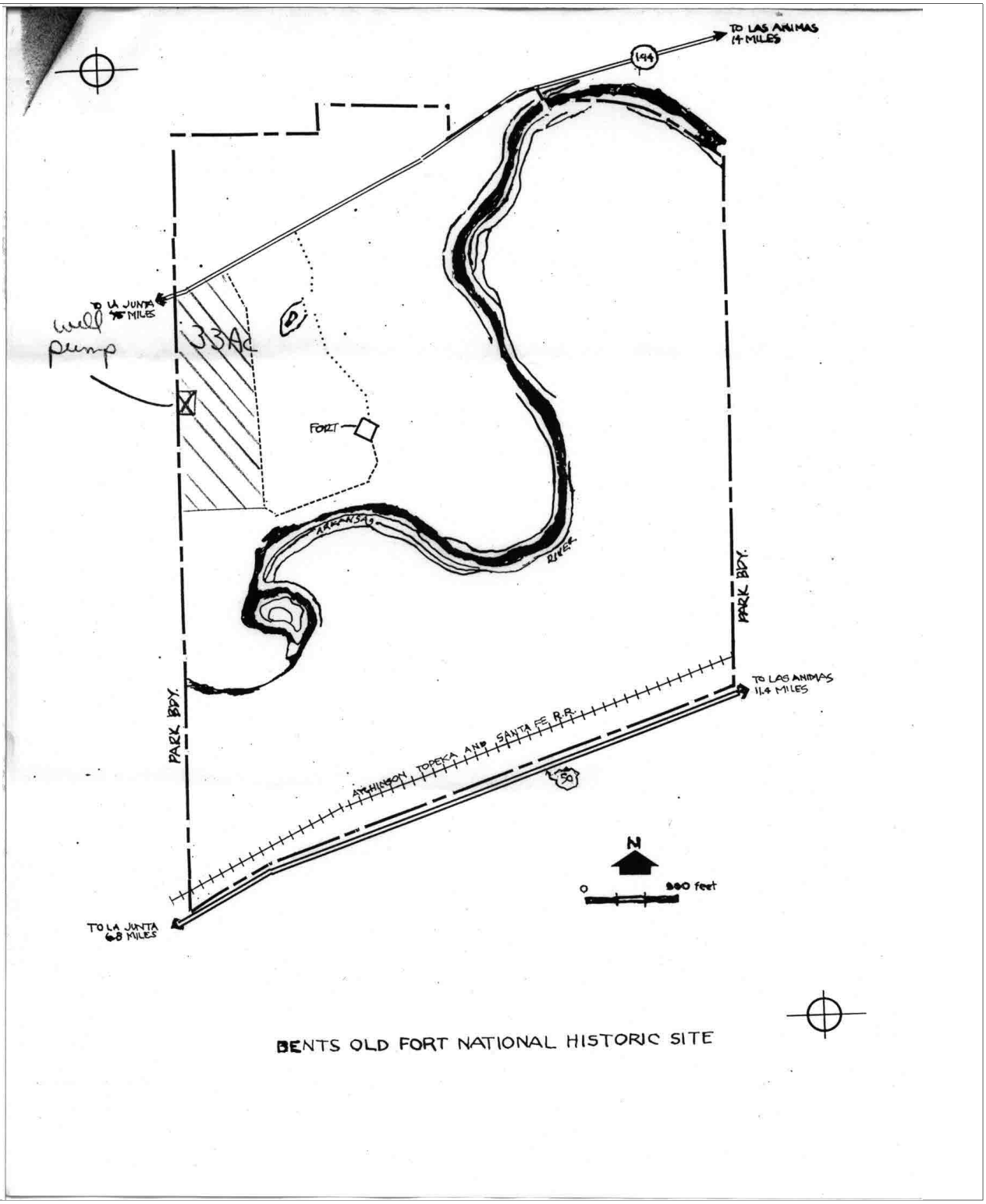
Karl Zimmermann
fg

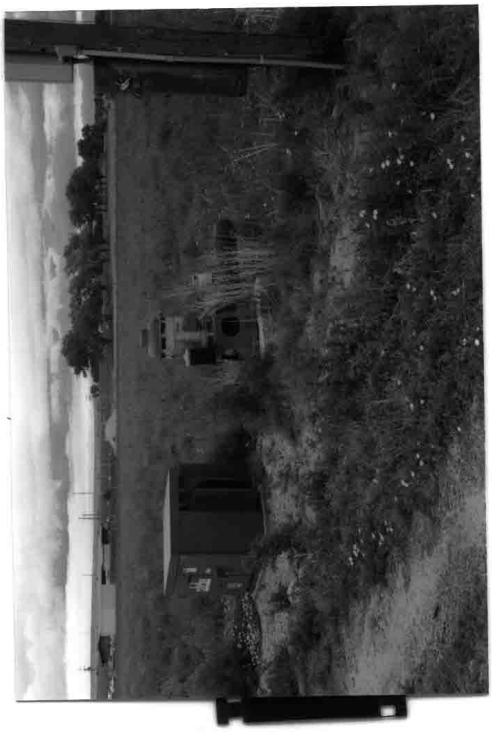
attachments


5-26-00


5-26-00


5-26-00


TO LAS ANIMAS
14 MILES
194
TO LA JUNTA
76 MILES
well
pump
33Ac
FORT
ARKANSAS
RIVER
PARK BDY.
PARK BDY.
TO LAS ANIMAS
11.4 MILES
ATCHISON TOPEKA AND SANTA FE R.R.
50
N
0
800 feet
TO LA JUNTA
6.8 MILES
BENTS OLD FORT NATIONAL HISTORIC SITE









Jeffrey C. Hughes

Dan McGlothlin

March 24, 1997

L54(2380)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Monument

From: Acting Chief, Water Rights Branch

Subject: Exempt Well Permits for Well Number Three

Please find copies of permit numbers 201492 (for domestic purposes) and 201493 (for fire suppression purposes) for Bent's Old Fort Well Number 3 attached for your records. The original permits will be kept in our office in the water right docket for this well. As you recall from our May 17, 1996, correspondence, this office requested the State Engineer to cancel the existing permit (9082-F) and to reclassify Well Number 3 as commercial-exempt.

Although it is difficult to determine from glancing at these permits, they have been classified as exempt under Colorado Statute 37-92-602. This was confirmed in a March 17, 1997, telephone conversation between Peter Fahmy of the Office of the Solicitor and Bruce DeBrine of the Office of the State Engineer. As a result of this classification, this well is exempt from having to replace out-of-priority depletions to the Arkansas River system as described in the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin, Colorado, approved September 27, 1995.

If you have any questions concerning these permits, please contact either me or Jeff Hughes at (970) 225-3536 or (970) 225-3527 respectively.

Attachments
cc: (all w/Attachments)
SOL (Denver) - Fahmy
Colorado State Engineer's Office, Water Division 2 - Ward
DoJ (Denver) - DuBois
RMRO - Wylie
Rocky Mountain Cluster Leadership Chair - Nickels (GRTE)
2380 - Hughes, BEOL Docket 3
FNP:JHughes:mf:3/24/97:S:\WRB\JCH\BEOL.MEM

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY REFER TO:
L54

January 29, 1997

Memorandum

To: Dan McGlothlin, Water Resources Division

From: Superintendent, Bent's Old Fort NHS

Subject: Well Permits

Enclosed is a copy of Form 6.1, the annual data from January 1, 1996 to December 31, 1996 on Well Permit No. 9083F (well #3 - in our maintenance building), and copies of Form 7.1 Notice of Well Reactivation and Form 13 Ground Water User Information Form for Well Permit No. 13596F (well #4). The original for Form 6.1 was sent to the Office of the State Engineer in Pueblo, and the originals for Forms 7.1 and 13 were sent to Helton & Williamsen in order to join the Fort Lyon Well Users well augmentation plan.

We never received final notification from the state about whether our request for a commercial-exempt permit for well #3 was granted. Please send us copies of any information you might have on that.

for Donald C. Hill
Superintendent

Form 13 — Ground Water User Information Form

To be Filed in Compliance with Rule 13 of the AMENDED RULES AND REGULATIONS GOVERNING THE DIVERSION AND USE OF TRIBUTARY GROUND WATER IN THE ARKANSAS RIVER BASIN, COLORADO

Person or Entity Responsible for Plan:	The entity responsible for the plan noted at left must furnish a copy of this form to:
Fort Lyon Well Users	Division Engineer Water Division 2 P. O. Box 5728 Pueblo, CO 81002

Please make any needed corrections to information on this form. This form requires that you verify information as accurate

Owner Information	User Info (If not same as owner)
Name Bent's Old Fort NHS	
Address 35110 Highway 194 East	
City, State, Zip La Junta, CO 81050	
Phone (719) 384-2596	

Well Information: Water District 17 Structure ID number 5725

Location: SW ¼, SW ¼, Section 14, Township 23 S (N or S), Range 54 W (E or W), 6 PM

Information on the next two lines is required only when the well does not have a Structure ID assigned.

Well Permit No. 13596 F Case or Decree No. W-3016 Decreed Name

Adjudication Date Appropriation Date

Power Supply and Use

Source of Power: X Electric, ___ Natural Gas, ___ Diesel, ___ Propane, ___ Gasoline, ___ Other or PTO

For Electrically Powered Wells indicate method of Water Measurement:

___ Power data from an electrical meter owned by the utility to be supplied on a monthly basis to be converted using a Power Consumption Coefficient.

X Self monitored well using another method of water measurement such as totalizing flow meter, privately owned electric meter, hour meter, or other. Monthly water usage will be reported to the Division Engineer by the party responsible for the plan.

Electrical Supplier (if applicable, check one)

X South East Colorado (SEC)	___ West Plains Energy (WPE)	___ Town of Holly(HOL)
___ City of Las Animas (LAA)	___ City of Lamar (LAM)	___ City of LaJunta(LAJ)
___ San Isabel Electric (SIE)	___ Public Service Co. (PSC)	___ KC Electric (KCE)
___ Mountain View Electric (MVE)	___ City of Fountain (FTN)	___ Other NPS owned meter

Electrical Account No. 21000230009 Electric Meter Number or Service number [redacted]

Water Use Information:

Is this well principally used for: X Irrigation (includes agricultural and turf irrigation with untreated water)
___ Other (Municipal, Commercial, or Other use)

for wells used for other than irrigation, a separate report of monthly stream depletions must be attached.

For Irrigation Wells only:

Number of acres irrigated by this well (or group of wells serving common acreage): 33 acres

Is the acreage served by this well irrigated with groundwater only ? ____ Yes or X No

What percentage of the water pumped from this well is used with the following irrigation method ?

100 % Flood or Furrow
____ % Sprinkler
____ % Other (indicate type) _____

If surface water sources are used on the acreage served by this well, provide the following information

Name of ditch or decree	Number of shares
Fort Lyon	40

ID numbers (or permit number and case number if ID number not available) of other wells serving the acreage irrigated by the surface rights listed above:

The above information is true and correct to the best of my knowledge.

Signature of well user: [signature] Date: 1/28/97

Release of Power Data (Required by Rule 13 for all Electrically Powered Wells): Meter belongs to National Park Service; we will record monthly use.
I hereby authorize the power supplier for each well included on this form to provide power records to the Division Engineer on a monthly basis. Further, I authorize the power supplier to provide power record and information about transformers and meters to the Division Engineer for each well listed above even though the account number or power meter /service number changes.

Signature of well user: [signature] Date: 1/28/97

Form 13, rev. 12-06-95, Page 2 of 2

Form 7.1

Notice of Well Reactivation

To be Filed in Compliance with Rule 7 of the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN to notify the Division Engineer of intent to reactivate a well previously reported to be an inactive well.

To: Division Engineer, Water Division No. 2
P.O. Box 5728, Pueblo, Co 81002

Owner Information	User Info (If not same as owner)
Name Bent's Old Fort NHS	
Address 35110 Highway 194 East	
City, State, Zip La Junta, CO 81050	
Phone (719) 384-2596	

Well Location and Information: Water District 17 Structure ID number 1705725

Well Permit No. 13596-F Case or Decree No. W-3016 Decreed Name

Information below required only when above information is incomplete

SW ¼, SW ¼, Section 14, Township 23, S, Range 54, W 6th PM

Measurement information (check one that applies):

- ___ Report of measurement technique submitted on attached form 3.1 or 3.2
- X Power Consumption Coefficient previously submitted on form 3.2
- ___ Notice of Totalizing Flowmeter previously submitted on form 3.1
- ___ Measurement information will be submitted on form 3.1 or 3.2 before water is taken for use

Electrical Supplier (if electric well) SECPA Account No. #2100023009

Electric Company meter number SECPA installed one meter for the entire park. Separate meter at the pump site is owned by Bent's Old Fort NHS. We will record monthly use.

Name of Ground Water Association, Substitute Supply Plan or Rule 14 Plan, or Water Court approved augmentation plan

Fort Lyon Well Users

The above information is true and correct to the best of my knowledge. I understand that no water may be diverted from this well until it is in compliance with the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN except to determine a power coefficient or install a totalizing flow meter. I further understand that the use of this well is subject to the AMENDED RULES AND REGULATIONS GOVERNING THE DIVERSION AND USE OF TRIBUTARY GROUND WATER IN THE ARKANSAS RIVER BASIN, COLORADO, and that water may only be taken from this well in compliance with those rules subject to a fine of up to five hundred dollars for each day of violation (sec. 37-92-503 C.R.S.). I agree to release of power use data by electric supplier.

Owner Signature: [signature] Date: 1/28/97

[16] From: Dan McGlothlin at NP-WASO-WR 1/29/97 11:58AM (1976 bytes: 36 ln)
To: Daniel R. Brown at NP-BEOL
cc: Don Hill at NP-BEOL, Jeff Hughes, Chuck Pettee
Subject: Re: Commercial-Exempt Permit for Well #3
---------- Message Contents ----------
Dan,

I got your voice mail message yesterday RE: same. The State Engineer was working on this when last I enquired with Alan Ward of the Division Engineer's Office (late October, 1996). WRB office completed the necessary document requesting the change and returned it to the Division Engineer's Office some time ago. I was told by Alan Ward and his staff that it would likely take some time (several weeks or months), due to backlog, for the State Engineer to issue the permit. He said he was aware that the NPS had applied for the exemption and that the St. Engineer would probably issue the permit. Because the status for Well #3 was likely to change to commercial-exempt, I was given a verbal assurance that the order for compliance would not be enforced (I believe I passed this information on to Don). If you have received different information than this, please let me know. We (Jeff Hughes) are contacting the Division Engineer and State Engineer to determine status of the permit and will let you know if and when it may be issued. At present, I would not recommend any action be taken vis-a-vis replacement water for Well #3.

Take care,

Dan

Dan,

Last year your office submitted a request to cancel well permit no. 9083F for the well in our maintenance building the provides non-potable water to the fort and fire hydrants, and in place of that permit requested a commercial-exempt permit. We have no record of that permit having been granted. Do you have the final correspondence and permit number for that well (we call well #3)?

Thanks for the help.

Dan Brown

[11] From: Don Hill at NP-BEOL 10/24/95 3:24PM (2238 bytes: 5 ln, 1 fl)
To: Dan McGlothlin at NP-WASO-WR, Don Hill
Subject: Augmentation Services Follow-up
---------- Message Contents ----------

Text item 1:

See attached file Water. This is a follow-up on the phone conversation we last had.

Don Hill
Superintendent, BEOL

Rec'd 10/25/95
Opw

A7021

October 23, 1995

Steve Arveschoug, General Manager
Southeastern Colorado Water Conservation Dist.
P.O. Box 440
Pueblo, Colorado 81002

Dear Sir,

Your letter of September 25th, in regard to the Southeastern Colorado Water Activity Enterprise 1.) to provide Well Augmentation Services and Augumentation Plan and 2.) allocate Fryingpan-Arkansas Project return water is of interest to Bent's Old Fort National Historic Site. This federal facility has three wells actively used (fire protection, agriculutral irrigation and domestic). We have one other well which is inactive at this time but will be used in the future to rehabilitate vegetation in our short grass prairie restoration program. As you can see, we have a interest in the program you have articulated.

We obviously desire to be in compliance and would be intersted in any information or actions to be taken. Because our fire protection water service is tied to well use, we have a concern. We might also mention that the Fort Lyon Canal Company has a waste water ditch across the front of the Historic Site paralleling the southside of Colorado Highway 194. This ditch returns waste water from agriculural lands to the Arkansas River; however, not too effectively since the wetlands have been growing over the past nine years.

Please, keep us posted on changes and requirements. We will be updating the Water Resources Division of the National Park Service in Fort Collins on this issue so that they might advise us.

Sincerely,

Donald C. Hill
Superintendent

[6] From: Dan McGlothlin 12/16/96 7:03PM (2145 bytes: 44 ln)
To: Jeff Hughes
Subject: Re[2]: Bent's Old Fort - replacement water issue
---------- Message Contents ----------
Jeff, Did she say anything about the need for SOL approval or what might be necessary from Ft. Lyons Well Users to make this happen? Dan

Dan,

Marilyn Averill is still the person to contact for this issue. I spoke with both of them at SOL's office last week. Neither one seemed to want to jump up and down to try and take it from the other one. Marilyn said she should be able to handle it if we could wait until after the holidays before she got into it. I did not think that would be a problem. We will most likely have to remind her though. JCH

Jeff: Has Steve replied to your questions? Dan

Steve,

I have a couple of questions for you concerning an issue we have at Bent's Old Fort, an NPS unit located on the Arkansas River just downstream of La Junta, Colorado. This has to do with replacement water requirements for ground water withdrawals as a result of the Kansas v. Colorado decision.

The National Park Service is considering joining a loosely-knit group of well users who have hired a consultant to submit a water replacement plan for their well pumping. The Bent's Old Fort needs to pump ground water to revegetate a portion of the park unit back to native vegetation, and therefore, needs to submit a replacement plan for this pumping to the State of Colorado. This contractor was one of the expert witnesses for the State of Colorado in the court case and is very reasonable in what he would charge us.

1) - Are you the person we should discuss this with? I believe Dan McGlothlin (my supervisor) has already briefly mentioned this issue to Marilyn Averill of your office.

2) - What type of review, if any, would be required by your office for this type of agreement/association?

If you have any questions about this issue, please contact me at (970) 225-3527.

Thank you! Jeff Hughes

[1] From: Dan McGlothlin 12/5/96 9:43AM (1542 bytes: 31 ln)
To: Jeff Hughes
Subject: Re: Bent's Old Fort - replacement water issue
---------- Message Contents ----------
Jeff: Has Steve replied to your questions? Dan

Steve,

I have a couple of questions for you concerning an issue we have at Bent's Old Fort, an NPS unit located on the Arkansas River just downstream of La Junta, Colorado. This has to do with replacement water requirements for ground water withdrawals as a result of the Kansas v. Colorado decision.

The National Park Service is considering joining a loosely-knit group of well users who have hired a consultant to submit a water replacement plan for their well pumping. The Bent's Old Fort needs to pump ground water to revegetate a portion of the park unit back to native vegetation, and therefore, needs to submit a replacement plan for this pumping to the State of Colorado. This contractor was one of the expert witnesses for the State of Colorado in the court case and is very reasonable in what he would charge us.

1) - Are you the person we should discuss this with? I believe Dan McGlothlin (my supervisor) has already briefly mentioned this issue to Marilyn Averill of your office.

2) - What type of review, if any, would be required by your office for this type of agreement/association?

If you have any questions about this issue, please contact me at (970) 225-3527.

Thank you! Jeff Hughes

Dan McGlothlin
Owen Williams
for
Dan B. Kimball

September 3, 1996

L54(2380)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Historic Site

From: Chief, Water Resources Division

Subject: Report for Travel by Dan McGlothlin to La Junta, Colorado on July 8-9, 1996

The attached trip report concerns travel by Dan McGlothlin, Water Rights Branch (WRB), to La Junta, Colorado to conduct a field reconnaissance of wells and consumptive uses of groundwater at Bent's Old Fort National Historic Site (BEOL) and to meet with the Park Superintendent and staff and a representative of the Fort Lyons Well Users Group. Field reconnaissance of water sources was necessary to document locations of ground water sources and uses, preparatory to developing a replacement water plan for Park ground water uses. The meeting, arranged by the Superintendent, was for the purpose of exchanging information on NPS needs and details of the well user group's approved replacement water plan.

If you have any questions, please contact Dan at (970) 225-3536.

Attachment

cc: (all w/attachment)
IMFA - Assistant Director, Natural Resources
Rocky Mountain Cluster Leadership Chair - Nickels (GRTE)
Rocky Mountain Cluster SSO - Wylie
SOL (Denver) - Averill
DoJ (Denver) - DuBois
2380(cc:Mail) - Williams, Jackson, Flora, McGlothlin, Hughes
FNP:DMcGlothlin:mf:8/29/96:S:\WRB\DJM\JULY96TR.RPT

August 30, 1996

L54(2380)
BEOL/Water Rights

Memorandum

To: Chief, Water Resources Division

Through: Chief, Water Rights Branch

From: Dan McGlothlin, Hydrologist

Subject: Trip Report for Travel to La Junta, Colorado on July 7-8, 1996

PURPOSE: The purpose of this trip was to conduct a field reconnaissance of wells and consumptive uses of groundwater at Bent's Old Fort National Historic Site (BEOL) and to meet with the Park Superintend and staff and a representative of the Fort Lyons Well Users Group. Field reconnaissance of water sources was necessary to document locations of water groundwater sources and uses, preparatory to developing a replacement water plan for Park groundwater uses. The meeting, arranged by the Superintendent, was for the purpose of exchanging information about NPS needs and details of the well user group's approved replacement water plan.

ITINERARY: Departed Fort Collins, Colorado on July 7, 1996, and arrived at La Junta the same day. Returned to Fort Collins on July 8, 1996.

CONTACTS: Don Hill, Superintendent - BEOL
Dan Brown, Resource Management Specialist
Joe Dutton, Fort Lyons Well Users Group

DISCUSSION: On July 8, 1996, I met with Hill, Brown and Dutton to discuss the Fort Lyons Well Users Group plan to divert tributary ground water in the Arkansas River Valley. I explained to Dutton that the WRB is assisting the park in preparing plan(s) to replace out-of-priority depletions of groundwater to senior surface water rights and usable stateline flows. The Park was informed by the Division Engineer, Water Division 2, that the use of tributary groundwater[1] must be in accordance with new rules adopted by the State

[1] Tributary ground water, in this instance, is ground water that is delivered at some location and time as Arkansas River flow. Wells using this ground water were determined to be injuring senior Arkansas River water users in a recent court ruling.

Engineer. Thus, the National Park Service (NPS) must discontinue pumping until a replacement (augmentation) water plan is approved by the State Engineer for these uses. The Park has declared two of the three wells (BEOL Wells No. 4 and 6) inactive, these wells will remain so until a replacement water plan(s) for Park uses has been approved. The third well (BEOL Well No. 3) provides essential water for sanitary waste disposal and firefighting uses, and, therefore, is in daily use. The NPS is awaiting a response from the State Engineer on its request for an exemption from the above-referenced rules.

Dutton explained how the Fort Lyons plan functions and indicated that his group would likely accept NPS Well No. 4 into their replacement water plan. This would be possible because the agricultural land formerly irrigated with water pumped from Well No. 4 is within the service area of the Fort Lyons Canal Company (Ditch Company). Also, Dutton explained that NPS is qualified to be a participant in the plan by virtue of its co-ownership of the Ditch Company. Shares in the Ditch Company appurtenant to the irrigated acreage were acquired when title to the property (known as the Day Property) transferred to NPS in 1980. Until recently, pasture crops were flood irrigated with ditch and well water.

Under the Fort Lyons plan, out-of-priority depletions to senior Colorado water rights induced by the pumping of tributary groundwater would be replaced to the Arkansas River with first-use water and return flow water from Fryingpan-Arkansas Project, obtained through the Southeastern Colorado Water Conservancy District. Dutton said there is a one-time membership application fee of $50.00. Members also annually pay a fee (ranging from $6 to 9.00 per acre-foot) based on the quantity of ground water pumped. He indicated that he would provide a complete version of the plan for NPS to review and encouraged me to contact the consultants who developed the Fort Lyons plan for further information.

Hill explained that his objective is to reestablish a landscape within the Park which duplicates the scene of the time of the fort's occupation. The Park consists of acquired agricultural lands so most Park vegetation is exotic. The Park will gradually convert all historically irrigated acreage to native prairie using irrigation water to establish the native vegetation.

Some of the acreage to be converted is located on the south side of the Arkansas River, formerly irrigated from BEOL Well No. 6. Because this area is not within the boundary (i.e. service area) of the Ditch Company, Dutton said this well could not be brought into his group's plan. A different solution for replacement water will be necessary. Hill indicated that, because the Park's resources (i.e. funds and staff) are very limited, the restoration effort will necessarily take several years to complete. The Park's first priority is to complete restoration on the Day Property (with water from Well No. 4).

The use of such ground water must, therefore, be curtailed unless the depletions can be replaced with water from another source.

Following the meeting with Dutton, I visited Wells No. 3 and 4 with Hill and Brown, where I photographed the wells and associated facilities. We also visited a pond adjacent to the Arkansas River where we found remnants of a pump station (within the Park) that suggest it was used to recycle irrigation water onto the cropland. The station appeared to have been unused for several years.

We also discussed a concern Hill raised about responsibility for maintenance of a return flow ditch that runs through the Park adjacent to State Highway 194. The ditch, which frequently spills onto Park land, returns irrigation water to the Arkansas River. The Park has considered relocating the ditch so to divert water away from a wetland area and to avoid flooding other low-lying Park land adjacent to the highway. At the time of our visit, the ditch was running at half to 2/3 capacity and spilling into the wetland. I discussed with Hill the need to review Park obligations under its contract with the Ditch Company. Upon returning to his office, Hill and I reviewed an outdated copy of a Fort Lyons Ditch Company operations manual which states that the water user is responsible for waste water disposal so as to avoid damage to Company facilities, county roads and adjacent farms. Thus, it appears that the responsibility for managing the waste water in this ditch may rest with the NPS. However, a current version of the rules should be obtained to verify this determination. I advised Hill and Brown that WRD may be able to assist with Park wetland management activities.

ACTION ITEMS:

1. Obtain clarifications for replacement of out-of-priority use of BEOL Well No. 4. from author of the Fort Lyons Well Users Group replacement water plan. Responsible Party: McGlothlin. Target Date: Completed.

2. Obtain copies of replacement water plans advanced by other well user groups in the Arkansas Valley. Responsible Party: McGlothlin. Target Date: Completed.

3. Review replacement water plans, and determine whether NPS should participate in these existing plans or prepare its own. Responsible Party: McGlothlin. Target Date: October 31, 1996.

4. Provide recommendation for developing a replacement water plan to the Superintendent. Responsible Party: McGlothlin. Target Date: November 30, 1996.

5. Determine course of action necessary for Well No. 3 upon receiving the State Engineer's response to the NPS's request to designate water used from BEOL Well No. 3 as a commercial-exempt use. Responsible Party: McGlothlin. Target Date: To be determined.

[46] From: Don Hill at NP-BEOL 5/9/96 2:54PM (868 bytes: 17 ln)
To: Dan McGlothlin at NP-WASO-WR
Subject: BEOL and Water Rights Issues Pending
---------- Message Contents ----------
Dan,

My discussion appears to have been with Alan Ward. He recommended writing a letter to the State Engineer to ask to cancel irrigation permit #9082-F and request that a new permit be issued for Well #3 pursuant to decree case #80CW142 stating use as sanitation and fire protection. Said well is exempt from groundwater rulings based on finding of fact #5.

Well #6, southside of Arkansas, can irrigate approximately 55.6 acres.

Sometime you should come to the park for a visit! We have a little hydrological problem with the irrigation wastewater ditch return to the river (aiding and abetting the park's wetland, which used to be marginal pasture).

Don

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY
REFER TO:

L54

Memorandum

To: Dan McGlothlin, Water Resources Division

From: Fran Pannebaker, biotechnician

Subject: Southeastern Colorado Water Conservancy District water Augmentation Plan. Should BEOL participate?

Enclosed is the letter and questionnaire from Southeastern Colorado Water Conservancy District which I faxed Monday, July 17. Don Hill and I both don't believe Bent's Old Fort needs to be included in this plan. I fact, in the future, we will have to find ways to use our water to maintain our rights to it. However, if you think we need to participate, please let me know. I think we should have BEOL added to their information mailing list.

We won't send this questionnaire in until we have your comments. Please contact Fran Pannebaker at (719) 384-2596.

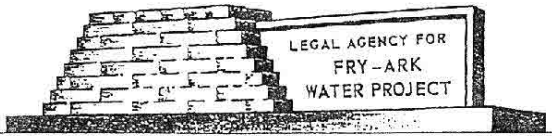
Fran Pannebaker

Fran Pannebaker

Attachments

00-00-0000: letter to the well owner; 1995

SOUTHEASTERN COLORADO
Water Conservancy District



PHONE 719/544-2040 • P.O. BOX 440 • 905 HIWAY 50 WEST • PUEBLO, COLORADO 81002

JUL 12 1995

July 10, 1995

Dear Well Owner:

Mr. Hal Simpson, State Engineer, has announced that he intends to file a set of new Rules regarding groundwater pumping. This comes in part as a result of the U.S. Supreme Court decision in the Kansas vs. Colorado Lawsuit. These new Rules will potentially impact all irrigation, municipal, industrial and commercial well owners tributary to the Arkansas River, and change the current 3/7 rule, which now allows unaugmented pumping for three days each week.

Because the proposed Rule would require full augmentation of groundwater pumping, and potentially have a significant impact on the economy of Southeast Colorado, the Southeastern Colorado Water Conservancy District is studying the possibility of sponsoring an Augmentation Plan for well owners in the District. The S.E. Board of Directors need your input to assist in determining the level of interest for a District sponsored Plan.

The Plan would serve well owners within the boundaries of the S.E. District. Your cost to participate would include an administrative fee assessment and a separate augmentation water fee assessment. The cost of the replacement water to augment your pumping would be based on the depletion rates established in the Final Rules adopted by the State Engineer, and your individual operation. Under the current draft rules we estimate our plan could provide replacement water for pumping of groundwater as a supplemental irrigation supply at $3.00 per acre-foot pumped, for pumping of groundwater as a sole source irrigation supply at $5.00 per acre-foot pumped, for pumping for groundwater for use in a sprinkler irrigation system at $7.50 per acre-foot pumped.

In addition to your augmentation water costs, participants would be charged an administrative fee which would be based on the costs to administer the Plan and the number of wells participating in the Plan. Your response to our questionnaire will help to finalize our analysis of the administrative costs.

We understand that there are many details and questions yet to be addressed, however, it would be helpful if you would take a few minutes to fill out the enclosed response form and return it to the District. Your assistance is needed to identify concerns and provide guidance to the District's Augmentation Plan Study Committee.

Please call if you have questions. We thank you for your effort, and look forward to your response.

Sincerely,

Steve Arveschoug
General Manager

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources

721 State Centennial Building
1313 Sherman Street
Denver, Colorado 80203
Phone (303) 866-3441
FAX (303) 866-4474

RECEIVED
JUL 19 1995
PUEBLO, COLORADO

Roy Romer
Governor

James S. Lochhead
Executive Director, DNR

Daries C. Lile, P.E.
Director, CWCB

MEMORANDUM

Dan McGlothlin
FYI per your request

TO: Members, ARCC

FROM: Hal Simpson Steve Miller for SJH

DATE: July 18, 1995

SUBJECT: Proposed Amended Well Regulations, revised draft

Enclosed please find a July 14, 1995 revised draft of the proposed Amended Rules and Regulations for wells in the Arkansas River Basin. There have been no changes to the introductory material in pages 1-18, so this revision begins with page 19. These revisions are a result of discussions at the June 26 meeting.

I anticipate substantial discussion of the well regulations at our next ARCC meeting (August 7, 1995 in Pueblo) and hope you will have the time to carefully review the revised draft and formulate questions and comments.

A notice and agenda for the August 7 meeting and the draft summary of the June 26, 1995 meeting will be sent to you sometime next week.

SRM/vt

Member06.mem (ARKR)

factors, an owner of a right to divert ground water may file an application for approval of a plan for augmentation with the Water Judge in the event the owner believes the presumptive stream depletions set forth in these Rules are not applicable to the individual facts or the determination of the state and division engineers on the time and place of depletions is incorrect; however, in that event, persons having water rights with senior priorities will have notice and an opportunity to be heard on the amount and timing of depletions and the terms and conditions necessary to prevent injury to such senior priorities.

ORDER OF THE STATE ENGINEER

IT IS ORDERED that the Rules and Regulations governing the use, control, and protection of surface and ground water rights located in the Arkansas River and its tributaries, which rules and regulations became effective on February 19, 1973, shall be amended and replaced by the following rules and regulations which are adopted and approved by the state engineer:

AMENDED RULES AND REGULATIONS

Rule 1. Scope. These rules apply to all rights which divert tributary ground water in the Arkansas River Basin in Colorado except decreed or permitted wells as described in Section 37-92-602; wells located within a designated ground water basin ~~and~~ which withdraw designated ground water as defined in Section 37-90-103(6)(a); and decreed and/or permitted ~~nontributary~~ wells which withdraw

~~nontributary ground water; and permitted wells subject to Section 37-90-137(4).~~

Rule 2. Definitions.

a. The following definitions are applicable to these rules:

i. "Tributary ground water in the Arkansas River Basin" means all underground water tributary to the Arkansas River or other natural streams in the Arkansas River Basin in Water Division 2, except waters referred to in Section 37-90-103(6).

b. "Appropriator(s)" means the owner of a water right and any person having the right to use a water right owned by another, including successors, lessees, contractees, or assigns.

c. The "Kansas Hydrologic-Institutional Model."

d. The "Durbin usable flow method with the Larson coefficients."

e. "Underground water" means "underground water" as defined in Section 37-92-103(11).

f. "Usable Stateline flow."

g. Any other term used in these rules that is defined in Article 90 or 92 is used with the meaning given therein.

Rule 3.1. Post-Compact Ground Water Diversions. Effective April 15, 1996, all diversions of ground water by appropriators having water rights junior to December 14, 1948,

(a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21; or

(b) from surficial aquifers on benches or terraces of the Arkansas River as shown on _____(map to be prepared),

shall be totally discontinued unless the ~~owner of such rights~~ appropriator replaces depletions to usable Stateline flows caused by such diversions in accordance with a plan approved by the state and division engineers in accordance with these Rules.

Rule 3.2. Pre-Compact Ground Water Diversions and Pumping Allowance. Effective April 15, 1996, all diversions of ground water by appropriators having decreed water rights senior to December 14, 1948,

(a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21; or

(b) from surficial aquifers on benches or terraces of the Arkansas River as shown on _____(map to be prepared),

shall be limited to an aggregate total of 15,000 acre-feet per year (January 1 through December 31) unless the ~~owners of such rights~~ appropriator replaces depletions to usable Stateline flows caused by ~~pumping~~ diversions of amounts greater than 15,000 acre-feet per year in accordance with a plan approved by the

state and division engineers in accordance with these Rules. For the purpose of implementing this rule, each appropriator having a decreed right to divert ground water senior to December 14, 1948, from the aquifers listed above shall be allocated ~~20 acre feet as a~~ an annual pre-compact pumping allowance for the purpose of determining depletions to usable Stateline flows. The annual pre-compact pumping allowance shall be determined by multiplying 15,000 acre-feet times a percentage which shall be derived by dividing the decreed capacity of the right by the total decreed capacity of all decreed rights to divert ground water senior to December 14, 1948, from the aquifers listed above. The state and division engineers shall prepare a list of all decreed rights to divert ground water having rights senior to December 14, 1948, from the aquifers listed above by the effective date of these Rules, which list shall set forth the annual pre-compact pumping allowance for each such right. In recognition that pumping by individual wells varied during the pre-compact period, ~~the owner~~ an appropriator having ~~of~~ a decreed right to divert ground water senior to December 14, 1948, from the aquifers listed above may divert more than ~~20 acre feet~~ the annual pre-compact pumping allowance of that right in any one year, provided, that the ~~owner~~ appropriator having ~~of~~ such right is included in a plan approved by the state and division engineers which includes other ~~owners~~ appropriators having ~~of~~ decreed rights to divert ground water senior to December 14, 1948, from the aquifers

listed above, and who agree that collectively they will not ~~pump~~ divert more than ~~20 acre-feet per well~~ their combined annual pre-compact pumping allowances in any one ~~per~~ year unless they replace depletions to usable Stateline flows caused by such additional ~~pumping~~diversions. Notwithstanding this annual pre-compact pumping allowance, appropriators having decreed rights to divert ground water senior to December 14, 1948, from the aquifers listed above shall be subject to all other rules and regulations applicable to diversions of ground water in the Arkansas River Basin, including Rule 3.3.

Rule 3.3. Ground Water Diversions from the Valley Fill Aquifer and Other Specified Aquifers. Effective April 15, 1996, all diversions of ground water ~~by appropriators having water rights junior to April 15, 1884,~~

(a) from the Valley Fill Aquifer as shown on plates 1-4 of Basic Data Release 21;

(b) from surficial aquifers on benches or terraces of the Arkansas River, including the Bessemer Terrace, as shown on _____(map to be prepared);

(c) from alluvial deposits along the Arkansas River from Pueblo to the headwaters of the Arkansas River as shown on _____;

(d) from the alluvium of Fountain Creek and its tributaries as shown on _____; and

(e) from alluvial deposits along tributaries to the Arkansas River ~~within ___ miles of the Arkansas River~~as shown on the attached map,

shall be totally discontinued unless the ~~owner of such rights~~ appropriator having a right to divert ground water from such aquifers replaces depletions which would deprive senior surface rights in Colorado of the amount of water to which said surface rights would have been entitled in the absence of such ground water withdrawals in accordance with: (1) a decreed plan for augmentation approved by the Water Judge in accordance with the procedures of Section 37-92-302 to 37-92-305; or (2) a plan approved by the state and division engineers in accordance with these Rules. Replacement of depletions in accordance with this Rule shall not relieve an appropriator of an obligation to replace depletions to usable Stateline flows pursuant to Rules 3.1 and 3.2.

Rule 3.4. Presumptive ~~Stream~~ Depletions. To provide an easily applied and consistent basis to determine ~~stream~~ depletions for plans approved pursuant to ~~these Rules~~Rule 3.3, the state and division engineers shall be governed by the following:

a. For the purpose of determining ~~stream~~ depletions to ~~Stateline flows and~~ senior Colorado water rights and Stateline flows caused by pumping ground water as a supplemental irrigation supply for flood irrigation, it will be assumed that the ~~stream~~ depletions are thirty percent (30%) of the amount

pumped. The state and division engineers may increase the assumed ~~stream~~ depletions to more than thirty percent, but not more than the assumed ~~stream~~ depletions for sole source irrigation wells in Rule 3.4.b, in the case of ~~water right owners~~ appropriators who ~~have sold a portion of their surface rights~~ pump ground water as a supplemental irrigation supply for flood irrigation but do not have a reasonable surface irrigation supply for the acreage irrigated (for example, appropriators who have sold a portion of their surface rights or do not own sufficient shares in a mutual ditch company to irrigate the acreage irrigated compared to other shareholders in the company) or who ~~own~~ pump ground water to supplement surface rights which are junior to June 8, 1890.

b. For the purpose of determining ~~stream~~ depletions to ~~Stateline flows and~~ senior Colorado water rights and Stateline flows caused by pumping ground water as a sole source of irrigation supply for flood irrigation, it will be assumed that the ~~stream~~ depletions are fifty percent (50%) of the amount pumped.

c. For the purpose of determining ~~stream~~ depletions to ~~Stateline flows and~~ senior Colorado water rights and Stateline flows caused by pumping ground water for use in sprinkler irrigation systems, it will be assumed that the ~~stream~~ depletions are seventy-five percent (75%) of the amount pumped.

d. ~~For the purpose of determining stream depletions to Stateline flows and senior Colorado water rights caused by pumping ground water for municipal use, it will be assumed that the stream depletions are ten percent (10%) of the amount pumped for uses other than lawn watering, and it will be assumed that the stream depletions caused by lawn watering are _____ percent (___%) of the amount pumped during the months of April through October.~~

~~e.~~ For the purpose of determining ~~stream~~ depletions to ~~Stateline flows and~~ senior Colorado water rights and Stateline flows caused by pumping ground water for use as an irrigation supply using other irrigation methods (e.g., drip or surge irrigation) and for other uses (e.g., municipal, commercial, industrial, ~~domestic,~~ etc.), the state and division engineers shall determine the ~~stream~~ depletions based on information submitted by the appropriator and the individual circumstances of each case or establish presumptive ~~stream~~ depletions for such uses.

Rule 3.4~~5~~. Other Diversions of Tributary Ground Water. Effective April 15, 1996, A~~a~~ll ~~other~~ diversions of tributary ground water in the Arkansas River Basin within the scope of these Rules not covered by Rule 3.3 ~~by appropriators having water rights junior to April 15, 1884,~~ shall be totally discontinued unless ~~the owner of such rights~~ an appropriator having a right to divert such ground water replaces depletions which would deprive senior surface rights in Colorado of

the amount of water to which said surface rights would have been entitled in the absence of such ground water withdrawals in accordance with: (1) a decreed plan for augmentation approved by the Water Judge in accordance with the procedures of Section 37-92-302 to 37-92-305, or (2) a plan approved by the state and division engineers in accordance with these Rules~~; however, in recognition that depletions to senior Colorado water rights may be different than the presumptive stream depletions set forth in Rule 4, the state and division engineers shall not be bound by such presumptive stream depletions in approving such plans~~. For the purpose of determining depletions to senior Colorado water rights for plans approved pursuant to this Rule, the state and division engineers may use the presumptive depletions in Rule 3.4 or determine depletions based on site-specific information provided by the appropriator.

Rule ~~5~~4. Return Flows from Fryingpan-Arkansas Project Deliveries and Return Flows from Other Imported or Fully Consumable Water. To provide an easily applied and consistent basis to determine return flows from ~~imported water~~ Fryingpan-Arkansas Project deliveries for plans approved pursuant to these Rules, it will be assumed that return flows from diversions of Fryingpan-Arkansas Project deliveries for irrigation use ~~or waters imported into the Arkansas River Basin~~ are forty percent (40%) of headgate deliveries to ditches diverting from the Arkansas River. Return flows from diversions of other waters imported into the Arkansas

River Basin or other fully consumable waters shall be determined on a case-by-case basis and information provided by the appropriator. ~~; however, in the case of an appropriator who proposes to use return flows from imported water delivered to the Colorado Canal in a plan, the state and division engineers may consider whether the return flows from the Colorado Canal are less than forty percent (40%) of headgate deliveries.~~

Rule ~~6~~5. Determination of Depletions to Usable Stateline Flows. Rules ~~4 and 5~~ 3,4 and 4 notwithstanding, to determine depletions to usable Stateline flows caused by post-compact well pumping, the state and division engineers shall use the Kansas Hydrologic-Institutional Model (HIM) and the Durbin usable flow method with the Larson coefficients, or such other method ~~as~~ approved by the Special Master and/or the United States Supreme Court. ~~Because the HIM was not designed to, and does not, provide accurate estimates of changes of Stateline flows caused by post-compact well pumping by individual wells, t~~The state and division engineers shall equitably allocate depletions to usable Stateline flows caused by post-compact well pumping ~~predicted by the HIM~~ to individual wells, and shall ~~equitably~~ allocate any reductions in depletions to usable Stateline flows resulting from return flows from imported or other reusable waters ~~and return flows from imported waters~~ to which ~~individual~~ appropriators, or ~~groups of~~

~~appropriators~~ their successors, lessees, contractees, or assigns are ~~may be~~ entitled based on their right to use or reuse such return flows. ~~imported waters.~~

Rule ~~7~~6. Requirements for Approval of Plans; Unit Response Functions. ~~The state engineer is the state official charged with the administration of water rights in Colorado and, together with the division engineer for Water Division No. 2, in general is responsible for the enforcement of the terms of the Arkansas River Compact.~~ Based on ~~stream~~ depletions determined in accordance with these Rules ~~and the results of the HIM, if applicable, or such other method as approved by the Special Master and/or the United States Supreme Court~~, the state and division engineers may approve a plan to divert ground water which provides sufficient augmentation water, in amount and time, to replace depletions to senior Colorado water rights caused by such diversions, including future ~~stream~~ depletions which ~~may~~ occur as the result of such diversions, and any and all depletions to usable Stateline flows caused by such diversions. Such plans shall be submitted to the division engineer by February 1 of each year. As a condition to approval of a plan to replace depletions to usable Stateline flows, the state and division engineers may require augmentation water over and above the amount necessary to replace depletions determined in accordance with Rule 3.4 to address situations where sufficient augmentation water may not be available, such as a dry year or underestimating pumping or augmentation water. To provide an easily

applied basis for developing such plans, the state and division engineers shall develop unit response functions for wells diverting from the Valley Fill Aquifer and surficial aquifers along the Arkansas River which may be used to determine the timing and location of stream depletions caused by ~~ground water~~ diversions of ground water for use in such plans. However, in determining the timing and location of stream depletions, the state and division engineers may also utilize ground water models or other methods to calculate the timing and location of stream depletions based on the ~~distance~~ location of the well ~~from the stream~~, the rate of pumping, the use being made of the ground water, and the aquifer's boundaries and characteristics ~~between the point of diversion and the stream~~.

Rule 7. Responsibilities of the State and Division Engineers, Augmentation Entities, and Appropriators Subject to These Rules. Appropriators alone or in concert may submit plans in accordance with these Rules. Water conservancy districts, irrigation districts, mutual or public ditch and reservoir companies, municipalities, or other entities which are governed by a board of directors may initiate and submit plans in accordance with these Rules. Appropriators and such entities shall be responsible for verifying the accuracy of information submitted in accordance with these Rules and for notifying the state and division engineers of any appropriator in a plan approved in accordance with these Rules who is not in compliance with the terms of the plan and for doing all things required by such

plans; however, the state and division engineers shall remain responsible for enforcement of these Rules and the terms of the Arkansas River Compact; and, notwithstanding the submission of a plan by an entity on behalf of an appropriator, should the plan prove insufficient, the appropriator shall ultimately remain responsible to replace depletions to usable Stateline flows and depletions which would deprive senior surface rights in Colorado of the amount of water to which said surface rights would have been entitled in the absence of such ground water withdrawals.

Rule 8. Plans for April 15, 1996, to April 14, 1997, and Thereafter. To provide a reasonable period to allow appropriators to develop plans in accordance with these Rules and to secure the augmentation water necessary for such plans, the state and division engineers may approve a plan to divert ground water for the period April 15, 1996, to April 14, 1997, if the appropriator provides sufficient augmentation water, in amount and time, to replace 60 percent of the depletions to senior Colorado water rights and 60 percent of any depletions to usable Stateline flows caused by such diversions, provided the Special Master and/or the U.S. Supreme Court does not direct otherwise. After April 15, 1997, full replacement of such depletions shall be required and no plan shall be approved which does not provide for full replacement of such depletions in accordance with these Rules.

Rule 9. Review and Revisions of Presumptive ~~Stream~~ Depletions. The presumptive ~~stream~~ depletions established in Rule 3.4 shall be reviewed by the state engineer annually to determine whether the presumptive ~~stream~~ depletions are adequate to prevent ~~depletions to usable Stateline flows and to prevent~~ material injury to water rights in Colorado having senior priorities and depletions to usable Stateline flows, and the presumptive ~~stream~~ depletions shall be revised as the state engineer determines is necessary~~, but in no event shall the presumptive stream depletions be increased by more than two percentage points in any year~~. The state engineer shall publish any revisions to the presumptive depletions in the manner prescribed for changes to rules and regulations.

Rule 10. Conditions to Approval of Plans: Monthly Pumping or Power Records. Any appropriator or entity acting on behalf of appropriators who seeks approval of a plan pursuant to these Rules must furnish records to the division engineer on a monthly basis of the amounts pumped ~~or authorize the power supplier to provide power records to the division engineer on a monthly basis~~ in a manner prescribed by the division engineer. In the case of wells powered by electricity, as a condition to approval of a plan, the appropriator must authorize the power supplier to provide power records to the division engineer on a monthly basis. Further, as a condition to approval of a plan, the appropriator must agree that in the event the appropriator fails to comply with the terms of a plan

approved pursuant to these Rules or fails to furnish or pay for augmentation water necessary for such a plan, the state or division engineer may issue an order to the power supplier to discontinue ~~power~~ energy to the well unless and until the appropriator has complied with the terms of such a plan or furnished or paid for augmentation water necessary for such a plan.

Rule 11. Information Which Must Be Furnished. Any appropriator or entity acting on behalf of appropriators who seeks approval of a plan pursuant to these Rules must furnish the following information: (1) the location of each well in the plan; (2) the structure identification number (if one has been assigned) of each well in the plan; (3) the permit or registration number of each well in the plan; (4) the appropriation date of the water right diverted through each well in the plan; (5) the case number of the proceeding in which the water right diverted through each well in the plan was decreed; (6) the use of each well in the plan; (7) in the case of wells used for irrigation, (a) the method of irrigation (flood, sprinkler, surge, drip, etc.) of each well in the plan, (b) the number of acres irrigated by each well in the plan, (c) whether each well in the plan is used as a supplemental irrigation supply or a sole source of irrigation supply, and (d) if used as a supplemental irrigation supply, (i) the surface rights or the name of the ditch or reservoir company and number of shares, (ii) the number of acres irrigated with the surface rights or shares, and (iii) a description of how the surface rights and

each well in the plan are used; and (8) in the case of wells used for other uses, information sufficient to allow the state and division engineers to determine depletions.

Rule ~~11~~12. Orders, Costs, and Attorneys' Fees. Any appropriator who diverts ground water in violation of these Rules or in violation of the terms of a plan approved by the state and division engineers pursuant to these Rules shall be subject to an order by the state or division engineer issued pursuant to section 37-92-502, 15 C.R.S., and subject to court proceedings and the State's costs, including reasonable attorney fees. Because ground water diversions in violation of these Rules could deplete usable Stateline flows in violation of the Arkansas River Compact or cause material injury to water rights in Colorado having senior priorities, the state or division engineer may enter upon, and order any person to permit the entry upon, private property to plug, lock, or otherwise disable any well which has been used to divert ground water in violation of these Rules or in violation of a plan approved pursuant to these Rules.

Rule ~~12~~13. Tabulation of Power and Pumping Records. To ensure compliance with these Rules, the state and division engineers shall obtain and review ~~power~~ records for wells ~~withdrawing~~ diverting ground water ~~from the aquifers listed in Rule 3.3~~ and shall tabulate pumping by such wells at regular

intervals and shall make such tabulations available for inspection by the public in the office of the division engineer.

Rule ~~13~~14. Severability. If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and unaffected.

Rule ~~14~~15. Effective date. These amended Rules shall become effective April 15, 1996.

(6-287ceb)

[R&R-AM-C.RDL]

00-00-0000: letter to steven witte regarding water well measurements; 1994

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

TAKE PRIDE IN AMERICA

IN REPLY
REFER TO:

L54

December 22, 1994

Water Division 2
Office of the State Engineer
219 W. 5th Street, Room 223
P.O. Box 5728
Pueblo, CO
81002

Steven Witte,

Attached please find the originals of Form 3.2 and Form 4 of the Water Well Measurements for Bent's Old Fort National Historic Site. After reviewing the rules and preforming the necessary tasks we are submitting the above forms. We have not seen any updates as to the use and due dates for these forms. We would like to be kept informed of any necessary updates and revisions to the reporting process.

Contract Carol Maass, Chief of Resources (719) 384-2596 with any questions.

for Donald J. Hill

Donald C. Hill

Denise Newberry DN

Dan McGlothlin

Charles W. Peltee

Owen Williams acting 11/21/94

November 21, 1994

L54(479)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Historic Site

From: Chief, Water Rights Branch

Subject: Review of Form 3.2 **Notice of Power Coefficient Rating** and Form 4 **Notice of Totalizing Flow Meter Installation** Required by the Office of the State Engineer, State of Colorado, Under the Rules Governing the Measurement of Tributary Ground Water Diversions in the Arkansas River Basin and Transmittal of the Judgment and Decree Adjudicating Conditional Water Right for Well #3, Case No. 93CW84 (80CW142)

Pursuant to your memorandum of September 20, 1994, we have reviewed the above captioned forms and find no errors or problems with them. With respect to the deadlines stated in the rules for filing a **Notice of Totalizing Flow Meter Notice** and **Installation of Power Coefficient Rating**, we were informed by the Division Engineer, Colorado Division of Water Resources, (personal communication with Denise Newberry of my staff on October 24, 1994) no deadlines have been set for filing these forms and the State Engineer (SE) will accept these on a voluntary basis. I recommend that the park submit the originals to the SE's Office. In addition, I recommend that the park begin monitoring water use on a monthly basis in accordance with report requirements authorized in Rule 6 of the above captioned rules.

Attached is a copy of the Judgment and Decree Adjudicating Conditional Water Right for Well #3 - Bent's Old Fort National Historic Site (NHS) - Water Division No. 2 - Case No. 93CW84 (80CW142). The National Park Service (NPS) will have until June, 2000 (six years) in which to make full use of the right, thereby establishing a basis for applying to make the conditional right absolute. To make this water right absolute, the park must document its beneficial use of water for firefighting and sanitation purposes. Therefore, if the park conducts fire drills, prescribed burns, or any activity which requires using water in accordance with the conditional right, it needs to document this use.

As referenced above, the State Engineer (SE) has proposed rules which would require users of tributary groundwater to annually file a water use report. This mandatory reporting of annual use will actually benefit the park because these reports would represent one form of proof of beneficial use.

I recommend that the park develop procedures to ensure that water use reports are part of the park's annual operation. Again, the annual water use report will greatly facilitate the task of preparing evidence, for the Water Court's Review, that proves NPS's diligence in exercising the conditional right over the next six years, and verifying the amounts of water used from this well in support of a future application to make the conditional right absolute.

Please let me know how we can assist you in complying with the SE's rules. If you have any questions, please contact Dan McGlothlin of my staff at (303) 225-3536 or me at (303) 225-3505.

Attachment

cc: RMR - Wise
479 - McGlothlin, Pettee

bcc: Docket 3 and 4

FNP:DN:MR:11/21/94/S:\WRD\DENISE\BEOL1.MEM

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY
REFER TO:

TAKE PRIDE IN AMERICA

L54 (479)
BEOL/Water Rights

Memorandum

To: Chief, Water Rights Branch

From: Superintendent, Bent's Old Fort National Historic Site

Subject: Measurement Of Tributary Ground Water Diversion

Attached for your review are the forms required by the Office of the State Engineer, State of Colorado under the Rules Governing the Measurement of Tributary Ground Water Diversions in the Arkansas River Basin.

* Form 3.2 Notice of Power coefficient Rating or Re-rating has been completed for Docket No. BEOL 004 (Day Property Well).

* Form 4 Notice of Totalizing Flow Meter Installation has been completed for Docket No. BEOL 003 (Maintenance Facility Well).

Attached also find a copy of the certification for Mr. Guy Watters who conducted the testing on the wells. Communications with Steve Witte, Division of Water Resources, State of Colorado in Pueblo verified that Mr. Watters signature is appropriate for the Registered Professional Engineer.

We will not submit the originals to the State Engineers Office until we have your review comments. Contact Carol L. Maass (719) 384-2596 with your comments.

Donald C. Hill

Attachments

cc: RMR - Wise

BEOL #3

Form 4

Notice of Totalizing Flow Meter Installation

To be Filed in Compliance with Rules 3 and 4 of the RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

To: Division Engineer, Water Division No. 2
P.O. Box 5728, Pueblo, Co 81002

Owner Information		User Info (If not same as owner)
Name	BENT'S OLD FORT NHS	
Address	35110 HIGHWAY 194 EAST	
City, State, Zip	LA JUNTA, CO 81050	
Phone	(719) 384-2596	

Well Location and Information: BEOL Well #3

SW ¼, SW ¼, Section 14, Township 23, S (NorS), Range 54, W (EorW), 6 PM

Distances from section lines:

_____ feet from the _____ (NorS) Section line and _____ feet from the _____ (EorW) Section line

Well Permit No. 9082F Case or Decree No. 80CW142

Flow Meter Information:

Manufacturer: McCROMETER, Model No. MW504-00

Serial #: 94-4-4497, Date installed July 20, 1994

Meter size: 4", Meter type Flanged Propeller

Meter units: Gal X, Acre feet ____, Acre inches ____, Other ____

Multiplier: 000 ____, 00 X, 0 ____, none ____, (check one)

Beginning meter reading: ____, Number of recording digits 6

Discharge Pipe Diameter (inches) 4" cast iron (ID) & 4" cast iron (OD)

WD ____ ID ____ PERMIT NO. 9082-F DECREE 80CW142 SEC 14 TS 23S RNG 54W

Power Supply & Use:

Power Utility CO Name South East Colorado Power Association

Power Co Account No. 18298

Kilowatt hour meter reading on date of flow meter installation 7056

This well discharges to:-_____open discharge,__X__ sprinkler or pressurized system

Registered Professional Engineer who supervised field calibration: Jerry W. Watters
(Signature) DBA HOLBROOK PUMP CO.(Date)

The above information is true and correct to the best of my knowledge. I agree to the release of information including current transformer factor, potential transformer factor, and electric meter readings to the Colorado Division of Water Resources by my electrical supplier for purposes of determining or verifying water use from the well.

Donald P. Hill
Signature of Owner

10/4/94
Date

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER
Division of Water Resources
Department of Natural Resources
1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

RECORDS
1-303-866-3447

Roy Romer
Governor
James S. Lochhead
Executive Director
Hal D. Simpson
State Engineer

August 31, 1994

Mr. Guy Waters
Holbrook Pump
P.O. Box 155
Cheraw, CO 81030

Re: Well Testing Course

Dear Mr. Waters:

It is my pleasure to inform you that you have passed the Well Testing Course which you attended in Pueblo on the 2nd, 3rd and 4th of August. Therefore, I am approving you as a person qualified to conduct totalizing flow meter verification testing and power coefficient testing for 1994. I look forward to working with you in this important matter.

You will need to submit a request for approval for the 1995 year if you wish to do testing next year. If you have any questions, please contact the Division 2 office in Pueblo.

Sincerely,

Will W. Bust

for Hal D. Simpson
State Engineer

HDS/GVS/jmg

cc: Steve Witte
Certification File

5028.gvs

W.R. Hansen
Dan McGlothlin
Owen Williams

June 22, 1994

L54(479)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Historic Site

From: Chief, Water Rights Branch

Subject: Measurement of Tributary Ground Water Diversion

The Office of the State Engineer (SE), State of Colorado, has promulgated the attached rules (Case No. 94CW12 - Rules Governing the Measurement of Tributary Ground Water Diversions in the Arkansas River Basin) for the administration of waters in the Arkansas River basin. These rules implement procedures for metering and reporting tributary ground water pumped from wells within the basin to comply with the Arkansas River Compact. Also attached for your information are the forms to be used for compliance and reporting.

To assess applicability of the new rules to National Park Service (NPS) water rights at Bent's Old Fort National Historic Site (BEOL), we reviewed BEOL's water rights dockets and discussed the status of park wells with Carol Maass of your staff. We have determined that these rules apply to two park wells.

With respect to the June 15, 1994, deadline stated in the rules for filing a **Notice of Totalizing Flow Meter Installation** or **Notice of Inactive Well,** we were informed by the Division Engineer, Water Division 2 (personal communication with Bill Hansen of my staff on June 14, 1994) that this deadline was suspended due to protest of the rules. A new date for filing these notices has not been set. However, we are recommending that the park proceed immediately in complying with the SE's rules as outlined below. A new deadline for the Notices is expected to be established in the near future.

Based upon our review of the information obtained from the park, we have prepared for your consideration the following assessments and recommendations for complying with the SE's rules.

Docket No. BEOL 0001 and 0002 (referred to by the park as Federal No.'s 1 and 2). These wells are abandoned, no water rights exist. No action required.

Docket No. BEOL 0003 (referred to by park as Federal No. 3, well is located in the park's maintenance facility)

A conditional water right for 150 gallons per minute for sanitation and firefighting purposes exists for this well. In December, 1993, the NPS filed, through Department of Justice, an application for a finding of reasonable diligence for a conditional water right decreed on December 15, 1987 (Case No. 80CW142). On May 25, 1994, the Water Referee, Water Division 2 ruled for the continuation of the conditional right and we are currently waiting for a decree from the Water Court. Once the finding of reasonable diligence has been decreed by the Water Court, NPS will have six years in which to make full use of the right, thereby establishing a basis for applying to make the conditional right absolute. If NPS is unable to make full use of this right and, at the end of six years, wishes to maintain the conditional right, it may apply again for a finding of reasonable diligence.

We understand that Federal No. 3 is inactive and that the park intends to make repairs and/or modifications to the system in the future. If the well is to remain out of service, a **Notice of Inactive Well** (Form 7) should be filed in accordance with the yet to be determined new deadline. Note that the well must be "disconnected from any and all power sources" and not be used until the Division Engineer is notified in writing of intent to re-activate the well. So long as the well remains inactive, this Notice must be refiled by March 1 every consecutive year following the original Notice submittal (refer to Rule 7). As stated in Rule 8, "no water shall be withdrawn from any well not in compliance with the rules except as necessary to determine a power coefficient rating or to install a totalizing flow meter."

As part of repairs and/or modifications of the Federal No. 3 system, and **prior to** re-activation, the well must be equipped with a totalizing flow meter that is installed and maintained according to manufacturer's recommendations. The totalizing flow meter must be installed in accordance with Rules 3.1, 3.3, 3.4 and 4. Included in these rules is the requirement that the meter, when installed, be properly field calibrated under the supervison of a registered professional engineer. Should the well become active at any time, the Division Engineer must be notified immediately with a **Notice of Totalizing Flow Meter Installation** (Form 4).

If the Park prefers to utilize power consumption measurements for documenting and reporting water use, rating procedures must be conducted under the supervision of a registered professional engineer and in accordance with requirements of Rule 3.2, 3.3 and 4. A **Notice of Power Coefficient Rating or Re-Rating** (Form 3.2) must be filed by October 1, 1994 (this deadline has not been suspended, according to the Division Engineer). Note that the SE requires a stand-alone power meter connection to the well, i.e. the meter may not service other power connections, for the purpose of reporting water pumped using the power coefficient method.

After the well is reactivated, a water use data report must be submitted no later than January 31, 1995, and every consecutive year thereafter (refer to Rule 6). The reporting period is November 1 to October 31. The report requires monthly amounts of water pumped. Depending on the method of measurement of water withdrawn, either Form 6.1 or 6.2 is to be used.

A benefit derived from filing annual water data reports for Federal No. 3 (if the well is reactivated within the next six years) is the establishment of a verifiable record of water pumped for sanitation and firefighting purposes in accordance with NPS's conditional water right. The annual water use report should greatly facilitate the task of preparing evidence, for the Water Court's review, that proves NPS's diligence in exercising the conditional right over the next six years, and verifying the amounts of water used from this well in support of a future application to make the conditional right absolute.

Docket - BEOL 0004 (irrigation well referred to by the park as the Day Property Well)

The NPS has an absolute underground water right for the Day Property Well with a priority date of January 30, 1954. The United States acquired title to the Alma F. Day property in 1972, which property included an irrigation well with a decreed right (Case No. W-3016) for irrigation purposes in the amount of 720 gallons per minute (not to exceed 153 acre-feet in one calendar year). It is our understanding that the park intends to use this well within the next few weeks for the purpose of irrigating and restoring native prairie grassland.

This being the case, the Day Property Well must be equipped with a totalizing flow meter, or be rated to determine a power coefficient. As stated earlier, depending on which measurement method you choose, the appropriate Notice must be filed with the Division Engineer. We recommend a totalizing flow meter be installed and calibrated, as soon as possible, under the supervision of a registered professional engineer in accordance with Rule 3.1. Again, an annual report of water use must be submitted to the Division Engineer no later than January 31, 1995, and every consecutive year thereafter.

Docket - BEOL 0005 (livestock well referred to by the park as the Harmon Property Well)

This well is used to provide livestock water. Permit No. 156062-A was issued December 13, 1989 for the watering of livestock on a farm or ranch. The well is administered by the SE as an exempt well (as described in the statutes, wells not exceeding 15 gallons per minute of production for the watering of livestock on a farm or ranch are exempt from administration). We conclude that the special rules governing the measurement of tributary ground water diversions **do not** apply to this well.

As soon as we learn of the new deadline for filing a **Notice of Inactive Well** or **Notice of Totalizing Flow Meter Installation**, we will inform you. The appropriate forms for Federal Nos. 3 and 4 should be completed by the park as soon as possible. The Water Rights Branch will be happy to assist you in reviewing the completed forms prior to submittal. We would like copies of all forms submitted, including annual reports of pumpage, to maintain current water right dockets for each well.

Please let me know how we can be of assistance to you in complying with the SE's rules. If you have any questions regarding these recommendations, please contact Dan McGlothlin of my staff at (303) 225-3536 or me at (303) 225-3505.

Owen Williams

Attachments

cc: RMR - Wise (all w/o attachments)
479 - McGlothlin, Pettee, Johns, Newberry

FNP:DMcglothlin:CC:6-27-94:(303)-225-3536:S:\WRB\BEOLFORM.MEM

6/14/94

Bill Hansen
water Rights, NPS

Bent's Old Fort NHS Wells

Federal #1 - abandoned

Federal #2 - abandoned

Federal #3 - See attached
this is the well in the Maintenance Building
used for Non-potable water
- File shows latest correspondence December 1, 1993
on Water Division No. 2 Case No. 80CW142
June 1, 1994 Case No. 93CW84

Livestock Well on Southside - attached 6 pages (not metered)
(heater & pump on same meter)

Day Property Well (RF 653) - attached 7 pages
(separate electric meter)

Federal #3, the Livestock Well on the Southside and the Day Property Well would all be utilized in the future

Carol L Maass
(719) 384-2597

Howerton Water Wells from Las Animas, Colorado. The State of Colorado granted a permit to use the ground water (permit #9082-F, copy attached) on March 31, 1965.

CASE NO. 94CW12 - RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

RULES GOVERNING THE MEASUREMENT OF TRIBUTARY GROUND WATER DIVERSIONS LOCATED IN THE ARKANSAS RIVER BASIN

AUTHORIZATION

In order for the State Engineer and Division Engineer for Water Division No. 2 to properly administer the waters of the Arkansas River basin and to comply with the Arkansas River Compact, it has become necessary to require the metering of tributary wells within the basin. The State Engineer's authority to promulgate these rules is based on section 37-80-104, C.R.S., which requires the State Engineer to make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments; section 37-92-501, C.R.S., which authorizes the State Engineer to adopt rules and regulations to assist in the administration, distribution and regulation of the waters of the state in accordance with the constitution of the state of Colorado, the provisions of Article 92 (The Water Rights Determination and Administration Act of 1969) and other applicable laws; and section 37-92-502(5), C.R.S., which authorizes the State Engineer to order any owner or user of a water right to install and maintain at such owner's or user's expense necessary meters, gauges, or other measuring devices and to report at reasonable times to the appropriate Division Engineer the readings of such meters, gauges or other measuring devices.

ORDER OF THE STATE ENGINEER

IT IS ORDERED that the following rules are adopted and approved by the State Engineer.

Rule 1. **Scope.** These rules are applicable to all wells located in the Arkansas River basin except decreed and/or permitted wells as described in section 37-92-602, C.R.S.; wells located within a designated ground water basin; decreed and/or permitted nontributary wells; permitted wells subject to sections 37-90-137(4), C.R.S.; and wells permitted and decreed for not more than 50 gallons per minute that are part of a judicially-approved plan for augmentation.

Rule 2. **Definitions:**

A. The following definitions are applicable to these rules governing the measurement of tributary ground water diversions located in the Arkansas River basin:

1. **"Compound or complex system"** means any well for which the method of delivery varies during a single reporting year (November 1 to October 31) between open discharge, sprinkler system or gated pipe or where more than one electrical device is operated from the same electric power meter.

2. **"Inactive well"** means any well that is not in use and is disconnected from a power source.

3. **"Power coefficient"** means the amount of electrical energy expressed as kilowatt hours (KWH) consumed in pumping one acre-foot of water.

B. Any other term used in these rules that is defined in Article 90 or 92 is used with the meaning given therein.

Rule 3. All wells within the scope of these rules shall either, **by June 15, 1994,** be equipped with a totalizing flow meter that is installed and maintained according to manufacturer's specifications and recommendations or, **by October 1, 1994,** be rated to determine a power coefficient.

3.1 When a totalizing flow meter is used, it shall be the owner's responsibility to keep the meter in acceptable operating condition. The State Engineer may adopt standards and specifications for totalizing flow meters and the installation, repair, and maintenance of meters. As a minimum, totalizing flow meters shall be: properly field calibrated under the supervision of a registered professional engineer when installed; contain sufficient recording digits to assure that "roll over" to zero does not occur within three years; and maintained by the well owner so as to provide a continuous, accurate record of withdrawals. If the meter is not operational, the well shall not be pumped until a working meter is installed or a specific backup water measurement program approved by the State Engineer is put into effect. Totalizing flow meters are required to be recalibrated in the field under the supervision of a registered professional engineer every four years after the date of original installation and flow meters in existence as of the effective date of these rules shall be certified as in calibration under the supervision of a registered professional engineer by June 15, 1995, and recalibrated every four years thereafter. The Division Engineer shall be notified in writing of the date of and person supervising the recalibration.

3.2 The State Engineer may adopt standards and specifications for power coefficient rating. As a minimum, power coefficients shall: be determined utilizing rating procedures conducted under the supervision of a registered professional engineer and approved by the State Engineer; be conducted when the pumping system has stabilized, i.e., both operating pressure and pumping drawdown have not changed more than 10% in the last hour; have been rated on or after April 1, 1992; and be updated through re-rating at least every four years. The Division Engineer shall be notified in writing of re-rating results, the date of and person supervising the re-rating.

3.3 If the well(s) are part of a complex or compound system, or if the pump is driven by internal combustion means, the owner or user of the well must utilize the totalizing flow meter method and the provisions of rule 3.1 apply.

3.4 All flow measuring equipment utilized in field calibration or rating of wells must be accurate within plus or minus 5%.

Rule 4. All owners of wells within the scope of these rules who choose to install totalizing flow meters shall provide notice in writing to the Division Engineer for Water Division No. 2 **by June 15, 1994,** stating: the name and address of the owner of the well(s); the name and address of the user of the well(s) (if different than the owner); the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); the meter manufacturer; the meter model number; the meter size; the meter serial number(s); the volumetric units (gallons or acre-feet); the power utility company name (if applicable); the power company account number (if applicable); the kilowatt hour meter reading on the date of installation (if applicable); the beginning totalizing flow meter reading; and the date of installation. Notification to the Division Engineer shall be on a form prescribed by the State Engineer.

Rule 5. All owners of wells within the scope of these rules who choose to utilize the power coefficient method shall provide notice in writing to the Division Engineer for Water Division No. 2 **by October 1, 1994,** stating: the name and address of the owner of the well(s); the name and address of the user of the well(s) (if different than the owner); the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); the power meter serial number(s); the power utility company name; the power company account number; the power coefficient; the date of power coefficient rating; the kilowatt hour meter reading on the date of the power coefficient rating; the name and address of the registered professional engineer supervising the power coefficient rating; the current transformer (C.T.) factor (if applicable); and the potential transformer (P.T.) factor (if applicable). Notification to the Division Engineer shall be on a form prescribed by the State Engineer.

Rule 6. **Data Submittal.**

6.1 Data as to the monthly amounts of water pumped shall be submitted to the Division Engineer no later than **January 31, 1995 and every year consecutive year thereafter.** The reporting period is from November 1 to October 31 (coinciding with the Arkansas River compact year).

6.2 For the year 1994, owners using the power coefficient method shall calculate the amount of water pumped using monthly power records from the period of November 1, 1993 through October 31, 1994, in order to obtain a complete year of record.

6.3 Data shall be submitted on forms prescribed by the State Engineer. Such forms shall require owner consent to release power company data to the Division Engineer.

Rule 7. Inactive wells are excluded from these rules provided a sworn notarized affidavit is filed with the Division Engineer by **June 15, 1994, and March 1, every consecutive year thereafter,** stating the status of the well as inactive. Such sworn statement shall include: the name and address of the owner of the well(s); the name and address of the user of the well(s) (if different than the owner); the well permit number(s); the decree or case number(s); the legal description of the location of the well(s); and a statement that the well(s) are disconnected from any power source. Should the well(s) become active at any time, the owner shall immediately notify the Division Engineer and all aspects of these rules shall apply. Notification to the Division Engineer shall be on a form prescribed by the State Engineer.

Rule 8. No water shall be withdrawn from any well not in compliance with these rules except as necessary to determine a power coefficient or to install a totalizing flow meter.

Rule 9. Failure to comply with any of these rules will subject the well owner and/or user to court proceedings and the state's costs, including reasonable attorneys fees, associated with the enforcement of these rules pursuant to section 37-92-503, C.R.S.

Rule 10. If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force and unaffected.

Rule 11. If the strict application of any provisions of these rules would cause unusual hardship, upon written request, the State Engineer may grant a variance under these rules.

IT IS FURTHER ORDERED that these rules shall become **effective on the 15th day of June, 1994,** and shall remain in effect until amended as provided by law. Any person desiring to protest these rules may do so in the manner provided in section 37-92-501, C.R.S. Any such protest to these rules must be filed by the end of the month following the month in which these rules are published.

Dated this 29th day of March, 1994

Signed: Hal D. Simpson, State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203

(Rules, 3 pages)

37-90-137(4)

(4) (a) In the issuance of a permit to construct a well outside a designated ground water basin and not meeting the exemptions set forth in section 37-92-602 to withdraw nontributary ground water or any ground water in the Dawson, Denver, Arapahoe, Laramie-Fox Hills, and Dakota aquifers, the provisions of subsections (1) and (2) of this section shall apply.

(b) (I) Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years.

(II) Subject to the provisions of subsections (1) and (2) of this section, the amount of such ground water available for withdrawal shall be that quantity of water, exclusive of artificial recharge, underlying the land owned by the applicant or underlying land owned by another:

(A) Who has consented in writing to the applicant's withdrawal; or

(B) Whose consent exists by virtue of a lawful municipal ordinance or a quasi-municipal district resolution in effect prior to January 1, 1985, and which consent was the subject of a water court application for determination of nontributary ground water rights filed by the affected municipality or quasi-municipal district prior to January 1, 1985; or

(C) Who shall be deemed to have consented to the withdrawal of ground water pursuant to the provisions of subsection (B) of this section.

(c) Material injury to vested nontributary ground water rights shall not be deemed to result from the reduction of either hydrostatic pressure or water level in the aquifer.

(d) The annual amount of withdrawal allowed in any well permits issued under this subsection (4) shall be the same as the amount determined by court decree, if any, and may, if so provided by any such decree, provide for the subsequent adjustment of such amount to conform to the actual aquifer characteristics encountered upon drilling of the well or test holes.

(5) Any right to the use of ground water entitling its owner or user to construct a well, which right was initiated prior to July 6, 1973, as evidenced by an unexpired well permit issued prior to July 6, 1973, or a current decree, shall not be subject to the provisions of subsection (4) of this section.

(6) Rights to nontributary ground water outside of designated ground water basins may be determined in accordance with the procedures of sections 37-92-302 to 37-92-305. Such proceedings may be commenced at any time and may include a determination of the right to such water for existing and future uses. Such determination shall be in accordance with subsections (4) and (5) of this section. Claims pending as of the effective date of this act which have been published pursuant to section 37-92-320 in the resume need not be republished.

(7) In the case of dewatering of geologic formations by removing nontributary ground water to facilitate or permit mining of minerals:

(a) No well permit shall be required unless the nontributary ground water being removed will be beneficially used; and

(b) In the issuance of any well permit pursuant to this subsection

37-92-602

PART 6

APPLICATION OF ARTICLE

37-92-601. Disposition of pending proceedings - showings of reasonable diligence.-- All proceedings pending on June 7, 1969, for the adjudication of water rights, for a change of water rights, or for the disposition of other matters which are of the type to be handled by proceedings provided for in this article shall be concluded by June 1, 1972, in accordance with the provisions of the statute under which they are instituted, and priorities and changes of water rights which are determined in such pending proceedings shall be integrated by the various division engineers in their current records and shall be included in tabulations prepared by the division engineers pursuant to the provisions of this article. Any such proceedings which are not concluded by June 1, 1972, shall be heard from that time on to completion by the water judge for the division in which the proceedings are pending, under procedures provided for in this article; except that the chief justice of the supreme court may provide that a judge, other than the water judge, shall complete proceedings in specific cases. Persons who have filed statements of claim in such pending proceedings may withdraw therefrom at any time and file applications or otherwise proceed in accordance with this article. Showings of reasonable diligence under existing conditional decrees or conditional decrees entered in such pending proceedings shall be made in accordance with the provisions of this article in the year 1972 and every fourth year thereafter in even-numbered years, but the time shall be tolled during any period in which the water judge finds the applicant was prevented from filing by reason of conditions beyond his control. Applications for quadrennial findings of reasonable diligence shall be filed with the water clerk pursuant to section 37-92-302 (1) not later than June 1 of each such years. When and if a conditional water right awarded in any such conditional decree becomes a water right pursuant to the procedures in this article, the priority awarded such water right shall be the same as if the proceedings in which the conditional decree was entered had remained open until the final determination with respect to such water right.

37-92-602. Exemptions - presumptions.--
(1) The provisions of this article, except for sections 37-92-201 and 37-92-202, shall not be applicable to:

(a) Designated ground water basins as defined and established by article 90 of this title;

(b) Wells not exceeding fifteen gallons per minute of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and the irrigation of not over one acre of home gardens and lawns, but not used for more than three single-family dwellings;

(c) Wells not exceeding fifteen gallons per minute of production and used for drinking and sanitary facilities in individual commercial businesses;

(d) Wells to be used exclusively for fire-fighting purposes if said wells are capped, locked, and available for use only in fighting fires; and

(e) Wells not exceeding fifty gallons per minute which are in production as of May 22, 1971, and were and are used for ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, and the irrigation of not over one acre of gardens and lawns.

(2) With respect to applications filed prior to May 8, 1972, the state engineer shall issue a permit for the construction of wells specified in subsection (1) of this section without regard to the provisions of section 37-90-137 (2) and (3) upon submission of an application which shall be accompanied by a fee of five dollars. It is the legislative intent that the exemption in subsection (1) of this section is for an applicant to obtain a water supply for his own use.

(3) (a) Wells of the type described in paragraphs (b) to (d) of subsection (1) of this section may be constructed only upon the issuance of a permit in accordance with the provisions of this subsection (3). A person desiring to use such a well shall submit an application for a permit accompanied by a fee of twenty dollars for an application under paragraph (c) of this subsection (3) and a fee of sixty dollars for an application under paragraph (b) of this subsection (3).

(b) (I) With respect to applications filed on and after May 8, 1972, the state engineer shall first make a determination as to whether or not the exercise of the requested permit will materially injure the vested water rights of others or any other existing well, subject to the provisions of subparagraph (II) of this paragraph (b). If the state engineer finds that the vested water rights of others or any other existing well will be materially injured, he shall deny the permit. Otherwise, the permit shall be issued, and it shall set forth such conditions for drilling, casing, equipping, and using the well as are reasonably necessary to prevent waste, pollution, or material injury to existing rights. The state engineer shall endorse upon the application the date of its receipt, file and preserve such application, and make a record of such receipt and the issuance of the permit in his office, so indexed as to be useful in determining the extent of the uses made from various ground water sources.

(II) If a permit is sought by a user for a well exempted under paragraph (b) of subsection (1) of this section which will be the only well on a residential site, which well will be used solely for household purposes in a single-family dwelling not including irrigation or will be the only well on a tract of land of thirty-five acres or more and will be used solely for the purposes specified in paragraph (b) of subsection (1) of this section, and the return flow from such uses shall be returned to the same stream system in which the well is located, there shall be a presumption that there will not be material injury to the vested water

rights of others or to any other existing well resulting from such well, which presumption may be rebutted by evidence sufficient to show such material injury.

(III) If the application is for a well, as defined in subparagraph (II) of this paragraph (b), which will be located in a subdivision, as defined in section 30-28-101 (10), C.R.S. 1973, and approved on or after June 1, 1972, pursuant to article 28 of title 30, C.R.S. 1973, for which the water supply plan has not been recommended for approval by the state engineer, the cumulative effect of all such wells in the subdivision shall be considered in determining material injury.

(c) If any person wishes to relocate an existing well of the type specified in paragraphs (b) to (e) of subsection (1) of this section, he shall file an application pursuant to this subsection (3) for the construction of a well and shall state in such application his intent to abandon the existing well which is to be relocated. If such relocated well will not change substantially the usage of water which can lawfully be made by means of the existing well, a permit to construct and use the relocated well shall be issued, and the existing well shall be abandoned within ninety days after the completion of the relocated well.

(d) Wells for which permits have been granted or may be granted must be constructed within two years after the permit is issued which time may be extended for successive years at the discretion of the state engineer for good cause shown.

(e) The state engineer shall act upon an application filed under this subsection (3) within forty-five days after such filing and shall support his ruling with a written statement of the basis therefor, and the provisions of article 4 of title 24, C.R.S., shall apply.

(f) Any person aggrieved by a decision of the state engineer granting or denying an application filed under this subsection (3) may within thirty days after such decision file a petition for review with the water clerk of the water division in which the well is located. Upon receipt of such petition, the water judge of said water division shall promptly conduct such hearings as are necessary to determine whether or not the decision of the state engineer shall be upheld. In any case in which the state engineer's decision is reversed, the water judge shall order the state engineer to grant or to deny the application, as such reversal may require, and may specify such terms and conditions as are appropriate. Appeals from any decision of the water judge shall be made as in other civil actions.

(4) Notwithstanding the provisions of the introductory portion of subsection (1) of this section, water rights for wells of the type specified in paragraphs (b) to (e) of said subsection (1) may be determined pursuant to sections 37-92-302 to 37-92-306; except that the original priority date of any such well may be awarded regardless of the date of application therefor.

(5) Any wells exempted by this section which were put to beneficial use prior to May 8, 1972, and any wells exempted by section 37-90-105 not of record in the office of the state engineer may be recorded in that office upon written application, and payment of a processing fee of sixty dollars, and permit approval. The record shall include the date the water is claimed to have been appropriated or first put to beneficial use.

SECTION 9. Appropriation.-- In addition to any other appropriation, there is hereby appropriated, out of any moneys in the ground water management cash fund not otherwise appropriated, to the department of natural resources for allocation to the state engineer, for the fiscal year beginning July 1, 1987, the sum of two hundred ninety-seven thousand nine hundred dollars ($297,900), or so much thereof as may be necessary, for the implementation of this act.

March 7, 1994

L54(479)
BEOL/Water Rights

Judy Tetreault
U.S. Department of Justice
Environment and Litigation Division
General Litigation Section
999 - 18th St., Suite 945
Denver, Colorado 80202

Re: Application for Finding of Reasonable Diligence -
Bent's Old Fort National Historic Site -
Case No. 93CW84(80CW142) - Water Division 2

Dear Ms. Tetreault:

Pursuant to your telephone conversation on March 1, 1994 with Dan McGlothlin of my staff, enclosed is a check for **$80.00**, for the filing fee associated with the above-captioned application.

Please acknowledge receipt of the check by completing the following information and returning it to this office.

Received payment on _____

Check Number _____

Payment acknowledged by _____

In submitting this payment to the Water Court, please request that the Water Court provide this office with a copy of receipt of payment in the enclosed envelope. If you have any questions, please contact Dan McGlothlin of my staff at (303) 225-3536.

Sincerely,

Owen R. Williams
Chief, Water Rights Branch

Enclosures

cc: BEOL - Superintendent
RMR - Wise
SOL (Denver) - Canaday
479 - McGlothlin, Newberry
bcc: BEOL Docket 003

00-00-0000: copy of check regarding reasonable diligence

DENISE NEWBERRY 11-91 82-7026/3070 308

~~926 W. Oak~~ 1201 Oak Ridge Dr. #250
FT. COLLINS, CO ~~80521-2515~~ 80525

3/3 19 94

PAY TO THE ORDER OF Clerk, Water Division 2 $ 80.00

Eighty DOLLARS

KEY BANK Key Bank of Colorado
300 W. Oak
Fort Collins, Colorado 80522
(303) 482-3218

MEMO BEDL Appl. fee

Denise Newberry

⑆307070267⑆00102503531⑈ 0308

United States Department of the Interior

OFFICE OF THE SOLICITOR
Rocky Mountain Region
P.O. Box 25007
Denver Federal Center
Denver, Colorado 80225

December 27, 1993

NPS.RM.2529

James DuBois, Attorney
U.S. Department of Justice
Environment and Natural Resources Division
999 - 18th Street, Suite 945
Denver, CO 80202

RE: Filing of Application For Finding of Reasonable Diligence - Bent's Old Fort National Historic Site (NHS) - Case No. 80CW142 - Water Division 2

Dear James:

Pursuant to your request, enclosed is a revised application for the above-captioned subject. Also, enclosed is a copy of a separate verification page as requested. The following which were sent with the first request should be filed with the application.

1. Findings of Fact, Conclusions of Law and Decree - Case No. 8CW142, Water Division No. 2 - 12-15-87. This is the decree for the Conditional Water Right for this Well No. 3.

2. Affidavit of Donald C. Hill, Superintendent, Bent's Old Fort NHS dated 12-08-93. This explains why water right hasn't been used for fire fighting and why the well was inoperable since July 15, 1993, but will be made operational in January of 1994. It also describes the other uses made of the well when operating.

3. Flow records for the well for the months of August, September, and November of 1993.

4. Copy of map showing the location of Well No. 3 in Bent's Old For NHS.

The following people are available as witnesses:

1. Donald C. Hill, Superintendent, Bent's Old Fort NHS, for questions pertaining to established water uses and park operations.

2. Steve Maas, Chief of Maintenance, Bent's Old Fort NHS, for questions pertaining to the operation and maintenance of Well No. 3 water system and how much water is being used.

Both can be reached at:

Bent's Old Fort NHS
35110 Highway 194 East
La Junta, CO 81050-9523
(719) 384-2596

Sincerely,

Ralph O. Canaday
Attorney

Enclosure

cc: NPS, WRD, 1201 Oak Ridge Drive, Suite 250, Fort Collins, CO 80525 Attn: Don McGlothlin

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

CASE NO. 80CW142

APPLICATION FOR FINDING OF REASONABLE DILIGENCE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF: The United States of America, National Park Service, in Otero County.

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1. Names, Addresses and Telephone Numbers of Applicants:

United States of America, National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525
(303) 225-3506

2. Name of structure: (well, spring, ditch, reservoir)
National Park Service Bent's Old Fort Well No. 3

3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:

A. Date of Original Decree: 12/15/87 Case No. 80CW142 Court Div.2
B. Location: SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in Otero County, Colorado
C. Source: Groundwater tributary to the Arkansas River
D. Appropriation Date: July 31, 1965 Amount: 140 gpm (0.312cfs)
E. Use: Sanitary disposal and fire protection
F. Depth: (if well) 50 feet

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: (add additional sheets if necessary)

The National Park Service (NPS) operates and maintains Bent's Old Fort Well No. 3 for the purposes of sanitary disposal and fire protection. The well has supplied non-potable water to 5 sanitation facilities, 5 building stand pipes, 2 fire hydrants and 2 hose connection within the Bent's Old Fort National Historic Site. The NPS expended approximately 2,300 dollars in appropriated funds in the periods 10/90 to 9/91 and 10/92 to 9/93 for general maintenance of the Well No. 3 system. In 1994, NPS will expend additional funds for maintaining and improving the Well No. 3 system.

There has been no need to utilize water from Well No. 3 for fire suppression or other emergency fire protection purposes at Bent's Old Fort National Historic Site. There are no records to demonstrate a

completion of the appropriation and application of water for fire protection purposes. In 1993, Well No. 3 was utilized to provide water for a prescribed fire exercise. The well has been used to supply water to 4 water closets, one urinal, 5 building stand pipes, 2 fire hydrants and 2 hose connections.

5. If claim to make absolute - Not Applicable
Water applied to beneficial use:
A. Date: _____ Amount: _____ Use: _____

B. Description of place of use where water is applied to beneficial use:

**PLEASE NOTE: The owner of any conditional water right shall notify the clerk of the court that decreed the conditional water right of any change in mailing address.

_____
Signature of Applicant (or Attorney)

_____
Address of Applicant (or Attorney

Telephone No._____

Attorney Registration No._____

00-00-0000: fax of verification on reading and verifying content of application

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

I, Daniel J. McGlothlin, state under oath that I have read this application and verify its content.

Daniel J. McGlothlin
Applicant

Subscribed under oath before me this 20 day of Dec., 1993.

My commission expires: May 13, 1996

Lynda Williams
Notary Public

United States Department of the Interior

OFFICE OF THE SOLICITOR
Rocky Mountain Region
P.O. Box 25007
Denver Federal Center
Denver, Colorado 80225

December 13, 1993

NPS.RM.2529

U.S. Department of Justice
Environment and Natural
Resources Division
999 -18th Street
Suite 945
Denver, CO 80202

Re: Filing of Application For Finding Of Reasonable Diligence -Bent's Old Fort National Historic Site - Case No. 80CW142 - Water Division 2

Dear Sir or Madam:

Enclosed is an Application For Finding Of Reasonable Diligence for Bent's Old Fort National Historic Site (BEOL) verified by Owen R. Williams. On December 15, 1987, in Case No. 80CW142, the National Park Service (NPS) was decreed appropriative water rights for fire protection and sanitation disposal purposes with a priority date of July 31, 1965. The decreed amounts of water use are 10 gallons per minute (gpm) absolute and 140 gpm conditional for BEOL Well No. 3. The Water Court has given notice to the United States that an Application For Finding of Reasonable Diligence or To Make Absolute a Conditional Water Right is required to be filed. The NPS desires to file an application for finding of reasonable diligence in Case No. 80CW142.

The attached application requests a finding of reasonable diligence on the basis that there has been no requirement for utilizing the 140 gpm for fire protection purposes. The system is being used for sanitary disposal and other maintenance purposes, in accordance with the existing absolute right decreed in Case No. 80CW142. The enclosed documents show that the NPS has maintained the well and associated water distribution system.

Enclosed for your information and use are a Department of Justice Memo of October 13, 1993 and court notice, summary report, application for finding of reasonable diligence (hard copy and electronic file copy, Wordperfect 5.1), copies of the decree and selected information applicable to the application, and memo of December 1, 1993 and affidavit for Donald C. Hill, Superintendent.

In the event witnesses are needed, Donald C. Hill, the superintendent, and Steve Maas, chief of maintenance, are available.

Sincerely,

Ralph O. Canaday

Ralph O. Canaday
Attorney

Enclosures

cc: National Park Service, Water Resources Division, 1201 Oak Ridge Drive, Suite 250, Fort Collins, CO 80525
Attention: Dan McGlothlin

CASE No. 80CW142, Application for Finding of Reasonable Diligence for Water Rights at Bent's Old Fort National Historic Site.

INFORMATION TO BE USED FOR COMPLETING ITEM 4. OF APPLICATION

The National Park Service (NPS) operates and maintains Bent's Old Fort Well No. 3 for the purposes of sanitary disposal and fire protection. The well has supplied non-potable water to 5 sanitation facilities, 5 building stand pipes, 2 fire hydrants and 2 hose connections within the Bent's Old Fort National Historic Site. The NPS expended approximately 2,300 dollars in appropriated funds in the periods 10/90 to 9/91 and 10/92 to 9/93 for general maintenance of the Well No. 3 system. In 1994, NPS will expend additional funds for maintaining and improving the Well No. 3 system.

There has been no need to utilize water from Well No. 3 for fire suppression or other emergency fire protection purposes at Bent's Old Fort National Historical Site. There are no records to demonstrate a completion of the appropriation and application of water for fire protection purposes. In 1993, Well No. 3 was utilized to provide water for a prescribed fire exercise.

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

IN REPLY REFER TO:

December 9, 1993

L54(479)
BEOL/Water Rights

Memorandum

To: Regional Solicitor, Rocky Mountain Region
Attn: Ralph Canaday

Through: Dan B. Kimball, Chief, Water Resources Division

From: Owen R. Williams, Chief, Water Rights Branch

Subject: Preparation of a Litigation Report For Water Rights at Bent's Old Fort National Historic Site, Water Division 2, Colorado

A conditional water right awarded by Water Division 2, in Case No. 80CW142 for a well at Bent's Old Fort National Historic Site (BEOL), is subject to a diligence showing. The National Park Service (NPS), desires to continue this right as a conditional right. The application for finding of reasonable diligence must be submitted, by the Department of Justice (DoJ), to the Colorado District Court for Water Division 2, no later December 30, 1993.

The attached materials, listed below, are provided to assist in the preparation of a litigation report:

- DoJ Memorandum of October 13, 1993 and court notice
- Summary report
- Draft application for finding of reasonable diligence (hard copy and electronic file copy, Wordperfect 5.1)
- Copies of the decree and selected information applicable to the draft application
- Memorandum of December 1, 1993 and Affidavit for Donald C. Hill, Superintendent

In the event a hearing before the referee or court is required, the following witnesses are available:

- Donald C. Hill, Superintendent, Bent's Old Fort National Historic Site, for questions pertaining to established water uses and park operations.

- Steve Maas, Chief of Maintenance, Bent's Old Fort National Historic Site, for questions pertaining to the operation and maintenance of the Bent's Old Fort Well No. 3 water system and how much water is being used.

If there are any questions, please contact Dan McGlothlin of my staff at (303) 225-3536.

Owen L. Williams

Attachments
cc: BEOL - Superintendent (w/hard copy attachments)
RMR - Wise (w/o attachments)
DoJ - DuBois (w/all attachments)
479 - Williams, Johns, Newberry (w/o attachments)

00-00-0000: re: concerning the application for water rights of the united states of america in otera county; 1993

U.S. Department of Justice

Environment and Natural Resources Division

WMC:CAFrink
90-1-2-941

Denver Field Office
General Litigation Section

Carol A. Frink, Paralegal Specialist
U. S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone: (303) 294-1900
Telefax: (303) 294-1931

October 13, 1993

Mr. Owen Williams
Chief, Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

Re: Concerning the Application for Water Rights of The United States of America in Otero County
Water Rights at Bent's Old Fort National Historic Site

Dear Mr. Williams:

Enclosed is a Notice dated October 7, 1993 received from the Division 2 Clerk advising that an Application must be filed no later than **December 30, 1993**, in compliance with C.R.S. 37-92-301(4)(a). The application must evidence that the NPS has exercised reasonable diligence in attempting to complete the water right or that any conditional water right was made absolute by placing water to beneficial use for the decreed purposes. If nothing is filed, the water right or conditional water right will be deemed abandoned and will be lost.

It is our understanding from the Office of the Solicitor that we will be filing the diligence application on your behalf. In that regard, please have all necessary information to our office by **no later than December 3, 1993.**

If you have any questions or comments, please call. Thank you.

Sincerely,

Carol A. Frink
Paralegal Specialist

Encl.
cc: Ralph Canaday, Esq. (w/encl.)

00-00-0000: letter regarding court case 80cw142 on application to water right; 1993

OCT 8 1993
DEPT. JUSTICE ENVIRONMENT DIV.
DENVER, COLO.

DISTRICT COURT, WATER DIVISION 2, COLORADO

Filed in the Office of the Clerk, Water Division No. 2, State of Colorado.
OCT - 7 '93 AM
CLERK

CASE NO. 80CW142

N O T I C E

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE UNITED STATES OF AMERICA in OTERO County.

YOU ARE HEREBY GIVEN NOTICE pursuant to C.R.S. 37-92-305(7), regarding conditional water right or rights awarded by this Court or which have been the subject of showing diligence in this Court as described in the above case or cases.

Application For Finding of Reasonable Diligence or To Make Absolute is required to be filed with the Clerk during December, 1993, as reflected by the rulings entered by this Court in said case or cases. (Forms are available at Clerk's office).

Failure to file said application and show diligence shall result in said conditional water right or rights being considered abandoned and an order cancelling same will be entered.

Dated: October 7, 1993.

Mardell R. Trivisonno, Clerk
District Court Water Div. 2
207 Judicial Building
320 West 10th Street
Pueblo, CO 81003
(719) 546-1791, ext. 5048

By: Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that I mailed by certified mail, (or regular mail as indicated) a true and correct copy of the Notice pursuant to C.R.S. 37-92-305(7), to each of the following, postage prepaid at Pueblo, Colorado, at the last known address appearing on the records of this Court, to-wit:

Division Engineer, P. O. Box 5728, Pueblo, CO 81002 (by regular mail);

State Engineer, 818 Centennial Building, 1313 Sherman Street, Denver, CO 80203 (by regular mail);

United States of America, c/o James J. DuBois, Department of Justice, Land and Natural Resources Division, 999 - 18th Street, Suite 945, Denver, CO 80202

Witness my hand and the seal of this Court.

Dated: October 7, 1993.

DISTRICT COURT WATER

Clerk

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado.

OCT - 7 '93 AM

CLERK

Summary Report

Prepared by
Dan McGlothlin
Water Rights Branch, Water Resources Division
December 1, 1993

Summary of Facts Relating to Application For Finding of Reasonable Diligence for Water Right at Bent's Old Fort National Historic Site (BEOL), Water Division No. 2

On December 15, 1987, in Case No. 80CW142, the National Park Service (NPS) was decreed appropriative water rights for fire protection and sanitation disposal purposes with a priority date of July 31, 1965. The decreed amounts of water use are 10 gallons per minute (gpm) absolute and 140 gpm conditional for Bent's Old Fort Well No. 3. The Water Court has given notice to the United States that an Application for Finding of Reasonable Diligence or To Make Absolute a Conditional Water Right is required to be filed. The National Park Service (NPS) desires to file an application for finding of reasonable diligence in Case No. 80CW142.

The attached draft application requests a finding of reasonable diligence on the basis that there has been no requirement for utilizing the 140 gpm for fire protection purposes. The system is being used for sanitary disposal and other maintenance purposes, in accordance with the existing absolute right decreed in Case No. 80CW142. The attached documents show that the National Park Service has maintained the well and associated water distribution system.

Background Information:

On December 19, 1980, the United States of America (USA) filed an application for water rights at Bent's Old Fort National Historic Site which was assigned Case No. 80CW142 in Water Division No. 2. Thereafter, the USA filed Amended Application for Underground Water Right for Case No. 80CW142 (according to the May 13 Referee's Ruling the amendment is dated March 26, 1984, we have only a copy of a draft amendment and memo dated February 5, 1987). The amendment (according to the referee's ruling) withdrew a claim for Bent's Old Fort Well No. 2 and reduced the amount of the conditional claim for Bent's Old Fort Well No. 3 from 340 gpm to 140 gpm for fire protection and sanitary disposal. On May 13, 1987, the referee for Water Division 2 issued a ruling for absolute and conditional underground water rights for Well No. 3 for 10 gpm **absolute for sanitary disposal** and 140 gpm **conditional for fire protection.** In the subsequent decree, issued December 15, 1987, the court recognized rights for fire protection and sanitary disposal in amounts of 10 gpm absolute and 140 gpm conditional, and, at item 5, set aside the Ruling of the Referee filed May 13, 1987. In other words, the decree does not distinguish that the conditional right is for one or the other of these uses.

On March 31, 1965, the State of Colorado issued Permit No. 9082-F to NPS to use ground water. The NPS has provided general maintenance to the system to some degree, but the system has deteriorated, and in its present condition, is incapable of producing the maximum flow allowed under the conditional right (see attached affidavit).

The NPS has installed flow meters at some outlets on the distribution system, but not at the well head. Present records indicate that water use for sanitary disposal has been less than 10 gpm total. When operating, the well supplies water to 4 water closets and one urinal, 5 building stand pipes, 2 fire hydrants and 2 hose connections.

The NPS has had no need to utilize the well for firefighting purposes. Therefore, there are no records to demonstrate a completion of the appropriation and application of water for fire protection purposes. The NPS has conducted a prescribed burn using water from Well No. 3, but has no record of water use for this exercise.

In its current condition, it is doubtful that the well is capable of providing sufficient pressure to directly support firefighting equipment. However, the NPS is presently developing a plan to improve current fire protection capability and is in the process of determining long-term facility protection needs.

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

CASE NO.80CW142

APPLICATION FOR FINDING OF REASONABLE DILIGENCE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF: The United States Of America, National Park Service, in Otero County.

---

1. Names, Addresses and Telephone Numbers of Applicants:

United States of America, National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525
(303) 225-3506

2. Name of structure: (well, spring, ditch, reservoir)
National Park Service Bent's Old Fort Well No. 3

3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:

A. Date of Original Decree: 12/15/87 Case No.80CW142 Court Div.2
B. Location: SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in Otero County, Colorado

C. Source: Groundwater tributary to the Arkansas River
D. Appropriation Date: July 31, 1965 Amount: 140 gpm (0.312cfs)
E. Use: Sanitary disposal and fire protection
F. Depth: (if well) 50 feet

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: (add additional sheets if necessary)

See attached documents

5. If claim to make absolute - Not Applicable
Water applied to beneficial use:
A. Date: _____ Amount: _____ Use: _____

B. Description of place of use where water is applied to beneficial use:

**PLEASE NOTE: The owner of any conditional water right shall notify the clerk of the court that decreed the conditional water right of any change in mailing address.

Owen R Williams
Signature of Applicant (or Attorney)

Address of Applicant (or Attorney)

Telephone No._____

Attorney Registration No._____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

I, Owen R Williams , state under oath that I have read this application and verify its content.

Owen R Williams
Applicant

Subscribed under oath before me this 9th day of December 1993.

My commission expires: My Commission Expires May 13, 1998

Lynda Williams
Notary Public

STATE OF COLORADO)
) SS.
COUNTY OF OTERO)

I am Donald C. Hill, Superintendent, Bent's Old Fort NHS, Hwy. 194E, La Junta, Colorado 81050. It is my responsibility to protect and preserve all of the resources of the park, while making them available for the public to use and enjoy. I am personally knowledgeable about and am competent to testify on the matters stated herein.

The National Park Service (NPS) operates and maintains Bent's Old Fort Well No. 3, located in the maintenance building in SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., for purposes of sanitary disposal and fire protection. The well contains two 75 gpm pumps, electrical service, and was last maintained on July 15, 1993. The well is currently inoperable due to fiscal constraints, but will be made operational during January 1994.

When operating, this well supplies water to 4 water closets, one urinal, 5 building stand pipes, 2 fire hydrants and 2 hose connections. To date the NPS has had no need to utilize water from the well for fire protection purposes under live fire fighting conditions. On April 23, 1993 water from this well was used to supply one 1000 gal. tanker and one 350 gal. brush truck that were used in a prescribed fire. However, records of the amount of water used for this exercise are not available. In the future we plan to have annual prescribed burns, which will require extensive use of this system for suppression efforts. As well as, providing base support for visitor and employee sanitation and ongoing adobe work at the fort. Maintenance funds have been secured to maintain and improve this well during the 1994 calendar year.

Donald C. Hill, Superintendent 12/8/93
Date

Subscribed and sworn before me this 8th day of December, 1993.

Notary Public Donna L. Nakayama Hudek

Residing at 202 Santa Fe Avenue

My commission expires 1/31/97

Filed in the office of the Clerk, District Court, Water Division No. 2, State of Colorado
COPY
DEC 15 1987
Clerk

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO
Case No. 80CW142

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA, FOR WATER RIGHTS IN THE ARKANSAS RIVER, IN OTERO COUNTY, COLORADO

THIS MATTER comes before the Court for the entry of Findings of Fact, Conclusions of Law and Decree, the parties of record having consented hereto, the Applicant, the United States of America, by John R. Hill, Jr., attorney, Department of Justice; and Objector, State of Colorado, by Carol D. Angel, Assistant Attorney General; and the Court having examined the records and files herein, and being now fully and sufficiently advised in the premises, enters these Findings of Fact, Conclusions of Law and Decree:

FINDINGS OF FACT

1. That the United States of America was joined as a party in Water Division No. 2 pursuant to the McCarran Amendment, 43 U.S.C. §666.

2. That the United States of America filed its original Application for Reserved Rights and Appropriative Rights in Case No. 79CW176 on December 20, 1979.

3. That subsequently, the United States of America amended its Application of the United States of America for Reserved Rights and Appropriative Rights in Case No. 79CW176 on December 19, 1980, by filing an Application for Water Rights assigned Case No. 80CW142. This Court, by Order of October 13, 1981, nunc pro tunc, October 5, 1981, determined that applications filed as amendments to Case No. 79CW176 until March 31, 1982, relate back to Case No. 79CW176.

4. That an Amended Application for Underground Water Right was filed in the captioned case on March 26, 1984.

5. That the appropriation was initiated by drilling a well and applying the water to the beneficial uses of fire protection and sanitary disposal.

6. That an Order setting Pretrial Conference on September 23, 1982, was filed on March 9, 1982. Pursuant to that Order, and the Court's Order of September 16, 1981, nunc pro tunc, September 8, 1981, Objectors State of Colorado, Catlin Canal Company and Arkansas Valley Ditch Association timely filed

Supplemental Statements of Opposition. The time for filing said Supplemental Statements of Opposition has expired.

7. That Pueblo West Metropolitan District and St. Charles Mesa Water Association filed Amendments to their Statements of Opposition to Case No. 79CW176 and that said Amendments were intended as Statements of Opposition to Case No. 80CW142. Pueblo West Metropolitan District and St. Charles Mesa Water Association did not, however, file Supplemental Statements of Opposition to Case No. 80CW142.

8. That a Statement of Opposition to Case No. 80CW142 was filed by the Southeastern Colorado Water Conservancy District. Said Statement of Opposition was later withdrawn.

9. That the Catlin Canal Company and Arkansas Valley Ditch Association, in their Motion to be Excused from Pretrial Conference dated September 22, 1987, have declined participation in the trial of the above-captioned matter and are therefore dismissed from this action.

10. The following Objectors filed Statements of Opposition in Case No. 79CW176, but failed to file Supplemental Statements of Opposition in this case, in compliance with the Order of September 16, 1981, nunc pro tunc, September 8, 1981:

Buffalo Mutual Irrigation Company
The High Line Canal Company
Holbrook Mutual Irrigation Company
Oxford Farmers Ditch Company
Rocky Ford Ditch Company
The Colorado Canal Company
Board of Water Works of Pueblo, Colorado
Southern Colorado Power Company
Lamar Canal and Irrigation Company
Las Animas Consolidated Canal Company
Bluepond Associates
Southeastern Colorado Water Conservancy District
City of Colorado Springs
Twin Lakes Reservoir and Canal Co.
John and Frances M. May
Gary Potter
City of Victor
Public Service Company of Colorado
Bessemer Irrigation Ditch Company
Colorado River Water Conservancy District
Colorado Water Protective & Development Association
Woodmoor Water and Sanitation District No. 1
Town of Aguilar
W. Barry Hill
Purgatoire River Water Conservancy District
Harold C. Ingersoll

Fort Lyon Canal Co.
City of Fountain
John L. and Catherine C. Taggart
Conquistador, Inc.
Louis Magnino
James G. Penchoff
Dennis R. and Connie D. Herndon
City and County of Denver
Mr. and Mrs. Harry W. Wareham
Lowell D. and Delores J. Peterson
Eric J. and Mary Ann Bransby
Jewell Sall
Shirley DeAndrea
Goemmer Brothers
City of Trinidad
John Vucetich
CF&I Steel Corp.
Cucharas Sanitation and Water District
Amity Mutual Irrigation Co.
District 67 Irrigation Canal Association
Colorado City Metropolitan District, Inc.
Randall Allmendinger
Harlan-Bismuth Associates
Trout Creek Associates
Pinerose Associates
New Colorado Associates
Huerfano County Water Conservancy District
Thomas R. Crocker
Ben Donahue and Jan Donahue and Sons
Judith A. Feagler
Merlyn S. Heimbecker and Ellen I. Heimbecker
Max H. Horne and Rose M. Horne
Charles E. Irwin and Mary Catharyne Irwin
Jimmie A. Keeton, Sr.
Edgar J. Oliver and Wilma Jean Oliver
Leland E. Payne and Martha C. Payne
Nancy Dean Riegel and Son
Roderick C. Senko and Lynda G. Senko
John C. Taggart and Rebecca E. Taggart
Vernon L. Watkins
Rock Creek Association
Randall L. Schranz and Patricia Ann Schranz
Lowell D. Peterson and Delores J. Peterson

CONCLUSIONS OF LAW

11. That all notices required by law for filing and publication of each application in the Resume of Water Division No. 2 have been fulfilled.

12. The Court has jurisdiction of the subject matter of these

proceedings and over all parties affected thereby, whether or not they have appeared.

13. This Court, in its Order dated September 2, 1983, has previously ruled that the United States is entitled to antedate its appropriative rights. Accordingly, this Decree is entitled to antedate prior decrees.

14. Applicant, United States of America, is entitled to this Decree as a matter of law.

15. A Ruling of the Referee was filed on May 13, 1987, and a Protest thereto was filed by the State of Colorado on June 1, 1987.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Findings of Fact and Conclusions of Law contained herein are incorporated by reference and made a part of this Decree.

2. The United States of America is entitled to water rights in the following structures, as of the following dates, and in the following amounts:

NAME OF STRUCTURE:	NPS Bent's Old Fort No. 3
TYPE OF STRUCTURE:	Well
DEPTH:	50 ft.
SOURCE:	Groundwater tributary to the Arkansas River.
POINT OF DIVERSION:	SW1/4 SW1/4 Section 14, T. 23 S, R. 54 W, 6th P.M., in the maintenance building located on Bent's Old Fort National Historic Site.
DESCRIPTION OF DITCH, PUMP OR PIPELINE:	150 gpm pump.
USE:	Fire protection and sanitary disposal.
AMOUNT:	10 gpm (0.022 cfs) absolute 140 gpm (0.312 cfs) conditional
PRIORITY DATE:	July 31, 1965

3. The rights decreed herein are subject to administration by the State Engineer in accordance with such rules, regulations or procedures currently in force or which the State Engineer may, from time to time, prescribe, and in accordance with such informal procedures as the State Engineer may choose to follow pursuant to law.

4. The Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said Office.

5. The Ruling of the Referee filed May 13, 1987, is set aside, and the Protest filed thereto is dismissed.

6. As to any conditional right awarded hereunder, the owner thereof if he decides to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court during the month of December, 1991, and every four (4) years thereafter until the right is decreed final, such application to be filed pursuant to C.R.S. 37-92-302.

7. Concerning any transfer of the conditional water right awarded herein and change of address:

a. Upon the sale or other transfer of any conditional water right decreed herein, the transferee shall file with the this court a notice of transfer which shall state:

i. The title and case number of the case in which the conditional decree was issued;

ii. The description of the conditional water right transferred; and a copy of the document effecting the transfer shall be attached;

iii. The name of the transferor; and

iv. The name and mailing address of the transferee.

b. The transferor of any conditional water right shall notify the transferee of the requirement of Rule 15(a), Local Rules of this Court.

c. The owner of any conditional water right shall notify the clerk of this court of any change in mailing address.

d. The clerk shall place any notice of transfer or change of address in the case file for the captioned case and in the case file in which the court last made a finding of reasonable

diligence, and the court shall enter an order of substitution of parties.

8. The water clerk shall serve a copy of this Decree upon the parties, the Division Engineer, Water Division No. 2 and the State Engineer.

DONE this 4th day of Dec, 1987.

BY THE COURT:

JOHN R. TRACEY, Water Judge
Water Division No. 2

The undersigned consent to this decree:

DATED: November 25, 1987

ROBERT N. MILLER
United States Attorney

By _____
JOHN R. HILL, JR. #10214
Attorney
Department of Justice
Land and Natural Resources Division
1961 Stout St., Drawer 3607
Denver, CO 80294
(303) 844-2892

ATTORNEYS FOR APPLICANT
UNITED STATES OF AMERICA

DATED: November 5, 1987

FOR THE ATTORNEY GENERAL

By _____
CAROL D. ANGEL #13123
Assistant Attorney General
Natural Resources Section
1525 Sherman Street, 3rd Floor
Denver, CO 80203
(303) 866-5114

xc: John R. Hill, Jr.
Carol D. Angel
Rexford L. Mitchell
Division Engineer
State Engineer

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

TAKE PRIDE IN AMERICA

IN REPLY REFER TO
L54 (479)
BEOL/Water Rights

December 1, 1993

Memorandum

To: Chief, Water Rights Branch
ATTN: Owen R. Williams

From: Superintendent, Bent's Old Fort

Subject: Water Division No. 2 Case No. 80CW142, Bent's Old Fort Well No. 3

Enclosed is the information requested on Well No. 3.

If you have any further questions call either Don Hill or Steve Maass at (719) 384-2596.

Alejandra A. Aldrich

for Donald C. Hill

Enclosure

Subject: water Division No. 2, Case No. 80CW142, Bent's Old Fort Well No. 3

1. Is the park's long-term plan for water from Well No. 3 to continue use as a non-potable source for sanitary disposal and fire fighting?

The long term plan, as addressed in the park's General Management Plan, would be for abandonment of this well. The main maintenance facility would be moved across Hwy 194 eliminating the need for this well. Other water systems would be incorporated to provide for fire suppression activities.

The short term plan for water from Well No. 3 is to use cyclic monies to repair electrical panel and rebuilt the pump for operative use. At present it is marginal, we must maintain that water right as an absolute water right. It must be retained to: a. use water for washing equipment and vehicles at the Maintenance area and b. use to wet down fort walls in preparation for stuccoing.

2. Is the well, when operational, capable of producing 150 gallons per minute?

The well has never been used at it's maximum capacity. Although, the well has low output it is still being used for the purposes mentioned above.

3. What rates of water use, in gallons per minute, have been made from this well for sanitation and fire fighting purposes in the last six years? Please provide evidence of rates of use for each use.

We have never had flow meters attached to this system to accurately measure flow rates. All flow rates provided below are estimates.

a. Fire fighting: 0 gallons. We have had no need to utilize this system for fire fighting needs. Other uses of the fire fighting stand pipes have been utilized for maintenance needs. This would be in the approximate range of 6 to 10 gallons/minute.

b. Sanitation: the system is only connected with 4 water closets and one urinal. Maximum potential need in this system would be at the 25 gallons/minute for a very short duration.

4. If water has not been required from Well No. 3 for fire fighting purposes, is the system, when up and running, capable of supporting fire fighting purposes?

Probably not. With the current marginal plumbing system and unknown flow rate of the system, it would more than likely be.

5. Has the well pump been tested in the last six years? If so, please provide the results of the test.

Well No. 3 has not been tested.

6. Does the park have a means of water storage for water supplied from this? If so, please specify the type and capacity of water storage.

The park currently has two (2) 100 gallon pressure tanks for storage of water in this system.

Flow Records Non-potable/Fire Suppression System
All flow rates in cubic ft. conversion 7.48gals. per cubic ft.

	Flow Meter	Gallons (Cubic)	Actual Gals.
8/17/93	216		
		576	4,308
8/18/93	792		
		64	479
8/19/93	856		
		198	1,481
8/23/93	1054		
9/17/93	2286		
		339	2,536
9/20/93	2625		
		134	1,002
9/21/93	2759		
		72	539
9/23/93	2831		
11/15/93	3822		
		70	524
11/23/93	3892		
		0	0
11/30/93	3892		

BEOL FY93 [BF3] PARK MASTER COPY

National Park Service
Maintenance Management

LOCATION MAINTENANCE REPORT

Period from 10/92 TO 09/93
Location: NPOTABLE NON-POTABLE WATER SYST.

Date: 12/08/93

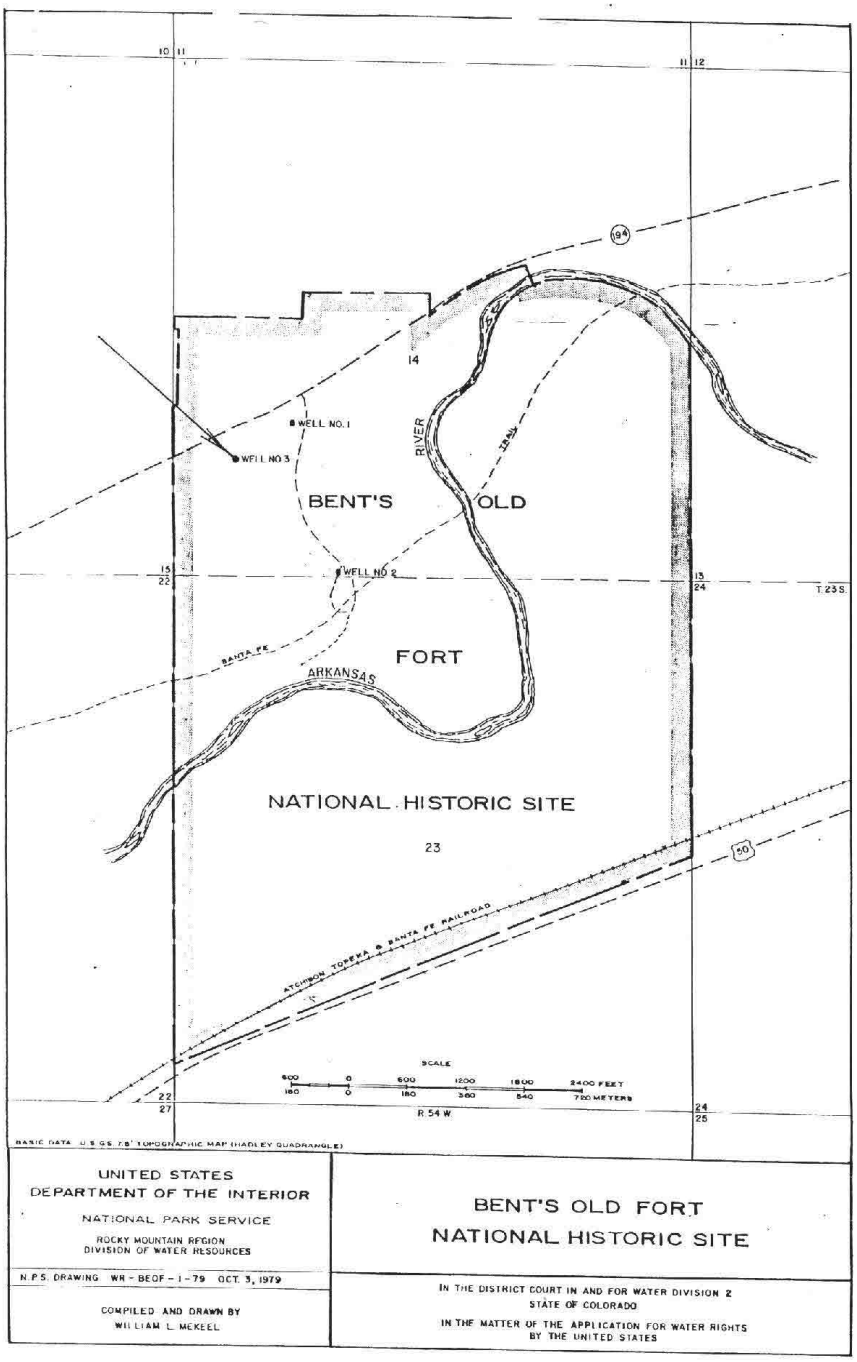
LOCATION/TYPE/ACTIVITY CODE	NAMES	MONTH ACCOMPLISHMENT QTY	UNIT	MONTH COST ($)	PERIOD TO DATE ACCOMPLISHMENT QTY	UNIT	PERIOD TO DATE COST ($)
NPOTABLE	NON-POTABLE WATER SYST.						
M							
4790	GEN BLDG MAINTENANCE	0	PERS HRS	0.00	14	PERS HRS	800.20
			TOTALS:	0.00			800.20
			GRAND TOTALS:	0.00			800.20

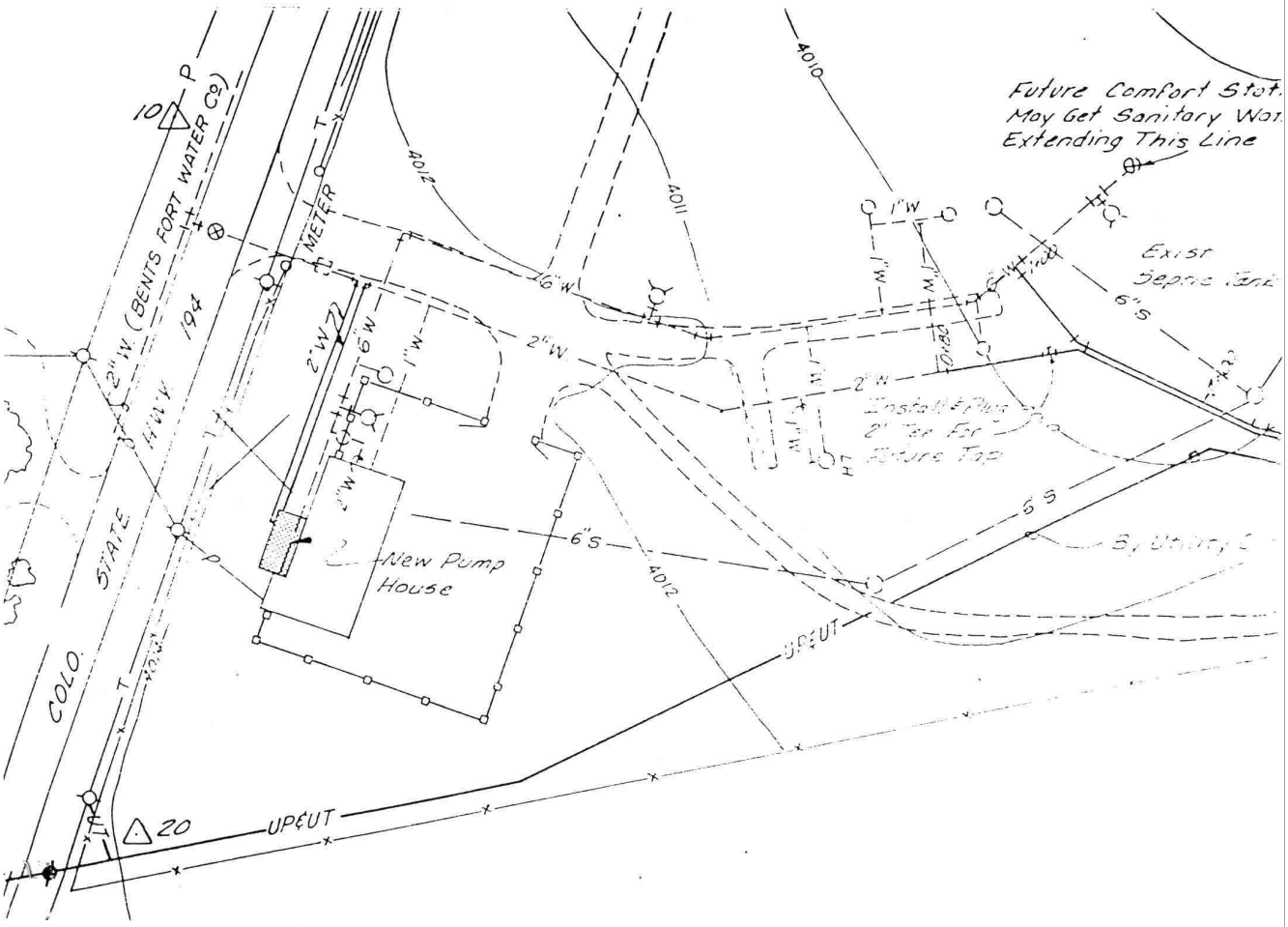
BENT'S OLD FORT NHS FY91 (BF1)

National Park Service — LOCATION MAINTENANCE REPORT — Page: 1
Maintenance Management — Period from 10/90 TO 09/91 — Date: 12/08/93
Location: NPOTABLE NON-POTABLE WATER SYSTEM

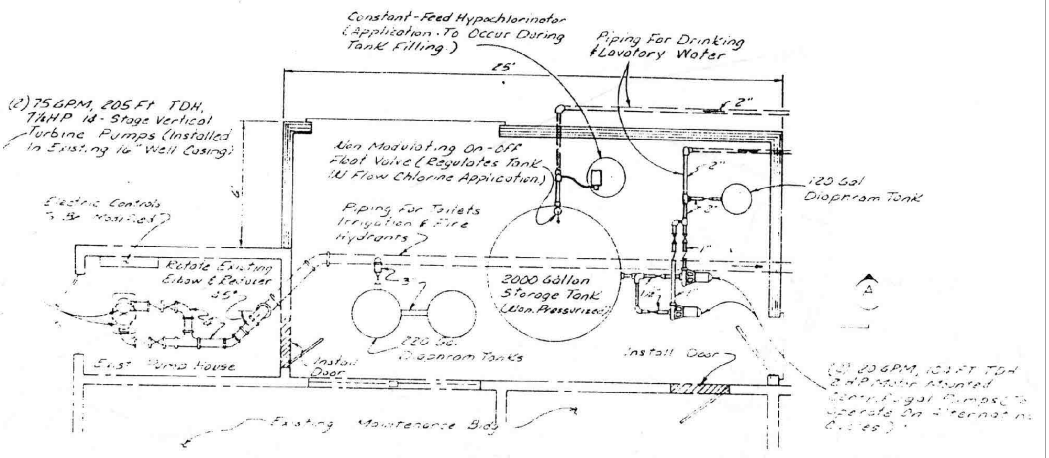
LOCATION/TYPE/ACTIVITY CODE	NAMES	MONTH ACCOMPLISHMENT QTY	UNIT	MONTH COST ($)	PERIOD TO DATE ACCOMPLISHMENT QTY	UNIT	PERIOD TO DATE COST ($)
NPOTABLE	NON-POTABLE WATER SYSTEM						
U							
4790	GEN BUILDING MAINT	0	PERS HRS	0.00	123	PERS HRS	1498.89
			TOTALS:	0.00			1498.89
			GRAND TOTALS:	0.00			1498.89

00-00-0000: bent's old fort water map; 1979




Future Comfort Stat.
May Get Sanitary Wat.
Extending This Line
Exist
Septic Tank
New Pump
House
Installed Plug
2" Tee For
Future Tap
METER
2"W (BENTS FORT WATER Co)
STATE
COLO.
194
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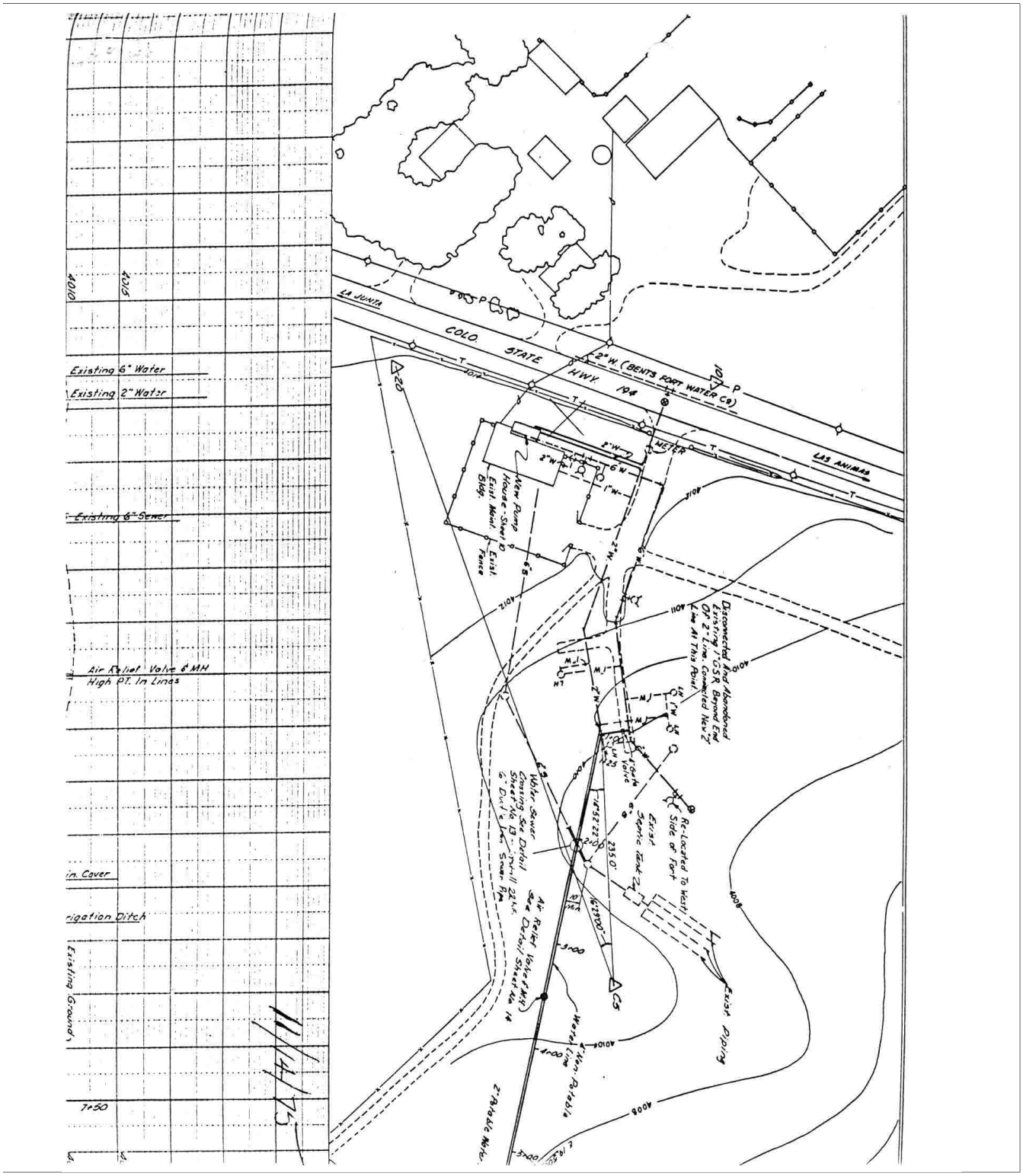




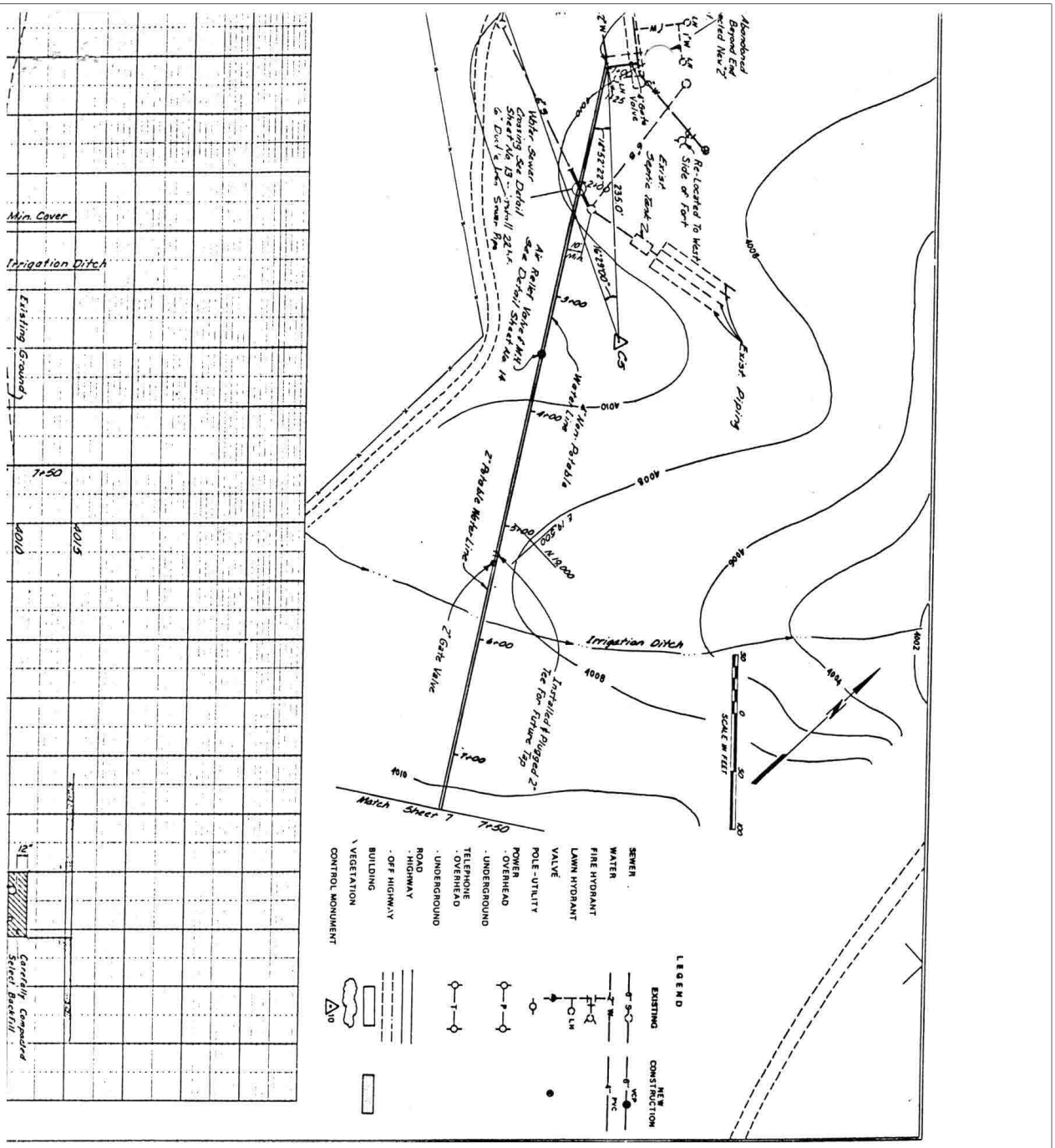
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1"=5

PUMP HOUSE AD

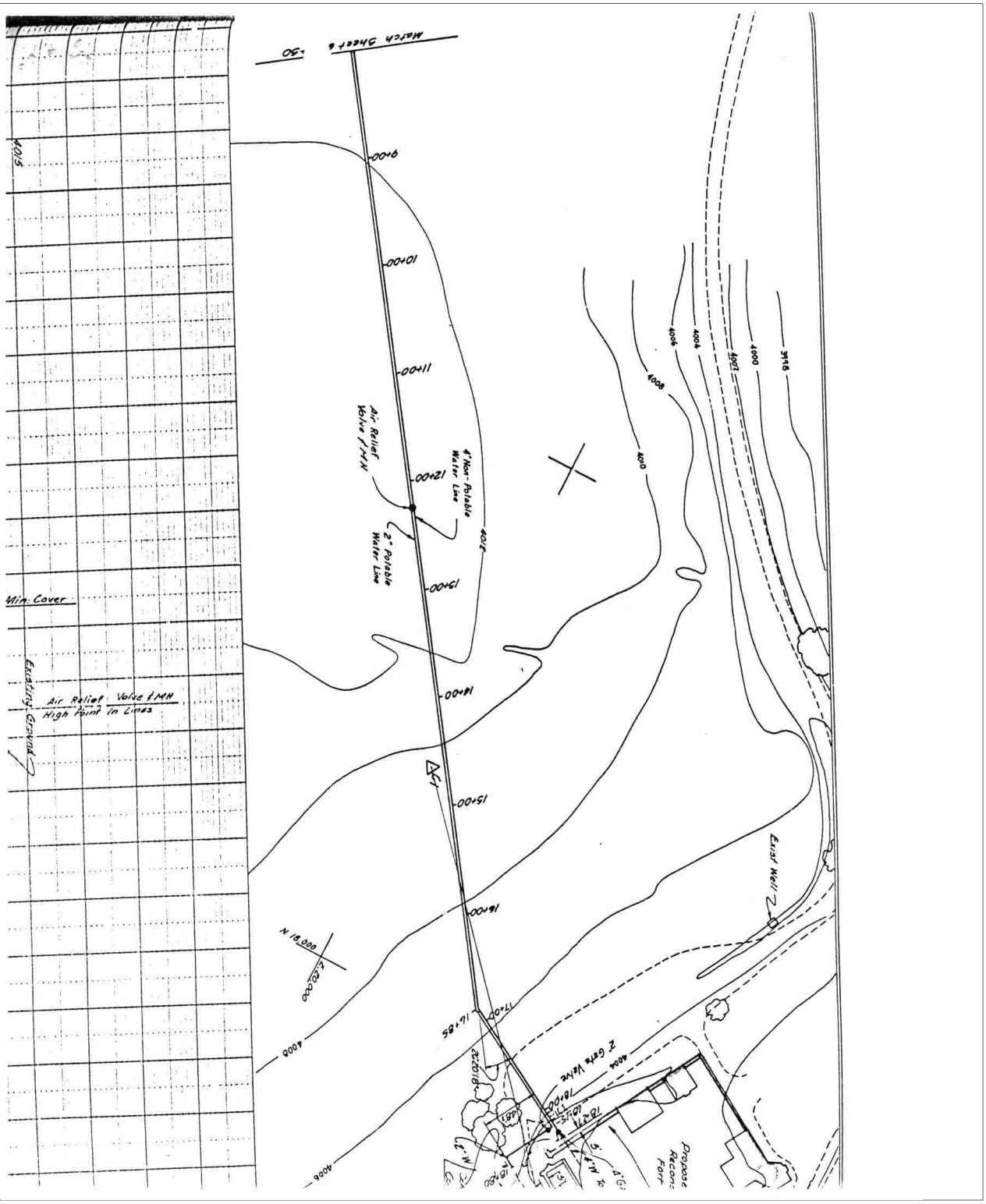
00-00-0000: water diagram at bent's old fort; 1975



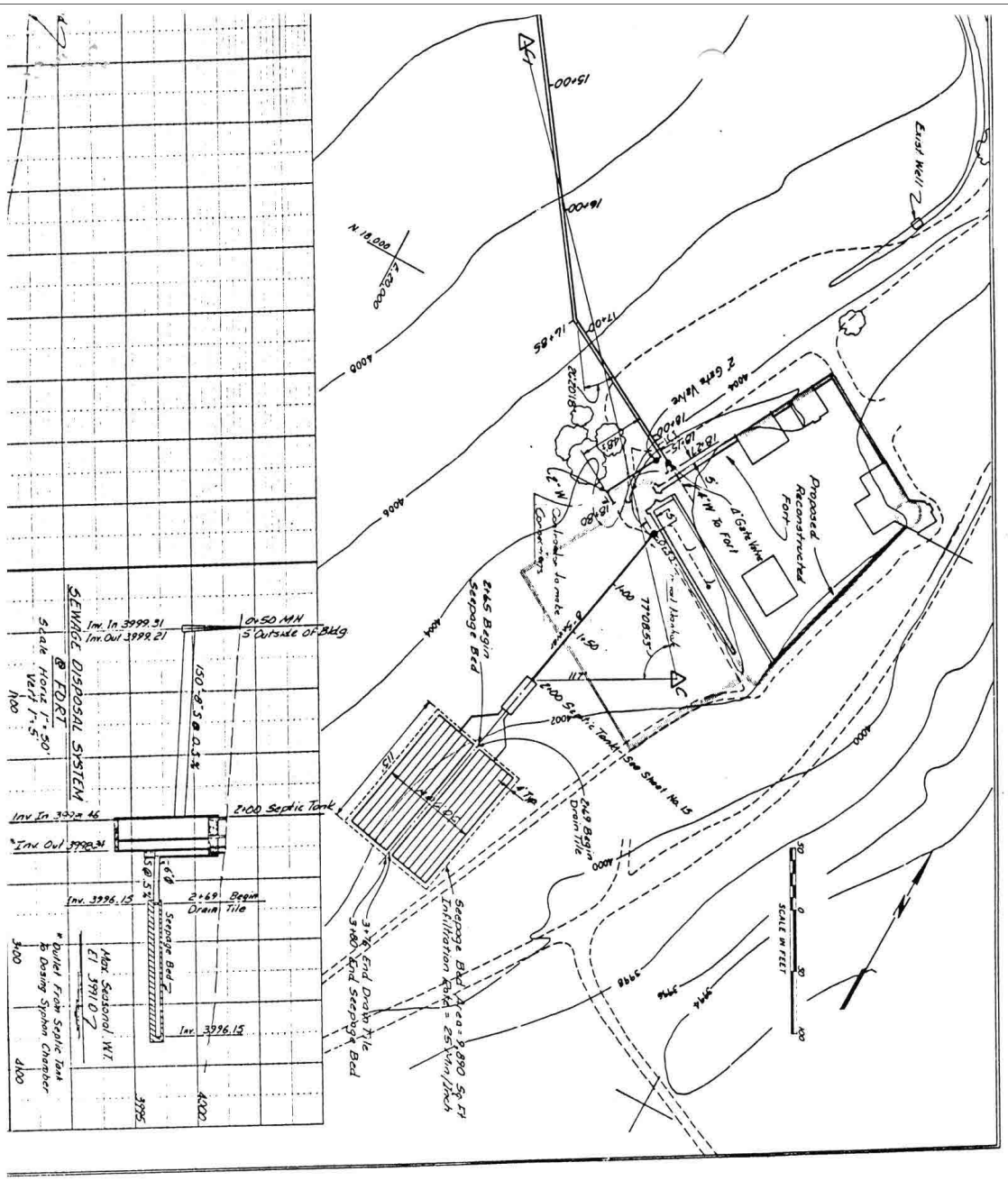
00-00-0000: water diagram at bent's old fort, section; 1975



00-00-0000: water diagram at bent's old fort, section; 1975



00-00-0000: water diagram at bent's old fort, section; 1975



December 7, 1993

NOTE:

TO: Don Hill, Superintendent, Bent's Old Fort NHS

FROM: Dan McGlothlin, Hydrologist, Water Rights Branch

Following are several items for your review and information. These are for the litigation package which I will send to the Office of the Solicitor for their review and approval. The package then goes to Department of Justice, Denver for review of the application and submission to the water court. Here's a short explanation of what needs to be done for each item.

Item 1. Draft Summary Report. This briefly describes the water right case and key information for legal counsel. I've X'd the blanks where you can fill in the numbers if you have them. The reference "see attached affidavit" means a yet to be drafted affidavit which you will need to prepare. We can work on the draft in the next day or two, but I sent you a copy of an affidavit we had in our file as a sample for you to see.

Item 2. Draft Application to Make Absolute a Conditional Water Right. The key elements are sections 4 and 5. The response to section 4 would be your affidavit identifying the uses and amounts of water you have made, discussion of your system and future needs and copies of meter records and your estimates of use (per my conversation on 12/6/93 with Steve Maas.) For item 5, I have a couple different maps in the file, but sent you the one which best describes the points of use. The well location is not plotted. If you have a better map that shows point of diversion and points of use, let's use it.

Item 3. Final Decree for Well No. 3. A copy for your reference. On page 5, at item 4 there is a requirement to install water measurement devices. If applicable, I would like a description of the meters, including type, where located, and recordings made, that you have installed at outlets on the system. This can be in the affidavit, also.

Item 4. Map. See my comment under item 2.

Item 5. This affidavit was in our water right docket for Well No. 3. It's not clear when or if this was submitted in 1987 when DOJ was working on the decree. The asterisked items are things that should be mentioned in a new affidavit, along with discussion of maintenance performed on the well, the amount of use made, etc. (again, we'll discuss ~~the~~ later today). The affidavit can/should be submitted by you as the line manager most knowledgeable of the well no. 3 situation.

Thanks for your help.

United States Department of the Interior

NATIONAL PARK SERVICE
Bent's Old Fort National Historic Site
35110 Hwy 194 East
La Junta, Colorado 81050-9523

IN REPLY
REFER TO:

L54(479)
BEOL/Water Rights

Oct. 29, 1993

Memorandum

To: Chief, Water Rights Branch, Attn: Owen R. Williams

From: Superintendent
Bent's Old Fort NHS

Subject: Water Division No. 2, Case No. 80CW142, Bent's Old Fort Will No. 3

Enclosed is the information requested on Well No. 3.

If you have any further questions call either Don Hill or Steve Maass at 719-384-2596.

Donald C. Hill
Superintendent
Bent's Old Fort NHS

Subject: Water Division No. 2, Case No. 80CW142, Bent's Old Fort Well No. 3

1. Is the park's long-term plan for water from Well No. 3 to continue use as a non-potable source for sanitary disposal and fire fighting?

The long term plan, as addressed in the park's General Management Plan, would be for abandonment of this well. The main maintenance facility would be moved across Hwy. 194 eliminating the need for this well. Other water systems would be incorporated to provide for fire suppression activities.

2. Is the well, when operational, capable of producing 150 gallons per minute?

This is unclear, for the well has never been used at it's maximum capacity. However, with the small diameter casing and the internal plumbing problems of the current system it is unlikely that it would provide this rate of flow.

3. What rates of water use, in gallons per minute, have been made from this well for sanitation and fire fighting purposes in the last six years? Please provide evidence of rates of use for each use.

We have never had flow meters attached to this system to accurately measure flow rates. All flow rates provided below are estimates.

A. Fire fighting - 0 gallons. We have had no need to utilize this system for fire fighting needs. Other uses of the fire fighting stand pipes have been utilized for maintenance needs. This would be in the approximate range of 6 to 10 gallons/minute.

B. Sanitation - The system is only connected with 4 Water Closets and one urinal. Maximum potential need in this system would be at the 25 gallons/minute for a very short duration.

4. If water has not been required from Well No. 3 for fire fighting purposes, is the system, when up and running, capable of supporting fire fighting purposes?

Probably not. With the current marginal plumbing system and unknown flow rate of the system, it would more than likely be inadequate.

5. Has the well pump been tested in the last six years? If so, please provide the results of the test.

This well has not been tested.

6. Does the park have a means of water storage for water supplied from this? If so, please specify the type and capacity of water storage.

The park currently has two 100 gal. pressure tanks for storage of water in this system.

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

IN REPLY REFER TO:

October 25, 1993

L54(479)
BEOL/Water Rights

Memorandum

To: Superintendent, Bent's Old Fort National Historic Site

From: Owen R. Williams, Chief, Water Rights Branch

Subject: Water Division No. 2, Case No. 80CW142, Bent's Old Fort Well No. 3

Attached is a notice issued by the water court concerning the conditional water right awarded for the above-captioned well. Also attached is a Department of Justice memorandum requesting that National Park Service (NPS) provide information in this matter by December 3, 1993. The United States must make Application for Finding of Reasonable Diligence or To Make Absolute the conditional right for 140 gallons per minute for firefighting purposes, as provided in the decree or risk cancellation of the right.

Information is needed which supports either a finding for reasonable diligence toward completion of the appropriation or a claim to make the right absolute. To support an application to make absolute, NPS must be able to prove that the water has been put to the beneficial use as conditionally decreed. To support a reasonable diligence finding, NPS must describe what has been done toward completion of the appropriation. It is our understanding that the well, although presently not operational, until recently was in operation since the decree was issued.

To determine which course of action is appropriate for protecting this right, we would like you to provide, by **November 12, 1993** any information available on the well which supports responses to the following questions.

1. Is the park's long-term plan for water from Well No. 3 to continue use as a non-potable source for sanitary disposal and firefighting?

2. Is the well, when operational, capable of producing 150 gallons per minute?

3. What rates of water use, in gallons per minute, have been made from this well for sanitation and firefighting purposes in the last six years? Please provide evidence of rates of use for each use.

United States Department of the Interior
NATIONAL PARK SERVICE
BENT'S OLD FORT NATIONAL HISTORIC SITE
35110 HWY 194 EAST
LA JUNTA, COLORADO 81050-9523

IN REPLY
REFER TO:

January 9, 1987

National Park Service Water Resource Division
301 S. Hawes
Room 335
Fort Collins, Colorsdo

ATT: Debbie:

Enclosed are the maps of the water lines and the existing wells that are being used at this time.
Hope this helps, is you need additional information please call me.

Donald S. Currie
Donald S. Currie
Chief of Maintenance

4. If water has not been required from Well No. 3 for firefighting purposes, is the system, when up and running, capable of supporting firefighting purposes?

5. Has the well pump been tested in the last six years? If so, please provide the results of the test.

6. Does the park have a means of water storage for water supplied from this well? If so, please specify the type and capacity of water storage.

We appreciate your assistance in this matter. If you have any questions, please contact Denise Newberry (303) 225-3525 or Dan McGlothlin (303) 225-3536.

Attachments (2)

cc: (all w/attachments)
DOJ (Denver) - DuBois
SOL (Denver) - Canaday
RMR - Wise
479 - Kimball, Flora, Jackson, McGlothlin, Johns, Newberry

REPORT OF TELEPHONE CONVERSATION

DATE 11/5/87 TIME 3:00 AM/(PM)

PROJECT BEOL wells

NPS PERSON ON CALL: Pat Larson ☐ I CALLED ☒ S/HE CALLED

PERSON John Hill

ORGANIZATION Department of Justice

ADDRESS Denver, CO

TELEPHONE NO. 844-2892 EXT.

(chief of Maintenance, BEOL)

SUBJECTS DISCUSSED Per John's discussion with Don Curry today, the Final Decree DOJ is preparing is not adequate to cover actual use from Well #3 at Bent's Old Fort. Apparently Walter Rusinek discussed alternatives with Clyde Young (Water Referee, Colo. Div. No. 2) and according to Walter's notes of 4/30/87, they agreed on a decree for "140 gpm absolute/10 gpm conditional." But, when the Ruling of the Referee was transmitted the quantities were reversed. Later correspondence to the Park indicates awareness of the discrepancy and says the NPS plans to make the 140 gpm conditional into an absolute right.

John was upset and was puzzled by the mix-up. I called him back and said I wasn't sure what had happened but I read him some of Walter's notes from phone conversations. John accepted the fact that we can't really do anything else but make the decree final for the 10 gpm absolute and 140 gpm conditional, then file an application to make the conditional right absolute.

ACTION TO BE TAKEN Water Rights Branch staff will prepare the Application to Make a Conditional Water Right Absolute and submit it to John Hill for filing.

COPIES TO: Stan Ponce, WRB

May 12, 1987

L54 (479)
RMR/BEOL NHS Water Rights

Memorandum

To: Don Hill, Acting Superintendent
Bent's Old Fort National Historic Site

From: Chief, Water Rights Branch

Subject: Status of water rights

It was a pleasure to have met you at the Superintendents workshop in Denver. In response to your request, we have determined the status of water rights at Bent's Old Fort National Historic Site (BEOL).

Our files contain four dockets pertaining to water rights at BEOL. A review of each docket follows.

Docket #1 -- Well #1 never received a permit from the state. The well is currently unused and capped.

Docket #2 -- Well #2, formerly provided water for fire protection, but is currently capped. An amended water right claim (#80CW142) filed in May of 1981 is currently before the Colorado Water Court, Division 2. Because the well is capped, the Department of Justice has decided to claim no water right for this well.

Docket #3 -- Well #3, located in the maintenance area, produces non-potable water for sanitary puposes and emergency fire protection. As part of Case #80CW142, the United States has claimed:

1. a 150 gpm conditional water right for fire protection with a priority date of July, 1965, and

2. a 10 gpm absolute water right for sanitation purposes with a priority date of July, 1965.

The United States plans to change the conditional water right claim to an absolute water right during the first diligence filings, which are required by state law every four years. Although the Water Rights Branch and the Department of Justice discussed filing another amended claim, it was decided that the claim currently before the court would be sufficient.

Docket #4 -- Well #4 is an operating irrigation well located on land acquired in 1981. The well has a state permit (#RF-653), and a decreed water right (Case #W-3016) which allows the use of 720 gpm for irrigation with a priority date of January 30, 1954. The water is currently used by a lessee to grow hay on the Park land.

Our files contain an application to amend the ownership of the right and place it in name of the United States. However, the records of the Colorado State Engineer do not reflect this change, and it is unclear if the application was ever filed. The Water Rights Branch has sent a new form to the State Engineer. Because this is a decreed water right which is being beneficially used, a change of ownership should be granted without problem.

The Historic Site also receives potable water from the Bent's Fort Water Company. There are no reserved water rights claims.

If you have any questions about the current or future status of these rights, please contact Walter Rusinek at 221-5341.

Stanley L. Ponce

Stanley L. Ponce

cc: Homer Rouse, RMR-H
Ron Hermance, RMR-NE

FMP:WRusinek:bv:221-5341:5/12/87:20512RUS.MM1

February 5, 1987

L34 (479)
ARR/BEOL Water Rights

Memorandum

To: Don Hill, Acting Superintendent
Bent's Old Fort National Historic Site

Through: Chief, Water Resources Division
Fort Collins, Colorado

From: Acting Chief, Water Rights Branch
Water Resources Division

Subject: Water Rights Issue at Bent's Old Fort National Historic Site

Attached is the status sheet regarding the water right issue at Bent's Old Fort National Historic Site. This form presents a concise statement of the issue and the action this office is taking to help solve questions raised by Water Referee Clyde Young.

Also attached are the amended application and cover letters which we have prepared in order to resolve this issue.

Having discussed this approach with you by telephone, we are transmitting these materials to John Hill today.

Please contact us immediately if you have any questions.

Scott Brown
D. Scott Brown

Attachments

cc: Ron Harmance, Dam Safety Officer, ARR
Don Curie, BEOL

bcc: Stanley L. Ponce, WRB
Debi Cox, WRB

PHP:SLPonce:ce:221-5341:2/4/87:20204pon.mmi

01-16-1987: handwritten note regarding clyde young's concerns of well no.2-covered.

Jan. 16, 1987

I called Acting Supt. Don Hill; apprised him of Clyde Young's concern:

Well No.3

10 gpm abs. (san. disp.) → no change
340 gpm cond. (fire prot.) → reduce to 150gpm, but upgrade to absolute.

Mr. Hill approved of this, by phone.
I'll call Clyde Young.

Scott

Debi... please confirm that No.2 is capped. Then, I'll call Young.

01/20

Don Curry called to see if we had any more questions. I asked him to verify if well no.2 had been covered and he said yes - there were no active wells anywhere near the location of No.2.

January 9, 1987

L54 (479)
RMR/BEOL-Water Rights

Memorandum

To: Don Curry, Chief of Maintenance
Bent's Old Fort National Historic Site

From: Program Assistant, Water Resources Division
Fort Collins, CO

Subject: Water Wells Within BEOL

After talking with you on the phone, I discovered the attached map which shows the wells we discussed. Now that you can see the location of the wells, let me ask you some additional questions:

1. Was Well #1 abandoned and covered during the summer of 1980? And is this the well that you referred to as the "house well"?

2. Has Well #2 been capped and covered? And is this the well that you thought was near the fort?

3. Is Well #3 the one that is located at the maintenance area?

4. Is the irrigation well you mentioned shown on the map? If so, could you please indicate which one, and if not, show me the approximate location of it.

If there is any further information you think might be beneficial to have in our records, would you please relay that to me. It would be anything pertaining to the wells as shown, or any other wells you're aware of.

I appreciate your time and effort in this matter. Please call me at (303) 221-5341 if you have any questions.

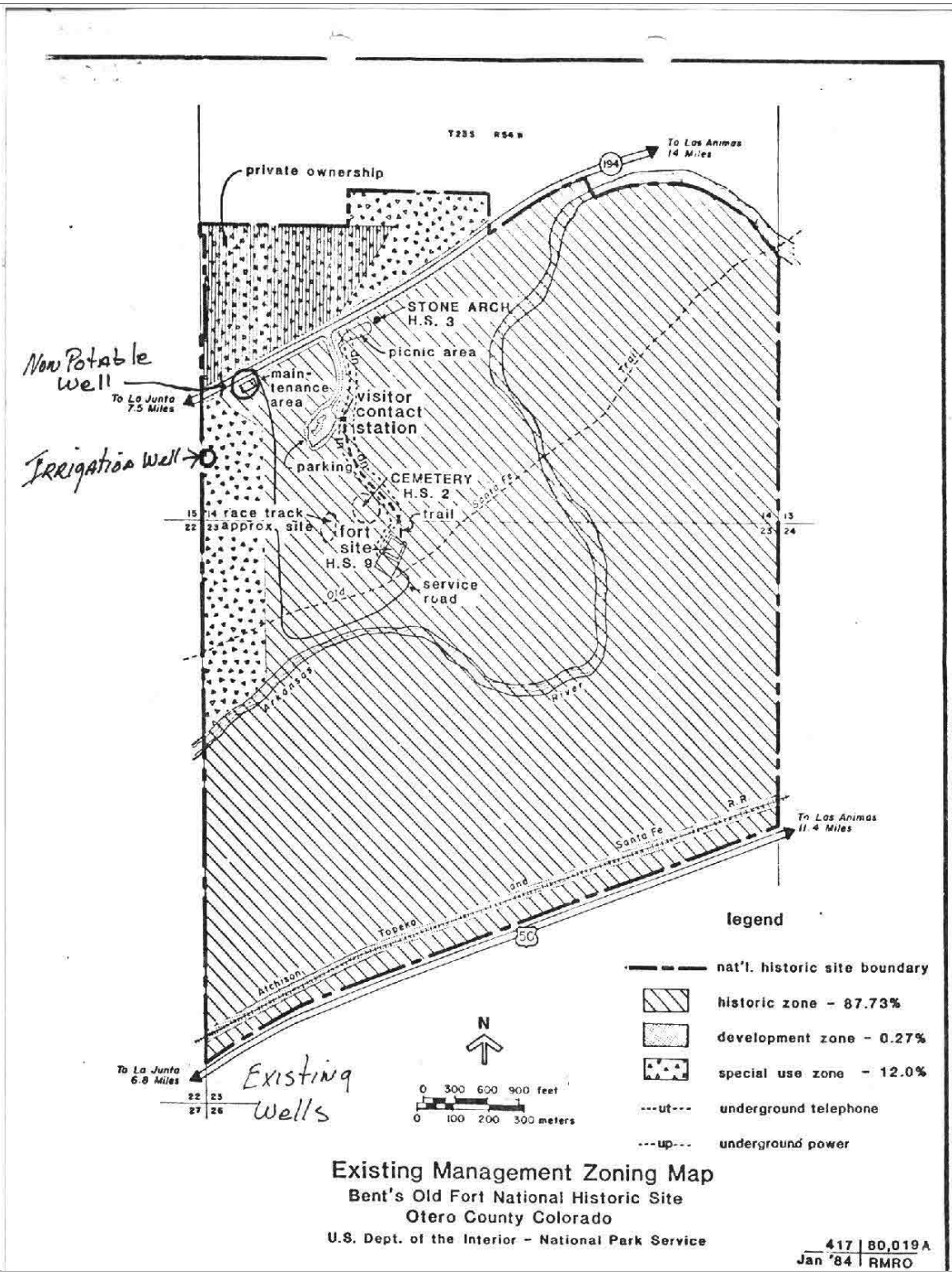
Debi Cox
Debi Cox

Attachment

cc: Scott Brown

FNP:DCox:cs:1/9/87:221-5341:20109cox.wel

00-00-0000: existing management zoning map; 1984



Existing Management Zoning Map
Bent's Old Fort National Historic Site
Otero County Colorado
U.S. Dept. of the Interior - National Park Service

417 | 80,019A
Jan '84 | RMRO

01/09/87

Called Clyde Young this morning to ask him about the format he preferred for the amendment. He asked if it was an amendment or an amended application. I told him I thought it was an amended application (based on a RONO file containing an amended application that was on my desk, but no relation to this issue).

Clyde thought we'd already filed one amendment, and if so, then a "leave of the court" (?) must be filed to do a second amendment.

If what we're going to do is reduce the claim, then Clyde can handle that from his office, and an amendment is not necessary. But if we're increasing the claim, then an amendment must be filed.

Clyde said that if we're filing an amendment, we should call John Hill and let him do the actual amendment.

If we're doing an amended application, we follow the same format as the original application and in the body of it, state what the change is. 4 copies are necessary.

Spoke to Scott about my conversation w/ Clyde and he's confused as me about the amendment part. We will sit on issue until I have a reply from Don and then decide how to carry on. Scott wants me to ask Clyde how much it matters whether the water rights are conditional or absolute.

01/10

Received diagram maps from Don Currier. Enclosed was a map showing the location of the two operable wells.

1-9-87 Debi & I agreed to wait until Dons info comes. She called Young, Amend. Appl. or Amend.??

January 8, 1987

Memorandum

To: Scott Brown

From: Debi Cox

Subject: Water Wells at Bent's Old Fort NHS

I contacted Don Curry, Chief of Maintenance at Bent's Old Fort NHS on January 8, 1987 in an effort to clear up some of the questions we have concerning the water wells at BEOL.

It was immediately clear that we were both at a disadvantage because Mr. Curry is not familiar with the legal descriptions of the wells - which was the only way I could identify them. I've sent him a copy of a map that has the wells marked on it, and he should be sending us further information based on that.

At this time the information I have is:

1. There are only two wells in operation. Probably 3 & 4 ... Is 2 out?

2. Mr. Curry does not anticipate any of the other wells coming back into use.

3. One of the wells in use is an irrigation well located west of the maintenance area. It is used exclusively for irrigating a leased hay field. In exchange for the lease, the park receives hay for its horses.

4. The other well is located in the maintenance area. It has nonpotable water that is used for three purposes: fire protection, restroom use, and water for the horses.

5. There is a distribution system laid out for fire protection and Mr. Curry will be sending a diagram of the pipes.

6. Bent's Old Fort receives its consumptive water in a pipeline from the Bent's Fort Water Company. It is the only water that is metered.

I will follow this memo up with any other information I receive from Mr. Curry.

DCB

Debi

L54 (RMR)MW

FEB 27 1981

John Hill, Jr., Esq.
Trial Attorney
United States Department of Justice
Land and Natural Resources Division
Federal Building
1961 Stout Street
Drawer 3607
Denver, Colorado 80294

Re: National Park Service Water Rights
Applications in Water Division 2,
State of Colorado (Bent's Old Fort
National Historic Site) Case 80C142

Dear Mr. Hill:

We have carefully reviewed our claims at Bent's Old Fort National Historic Site and would like to amend the claims as follows:

Eliminate the claim for National Park Service Bent's Old Fort No. 2. This well has been capped and covered and no further use is anticipated.

The claim for National Park Service Bent's Old Fort No. 3 should be maintained but the conditional amount of 340 gpm (0.758 cfs) should be reduced to 140 gpm (0.312 cfs). The 10 gpm (0.022 cfs) absolute portion of the claim should be maintained.

The statement of use should remain the same which is fire protection, sanitary disposal and other related purposes. The water system is not metered, consequently we have qualified the amounts claimed with the sanitation facilities available and the number of employees and annual visitation. The map of Bent's Old Fort which showed the locations of three wells has been revised to show only Well No. 3.

We believe the claim, when amended, is extremely reasonable considering the size of the area, numbers of visitors and the large investment in the reconstructed fort.

Sincerely yours,

/s/ WES WOLFE

Wes Wolfe
Acting Associate Regional Director
Park Operations
Rocky Mountain Region

Enclosure

cc: RMR-MW
WLMekeel:ek 2/25/81

EXHIBIT LIST

Case No: 80 CW142 W.D. 2

IN THE MATTER OF THE

APPLICATION FOR WATER

RIGHT OF

Exhibits on Behalf of:

United States of America

NUMBER	DESCRIPTION	WITNESS	DATE MARKED	DATE ADMITTED	REMARKS
	Map - Bent's Old Fort National Historic Site - showing location of well no. 3	Jerry R. Phillips Superintendent Bent's Old Fort National Historic Site			
	State of Colorado permit to construct a well and use ground water, No. 9082-F, issued March 31, 1965.	Jerry R. Phillips Superintendent Bent's Old Fort National Historic Site			
	Results of pump test - Ken R. White Company - July 5, 1974	Thomas J. Cox, Jr. Chief of Maintenance Bent's Old Fort National Historic Site			
	Establishing water use at Bent's Old Fort	" "			
	Certified copy of the Act establishing Bent's Old Fort National Historic Site				

00-00-0000: purchase order and receipt of well permit ; 1965

APR 14 19[illegible]

DIVISION OF WATER RESOURCES
OFFICE OF THE STATE ENGINEER
GROUND WATER SECTION
232 State Services Building
1525 Sherman Street
Denver 3, Colorado

TO Superintendent
Bent's Old Fort NHS
P. O. Box 581
La Junta, Colorado 81050

INVOICE NO. GW-41

DATE 3-31 19 65

	Purchase Order No. 65-BEOL-77		
1	Well Permit No. 9082-F In the SW¼ of the SW¼ of Section 14, Township 23 South, Range 54 West	$25	00
	Permit 9082-F TOTAL	$25	00

STATE OF COLORADO
Division of Water Resources
Office of State Engineer
Ground Water Section

RECEIPT Date March 31 1965 No. 9082

Received From U. S. Dept. of Interior, Nat. Park Serv.
Address Box 581, La Junta, Colo.
Amount Twenty-five 00/00 Dollars $ 25.00
For Irrigation water well permit

Paid By

Check ☐ Cash ☐ M. O. ☐

State Engineer
By Vaclav V. Erbes

00-00-0000: letter regarding water rights claims; 1979

Federal #1

United States Department of the Interior
NATIONAL PARK SERVICE
ROCKY MOUNTAIN REGIONAL OFFICE
655 Parfet Street
P.O. Box 25287
Denver, Colorado 80225

IN REPLY REFER TO:

L54 (RMR)MW

NOV 27 1979

John Hill, Jr., Esq.
Trial Attorney
Department of Justice
Land and Natural Resources Division
Denver Federal Building
1961 Stout Street
Drawer 3607
Denver, Colorado 80296

Dear Mr. Hill:

Enclosed are the Water Division 2 applications and related materials involving our three water well claims at Bent's Old Fort National Historic Site. Well number one has been abandoned and no future use is contemplated. Well number two was drilled in 1954 and the water right was purchased in 1962 from the previous owner. There are no log data or production records available for either well. Well number three is the only well that has a permit. Therefore, we are including copies of the permits along with copies of a production test.

This completes our water right claims; since all land included in the National Historic Site was acquired, no reserved rights are involved. Consequently, we are not including copies of the legislation establishing the area and other documentation included with our previous claims in other water divisions to establish reserved rights claims.

If you need further information please call Bill Mekeel at 234-5997.

Sincerely yours,

Wes Wolfe

for Kenneth R. Ashley
Associate Regional Director
Park Operations

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

STATEMENT

original of this mailed to R.O. 05-11-65

Las Animas, Colorado, 5-1, 19 65

Superintendent - Ray L. Young
Bent's Old Fort National Historic Site
La Junta, Colorado

IN ACCOUNT WITH

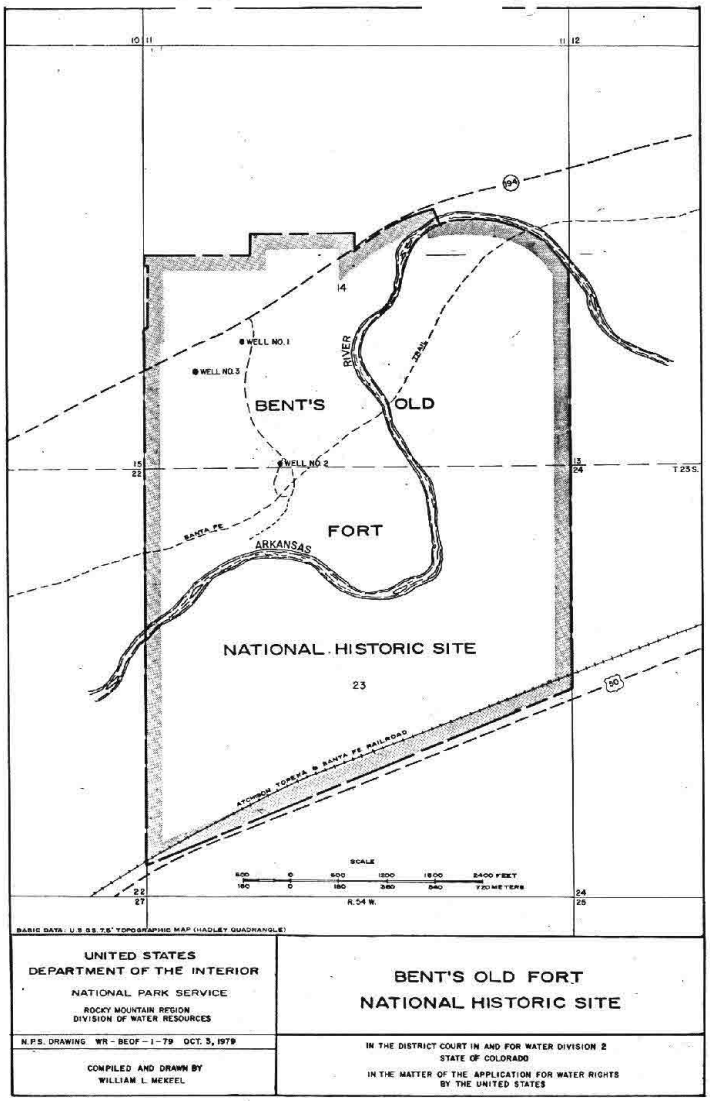
Howerton Water Wells
DRILLING AND REPAIRING
Telephones 456-1113 or 456-0540

	Drilling Water Well TD 41' @ 10.00/ft	410.00	410.00
20'	of 16" Perforated Casing @ 6.66/ft.	133.20	133.20
21'	of 16" Plain Casing @ 4.91/ft.	~~102.74~~	103.24
10	yards of Gravel pack	51.00	51.00
	Electrical Temporary hookup	~~55.45~~	one Paid
	Install, connect for test, Test pumping, removal of pump, clean hole & seal well 23/10's @ 15.00/hr.	345.00	345.00
	total:		~~$1079.34~~ 1042.94

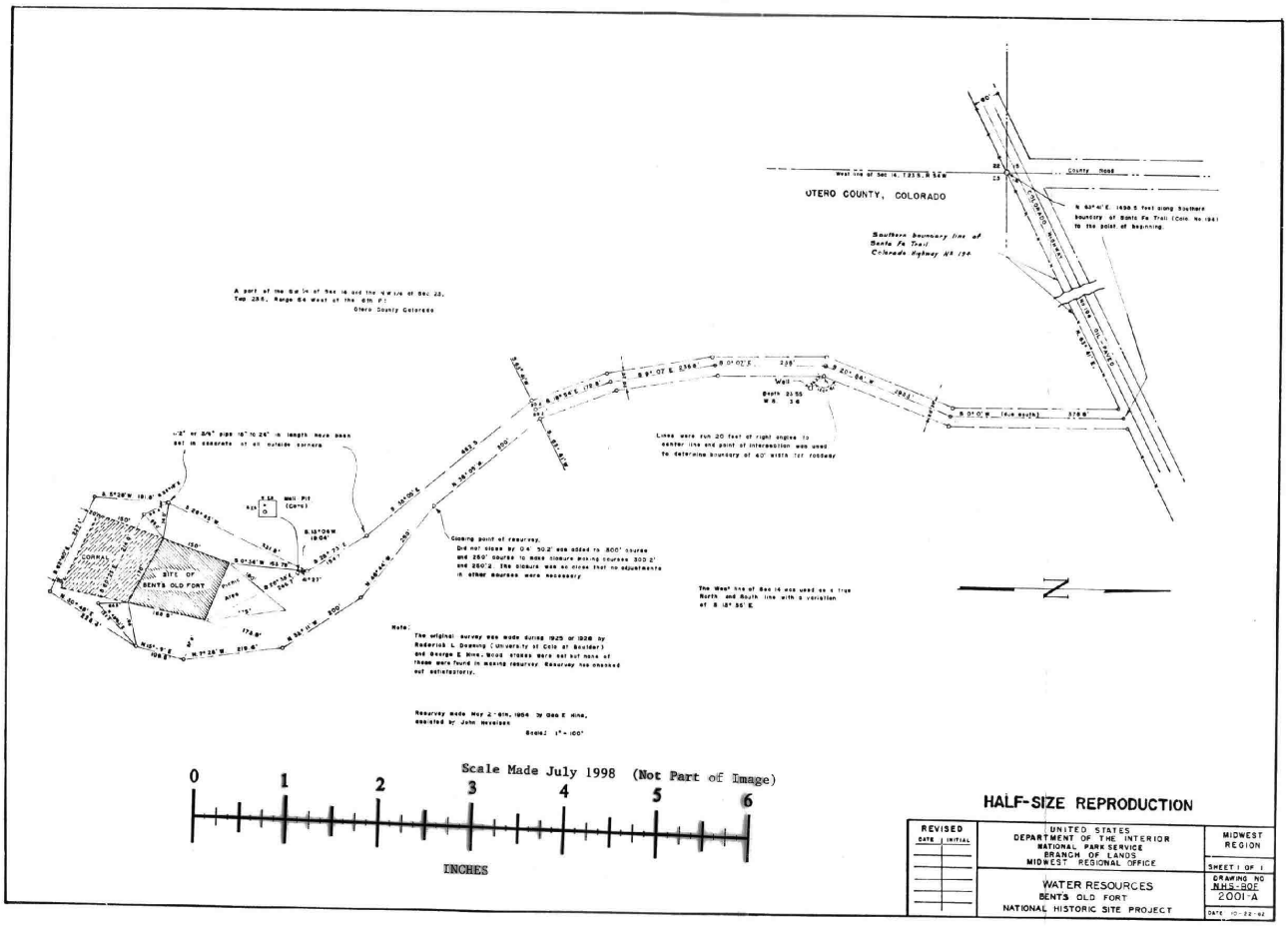
Purchase Order 65-Beol-76 dtd 3-29-65
M C Howerton

Maps and Miscellaneous Information

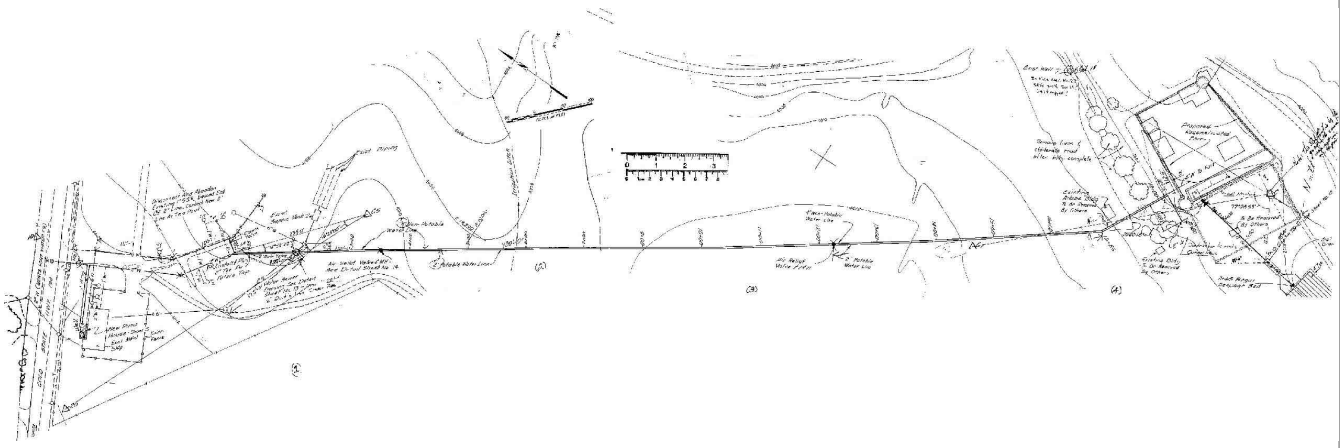
00-00-0000: map of bent's old fort national historic site; 1979

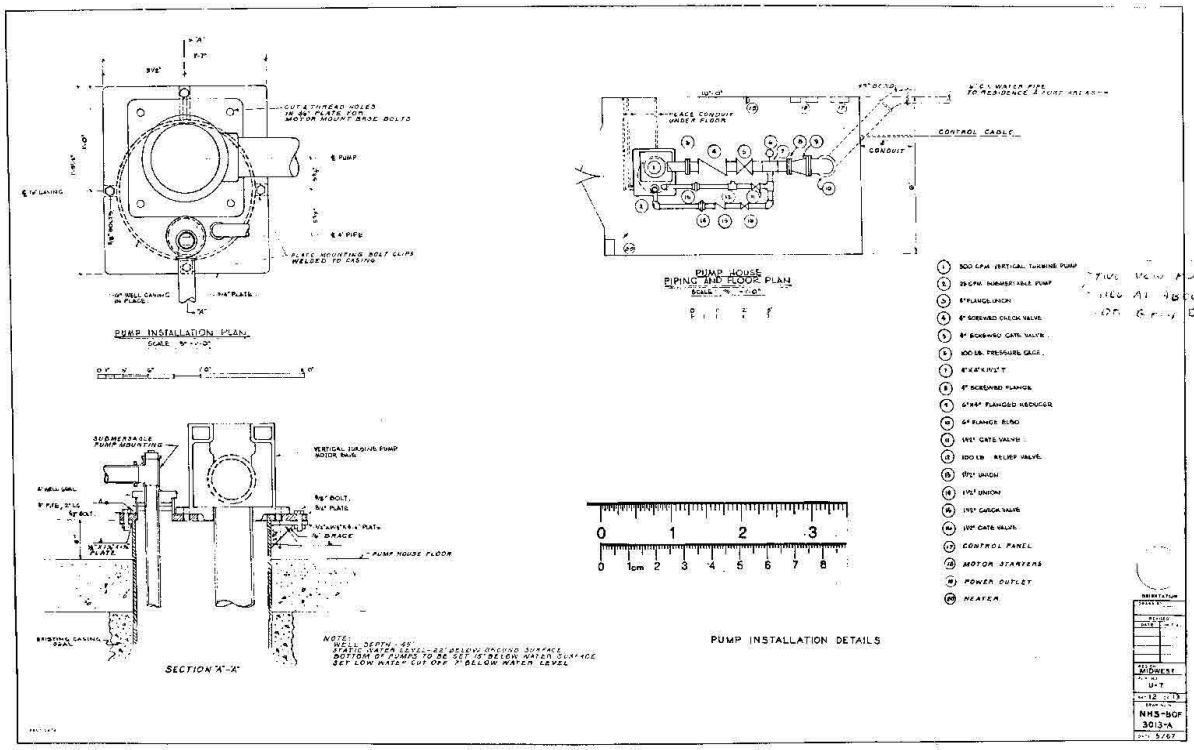


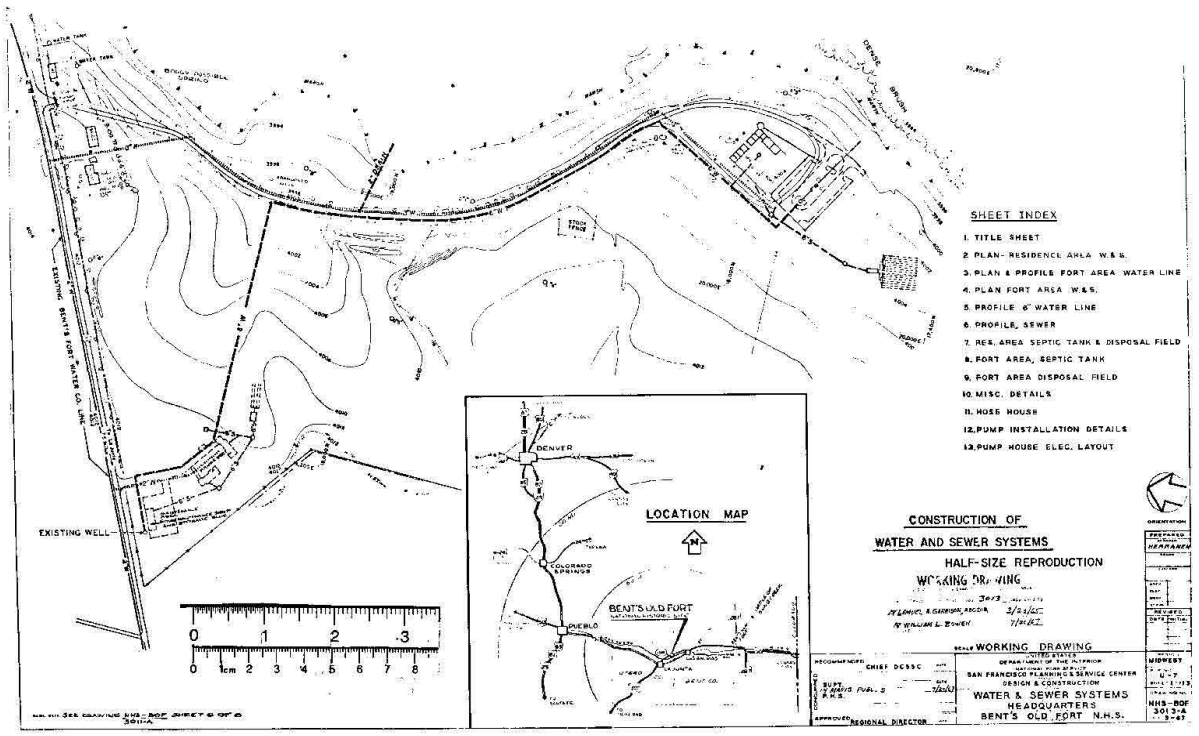
00-00-0000: map of bent's old fort: half-size reproduction diagram; 1962



00-00-0000: map of bent's old fort: half-size reproduction diagram; 1962




CUT & THREAD HOLES TO BE PLATE FOR MOTOR MOUNT BOLTS
PUMP
PLACE MOUNTING BOLT CLIPS WELDED TO CASING
PUMP INSTALLATION PLAN
PLACE CONDUIT UNDER FLOOR
CONTROL CABLE
CONDUIT
PUMP HOUSE PIPING AND FLOOR PLAN
SUBMERSABLE PUMP MOUNTING
VERTICAL TURBINE PUMP MOTOR BASE
PUMP HOUSE FLOOR
SECTION "A"-"A"
NOTE:
WELL DEPTH - 45'
STATIC WATER LEVEL - 22' BELOW CASING SURFACE
BOTTOM OF PUMPS TO BE SET 15' BELOW WATER SURFACE
SET LOW WATER CUT OFF 7' BELOW WATER LEVEL
0 1 2 3
0 1cm 2 3 4 5 6 7 8
1 300 GPM VERTICAL TURBINE PUMP
2 25 GPM SUBMERSIBLE PUMP
3 6" FLANGE UNION
4 6" SCREWED CHECK VALVE
5 6" SCREWED GATE VALVE
6 100 LB. PRESSURE GAGE
7 6"x6"x1½" T
8 6" SCREWED FLANGE
9 6"x4" FLANGED REDUCER
10 6" FLANGE BLIND
11 1½" GATE VALVE
12 100 LB. RELIEF VALVE
13 6"x1" UNION
14 1½" UNION
15 1½" CHECK VALVE
16 1½" GATE VALVE
17 CONTROL PANEL
18 MOTOR STARTERS
19 POWER OUTLET
20 HEATER
PUMP INSTALLATION DETAILS
NMS-BOF 3013-A



Docket Information

Number of Documents in Docket 261

Documents Dated from 5/15/1967 to 11/13/2000

Docket Compiled: 2/10/2012