WATER-RIGHT DOCKET

Death Valley National Park

Docket No: 26

GOLDBELT SPRING WATER SYSTEM

Preliminary Docket Information

05-04-1979: goldbelt spring water system; hydrologic unit #18090203 ; may 04, 1979

DATE: May 4, 1979

DOCKET (FILE) TITLE _____

REGION Western AREA Death Valley National Monument

SITE Goldbelt Spring Water System

STATE California COUNTY Inyo DOCKET NO WR #26

LOCATION SE¼ SW¼ Sec.29 T15S R42E

REGIONAL BASIN _____ LOCAL BASIN _____

ACQUIRED BY Appropriation

APPLICATION 18433 PERMIT 12100 CERTIFICATE 6740

ACTION DUE _____ PRIORITY December 15, 1958 RESERVATION February 11, 1933

QUANTITY 650 gpd USE mining and domestic

STATUS Active SOURCE Surface Water - Spring

REMARKS Hydrologic Unit #18090203

NARRATIVE:

In 1958 Death Valley National Monument filed an application to appropriate water from Goldbelt Spring. This filing was in response to a request for a Special Use Permit by the Sierra Talc Co. for their mining activities in the monument. The company recieved Permit for Water Use No. DEVA-1-59-WP for 0.002 cfs for domestic use and 0.008 cfs for mining.

On May 10, 1959 Roy Hunter protested the application on the grounds that he had a senior right to that spring and all other sources of water in the Marble Canyon area by virtue of his (and his father's) grazing activities in the area since 1903. The monument responded to his assertion by pointing out that no grazing was allowed in the monument, so Hunter could not have any right to any monument water source for this purpose. The monument sued Hunter to enjoin his cattle grazing activities within the monument's boundaries. Hunter counterclaimed that he had a valid appropriative right to the water from the springs in Marble Canyon. The 9th Circuit Court of Appeals agreed with Hunter, but also found that he had no right to graze cattle in the monument. The court held that the monument had to allow Hunter a right-of-way across monument land to divert and transport the water to Hunter's grazing area. Hunter attempted to strike a compromise with the monument, where he would transfer his rights to the springs in the area in return for grazing rights in the monument for 30 years. The Service then suggested a 10 year grazing permit in the event another agreement could not be reached. The current status of this situation is unknown; Goldbelt Spring is the only source in the area that could be developed with any economic feasibility.

Bill Werrell called Pete Sanchez in the park in Jan. 1981, to inquire about the present usage of this water source. At this time the sole usage is for wildlife at the site. Mining ended years ago and there are no grazing rights or easements to the water source.

Hershey, Jan. 1981

The Report of Licensee for this source was filled out and returned in Jan. 1981. A request for a change of use from Mining/Domestic to Wildlife Preservation should be filed soon. This action would bring the use of the source into line with the present situation at the site.

A check with the mining office confirmed that there is no mining, nor has there been any mining in the Goldbelt Springs area for some time. A decision of the Administrative Law Judge is in this docket. The mining office will notify us if there is any appeal concerning this water source.

Hershey, Jan. 9, 1981

Compiled by T. Kern

Approved by _____

State Water Rights Documentation

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2011

Primary Owner: U S NATIONAL PARK SERVICE
Application Number: A018433
License Number: 006740
Date Submitted: 2012-07-03

1. Project Abandoned	
The project has been abandoned and I request revocation of my water right license	No

2. Compliance with License Terms and Conditions	
I have currently reviewed my water right license and I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	

3. Changes to the Project	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	Yes
Description of type of use changes	Water is now being used for wildlife and recreational purposes.
Place of use has changed	
Description of place of use changes	
Other changes	
Description of other changes	

4. Purpose of Use	
Recreational	Visitation
Fish and Wildlife Protection and/or Enhancement	Amounts are estimates.

5. Amount of Water Diverted and Used		
Month	**Amount directly diverted or collected to storage (Gallons)**	**Amount used (Gallons)**
January	0.0	0.0
February	0.0	0.0
March	0.0	0.0
April	0.0	0.0
May	0.0	0.0
June	0.0	0.0
July	0.0	0.0
August	0.0	0.0
September	0.0	0.0
October	0.0	0.0
November	0.0	0.0
December	0.0	0.0
Total	0	0

6. Maximum Rate of Diversion for each Month	
Month	**Maximum Rate of Diversion (GPD)**
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0

7. Storage					
Reservoir name	**Spilled this year**	**Feet below spillway at maximum storage**	**Completely emptied**	**Feet below spillway at minimum storage**	**Method used to measure water level**

Conservation of Water	
8. Are you now employing water conservation efforts?	No
Description of water conservation efforts	
9. Amount of water conserved	

Water Quality and Wastewater Reclamation	
10. During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	No
11. Amount of reclaimed, desalinated, or polluted water used	

Conjuctive Use of Groundwater and Surface Water	
12. During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your license?	No
13. Amounts of groundwater used	

Additional Remarks
License amended in 1991 to remove domestic and mining and add wildlife enhancement. Order from Board in file is instructive on possible other conversions. The United States gives this information to the State in the interest of comity, and does not concede that the State has the power to regulate the rights of the United States to the use of water.

Attachments		
File Name	**Description**	**Size**
No Attachments		

Contact Information of the Person Submitting the Form	
First Name	Eric
Last Name	Lord
Relation to Water Right	Other
I read the above and agree	Yes

CALIFORNIA Water Boards

DEVA

EDMUND G. BROWN JR. GOVERNOR

MATTHEW RODRIGUEZ SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOTICE TO WATER RIGHT LICENSEE

March 5, 2012

Designated Contact or Agent:
U S NATIONAL PARK SERVICE
1201 OAK RIDGE DR STE 250
FORT COLLINS, CO 80525

Contact Phone Number: (970) 225-3500

Primary Owner: U S NATIONAL PARK SERVICE

Application ID: A018433 **License No.** 006740

First three Sources listed:	Counties:
GOLDBELT SPRING	Inyo

Direct Diversion Rate: 650.000 Gallons per Day **Collection to Storage Amount:** 0.000 AC-FT

LICENSEE REPORTING FOR 2011

As indicated in the California Code of Regulations title 23, section 847, the State Water Resources Control Board (State Water Board) requires annual reporting of water diversion and use under licenses. The State Water Board has historically required these reports to be filed once every three years in paper form. California Water Code chapter 2.7 section 348 authorizes the State Water Board to require online reporting of water diversions. Consistent with these requirements, the State Water Board, Division of Water Rights (Division) developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). RMS allows electronic submittal of water diversion and use reports, saving both paper and resources. **All reports must be completed online through RMS; paper copies are not available.** To report online, go to **www.waterboards.ca.gov/rms** and login with your User ID and Password. The information required to login and access your online Report of Licensee is:

User ID (Water Right ID): **A018433**
Password (Reporting Identifier): **046679**

You are required to complete the online report for 2011 no later than **June 30, 2012.** If you do not have a computer or internet access, you should use a friend's computer, a computer in a public library, or a Division computer to fill out the form. Unfortunately, Division staff cannot fill the form out on your behalf. However, if you wish to seek assistance with the form, you may contact the Division to request a listing of attorneys and consulting firms with water rights experience. You can also review the listing on the Division's Business Information Contacts webpage at: http://www.waterboards.ca.gov/waterrights/board_info/contacts.shtml.

If you have multiple water rights, please be aware you must report water use separately for

each right. Do not list total combined diversions under multiple rights on the form. To document compliance with the conditions of your water right(s), you may use RMS to submit photos (such as staff gages, measuring devices, etc.), documents (Department of Fish and Game agreements, other agency approvals, etc.), graphs, and spreadsheets.

CHANGES FOR 2011 REPORTING:

- It is possible to create one account on the RMS site to report all of your water rights. It is not necessary to create an account if you would like to report your water rights individually. Please see the RMS login page for more information and instructions.
- RMS includes the capability to amend current and past reports. Amendments to credits previously claimed pursuant to Water Code sections 1010, 1011, and 1011.5 are subject to review and may not be accepted.
- Licensees can list all of their reservoirs associated with this license in their report.
- RMS includes new on screen help tools and instructions.

REQUIRED NOTIFICATION OF CHANGE IN OWNERSHIP

You are required to notify the Division directly of any water right ownership change. Your county assessor's office or title company does not notify the Division of ownership changes. Failure to notify the Division of an ownership change prior to assessment of annual water right fees will result in your liability to pay the annual water right fee even if you transferred the property associated with the water right. Notification to the Division should be made using the Change of Name/Address or Ownership form by clicking on the Water Rights Forms link located at www.waterboards.ca.gov/waterrights/board_info.

CONTACT INFORMATION

Frequently asked questions pertaining to filling out online reports are posted at the RMS website and we encourage you to read these first. However, if you still have any questions or need assistance completing the report, please contact the Division of Water Rights at (916) 323-9393 or send an email to: ewrims@waterboards.ca.gov.

Sincerely,

Phillip Crader, Manager
Permitting and Licensing Section
Division of Water Rights

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2010

Primary Owner: U S NATIONAL PARK SERVICE
Application Number: A018433
License Number: 006740

Compliance with License Terms and Conditions	
The project has been abandoned and I request revocation of my water right license	No
I have reviewed my water right license	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Recreational	Visitation.
Fish and Wildlife Protection and/or Enhancement	See remarks.

Month	Amount directly diverted or collected to storage (Gallons)	Amount used (Gallons)
January	3000.0	3000.0
February	3000.0	3000.0
March	3000.0	3000.0
April	3000.0	3000.0
May	3000.0	3000.0
June	3000.0	3000.0
July	3000.0	3000.0
August	3000.0	3000.0
September	3000.0	3000.0
October	3000.0	3000.0
November	3000.0	3000.0
December	3000.0	3000.0
Total	36000	36000

Month	Maximum Rate of Diversion ()
January	
February	
March	
April	
May	

June	
July	
August	
September	
October	
November	
December	

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level

Conservation of Water	
Are you now employing water conservation efforts?	
Description of water conservation efforts	
Amount of water conserved	

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	
Amount of reclaimed, desalinated, or polluted water used	

Conjuctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your license?	
Amounts of groundwater used	

Additional Remarks
Use amounts are estimates.

Attachments	
File Name	Size
No Attachments	

Contact Information of the Person Submitting the Form	
First Name	Eric
Last Name	Lord
Relation to Water Right	Other
I read the above and agree	Yes

Linda S. Adams
Acting Secretary for Environmental Protection

State Water Resources Control Board

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ (916) 341-5300
Mailing Address: P.O. Box 2000 ♦ Sacramento, California ♦ 95812-2000
FAX (916) 341-5400 ♦ Web Site Address: http://www.waterboards.ca.gov

Edmund G. Brown Jr.
Governor

NOTICE TO WATER RIGHT LICENSEE

Application ID: A018433 **License No.** 6740 **Reporting Cycle:** 3

Owner(s) of Record: U S NATIONAL PARK SERVICE

Primary Contact or Agent:
U S NATIONAL PARK SERVICE
1201 OAK RIDGE DR STE 250
FORT COLLINS, CO 80525

Contact Phone: (970) 225-3500

Source(s): GOLDBELT SPRING in Inyo County

Direct Diversion Rate: 650 Gallons per Day **Collection To Storage Amount:** 0 AC-FT

ANNUAL LICENSEE REPORTING FOR 2010

The State Water Resources Control Board (State Water Board) has historically required Reports of Licensee to be filed once every three years in paper form. Senate Bill 8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under licenses, and developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The online RMS allows you to electronically submit your water diversion and use report, saving both paper and resources. To report on-line, go to **www.waterboards.ca.gov/rms** and log in with your water right ID and password. The information required to log in and access your online Report of Licensee is:

Water Right ID: **A018433**
Password: **2W3T5Y**

You are required to complete the online report for 2010 no later than **July 1, 2011.** You may also submit your record of diversion and use for previous years using the RMS. To maintain a continuous record of water use under your license, Licensees with **Reporting Cycle 1** should report their monthly diversion and use for 2008, 2009, and 2010. Licensees with **Reporting Cycle 2** should report their monthly diversion and use for 2009 and 2010; and Licensees with **Reporting Cycle 3** only need to report monthly diversion and use for 2010. Please note that it is not possible at this time to amend a report submitted through the RMS.

CHANGES FOR 2010 REPORTING:

Question 4 on the previous Report of Licensee form ("Amount of Water Used") has changed. New Question 5c requires you to report both the "*Amount directly diverted and/or collected to storage*" and the corresponding "*Amount used*" for each month. For many direct diversion-only projects, these amounts will be the same and the online form provides a check box for that purpose (Question 5b).

New Questions 6a and 6b on the RMS Report of Licensee requires you to report the maximum instantaneous *rate* of diversion that has occurred in each month under the license, if available.

If your water project is covered by two or more water rights, you should only report your diversion and use of water for the project covered by the license number printed above. The total amount diverted and used under multiple water rights should not be combined and reported on a single

form. In such cases, you should quantify your diversion under each water right, assigning water to the senior-most right first, to the extent allowed under the permit or license.

REQUIRED NOTIFICATION OF CHANGE IN OWNERSHIP

You are required to notify the State Water Board directly of any water right ownership change. Your county assessor's office or title company does not notify us of any ownership updates. Failure to notify the State Water Board of an ownership change prior to assessment of annual water right fees will result in your liability to pay the annual water right fee even if you transferred the property associated with the water right. Notification to the State Water Board should be made using the Change of Name/Address or Ownership form by clicking on the Water Rights Forms link located at www.waterboards.ca.gov/waterrights/board_info

CONTACT INFORMATION

Frequently asked questions pertaining to filling out online reports are posted at the RMS website and we encourage you to read these first. However, if you still have any questions or need assistance completing the report, please contact the Division of Water Rights at (916) 341-5431 or send an email to: ewrims@waterboards.ca.gov

Sincerely,



Phillip Crader, Manager
Permitting and Licensing Section
Division of Water Rights

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2009

Application Number: A018433
License Number: 006740

Compliance with Permit Terms and Conditions	
I have reviewed my water right permit	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Recreational	Visitation.
Fish and Wildlife Protection and/or Enhancement	See remarks.

Month	Amount directly diverted or collected to storage (Gallons)	Amount beneficially used (Gallons)
January	3000.0	3000.0
February	3000.0	3000.0
March	3000.0	3000.0
April	3000.0	3000.0
May	3000.0	3000.0
June	3000.0	3000.0
July	3000.0	3000.0
August	3000.0	3000.0
September	3000.0	3000.0
October	3000.0	3000.0
November	3000.0	3000.0
December	3000.0	3000.0
Total	36000	36000

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level

Conservation of Water	
Are you now employing water conservation efforts?	
Description of water conservation efforts	
Amount of water conserved	

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	
Amount of reclaimed, desalinated, or polluted water used	

Conjuctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your permit?	
Amounts of groundwater used	

Additional Remarks
Use amounts are estimates.

Contact Information of the Person Submitting the Form	
First Name	Eric
Last Name	Lord
Relation to Water Right	Other
I read the above and agree	Yes

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2008

Application Number: A018433
License Number: 006740

Compliance with Permit Terms and Conditions	
I have reviewed my water right permit	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Recreational	Visitation.
Fish and Wildlife Protection and/or Enhancement	See remarks.

Month	Amount directly diverted or collected to storage (Gallons)	Amount beneficially used (Gallons)
January	3000.0	3000.0
February	3000.0	3000.0
March	3000.0	3000.0
April	3000.0	3000.0
May	3000.0	3000.0
June	3000.0	3000.0
July	3000.0	3000.0
August	3000.0	3000.0
September	3000.0	3000.0
October	3000.0	3000.0
November	3000.0	3000.0
December	3000.0	3000.0
Total	36000	36000

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level

Conservation of Water	
Are you now employing water conservation efforts?	
Description of water conservation efforts	
Amount of water conserved	

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	
Amount of reclaimed, desalinated, or polluted water used	

Conjuctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your permit?	
Amounts of groundwater used	

Additional Remarks
Use amounts are estimates.

Contact Information of the Person Submitting the Form	
First Name	Eric
Last Name	Lord
Relation to Water Right	Other
I read the above and agree	Yes

[FINAL SUBMITTED VERSION]

REPORT OF LICENSEE FOR 2007

Application Number: A018433
License Number: 006740

Compliance with Permit Terms and Conditions	
I have reviewed my water right permit	Yes
I am complying with all terms and conditions	Yes
Description of noncompliance with terms and conditions	
Intake location has been changed	
Description of intake location changes	
Type of use has changed	
Description of type of use changes	
Place of use has changed	
Description of place of use changes	

Purpose of Use	
Recreational	Visitation.
Fish and Wildlife Protection and/or Enhancement	Amounts are estimates.

Month	Amount directly diverted or collected to storage (Gallons)	Amount beneficially used (Gallons)
January	3000.0	3000.0
February	3000.0	3000.0
March	3000.0	3000.0
April	3000.0	3000.0
May	3000.0	3000.0
June	3000.0	3000.0
July	3000.0	3000.0
August	3000.0	3000.0
September	3000.0	3000.0
October	3000.0	3000.0
November	3000.0	3000.0
December	3000.0	3000.0
Total	36000	36000

Reservoir name	Spilled this year	Feet below spillway at maximum storage	Completely emptied	Feet below spillway at minimum storage	Method used to measure water level

Conservation of Water	
Are you now employing water conservation efforts?	
Description of water conservation efforts	
Amount of water conserved	

Water Quality and Wastewater Reclamation	
During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?	
Amount of reclaimed, desalinated, or polluted water used	

Conjuctive Use of Groundwater and Surface Water	
During the period covered by this Report, were you using groundwater in lieu of available surface water authorized under your permit?	
Amounts of groundwater used	

Additional Remarks

Contact Information of the Person Submitting the Form	
First Name	Eric
Last Name	Lord
Relation to Water Right	Other
I read the above and agree	Yes

Return completed Report to:

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
P.O. BOX 2000
SACRAMENTO, CA 95812-2000

"A018433%L%2009"

Or file Report online at: http://ciwqs.waterboards.ca.gov/ewrims/ewrims_online_reporting/login.jsp
For assistance completing this Report, call: (916) 341-5300 FAX (916) 341-5400

REPORT OF LICENSEE FOR 2007, 2008, 2009

OWNER(S) OF RECORD: If the owner information below is wrong or missing, please correct.
U S NATIONAL PARK SERVICE

APPLICATION NO: A018433

LICENSE NO: 006740
CONTACT PHONE NO: 970-225-3500

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING
U S NATIONAL PARK SERVICE
1201 OAK RIDGE DR STE 250
FORT COLLINS, CO 80525

LICENSE SUMMARY

NAME(S) OF SOURCES OF WATER (Up to first 4 sources listed)	POD PARCEL NO	COUNTY LOCATION
GOLDBELT SPRING		Inyo

MAX DIRECT DIVERSION RATE: 650 Gallons per Day
MAX COLLECTION TO STORAGE AMOUNT: 0 AC-FT
WATER RIGHT FACE VALUE: 0.7 AC-FT

LICENSED USE(S) OF WATER (First 4 uses displayed below	ACRES (AC)	DIRECT DIVERSION SEASON (month/day to month/day)	COLLECTION TO STORAGE SEASON (month/day to month/day)
Recreational	0.0	1/1 to 12/31	
Fish and Wildlife Protection and/or Enhancement	0.0	1/1 to 12/31	

[ ] YES [ ] NO The project has been abandoned and I request revocation of my water right license.

COMPLIANCE WITH LICENSE TERMS AND CONDITIONS: This Report is important since it provides a record of your actual water use as well as your compliance with the terms and conditions of your water right license. The information requested below should be filled out carefully. This Report should be promptly returned to the above address.

1. [ ] YES [ ] NO I have currently reviewed my water right license.
2. [ ] YES [ ] NO I am complying with all terms and conditions listed in the license. Identify any noncompliance under "Remarks" on the reverse side.
3. [ ] YES [ ] NO I have changed the intake location, type(s) of use, and/or place of use authorized by the license. If Yes, explain under "Remarks" on reverse side. ***Note:*** *A Change Petition and associated fees may be required for any significant changes to the licensed project.*

BENEFICIAL USE(S) OF WATER: Under the appropriate boxes below, briefly explain how the water was used each year

4. Current Use(s) of Water	2007	2008	2009
4.a. Irrigation – specify no. of acres irrigated			
4.b. Frost Protection – specify no. of acres protected			
4.c. Heat Control – specify no. of acres protected			
4.d. Industrial – specify type			
4.e. Stockwatering – specify no. & type of animals			
4.f. Municipal – approx. population served			
4.g Domestic – specify no. of persons, lawn/garden area			
4.h. Power Generation – installed capacity in kW, MW, or hp			
4.i Recreational – specify (boating, fishing, water contact sports, etc.)			
4.j. Other – specify (Examples: fire protection, snowmaking, mining, etc.)			

AMOUNT OF WATER TAKEN FROM THE SOURCE: Please report only the amounts diverted and/or stored under this license.
5.a. Amount of water taken each month under this license in [ ] gallons or [ ] acre-feet or [ ] million gallons

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2007													
2008													
2009													

AMOUNT OF WATER BENEFICIALY USED: Please report only the amounts beneficially used under this license.
5.b. Amount actually used by direct diversion and/or withdrawal from storage in acre-feet [ ] Check if amounts are same as 5.a.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2007													
2008													
2009													

Please Detach This Portion

To file this report electronically, please go to http://ciwqs.waterboards.ca.gov/ewrims/ewrims_online_reporting/login.jsp and log-in using the Water Right ID and Password provided below:

Water Right ID: A018433

Password: 2W3T5Y

After logging-in, you will be able to change your password by selecting the "Change E-mail or Password" link at the top of the screen. To complete your report for the current year, select the link to the year 2009. You can also complete reports for previous years by selecting "Submit a Report for a Year not Shown Above".

If you have any questions or need further assistance you may contact the eWRIMS Help Desk at 866-792-4977, Monday through Friday, 8:00 a.m. through 5:00 p.m., or by email at ewrims@waterboards.ca.gov.

Please Detach This Portion

App ID No. A018433

6. For Storage Projects only:	2007	2008	2009
6.a. Did your reservoir(s) spill?			
6.b. If **No**, how many feet vertically below the spillway was the water level at maximum storage?			
6.c. Have you emptied the reservoir(s)?			
6.d. If **No**, how many feet vertically below the spillway was the water level(s) at minimum storage?			

PLEASE ANSWER ONLY THOSE QUESTIONS BELOW THAT ARE APPLICABLE TO YOUR WATER RIGHT PROJECT
(Please note that future amendments to the claims below will not be accepted.)

An appropriative water right can be reduced or revoked through five continuous years of nonuse. However, the California Water Code specifies that under certain conditions no reduction or loss of the appropriative water right shall occur due to: (a) water conservation efforts; (b) use of recycled, desalinated, or polluted water; and/or (c) conjunctive use of groundwater and surface water. You must report the extent and amount of water claimed for credit below. Failure to report the amounts will deprive you of the benefits allowed under the Water Code sections.

CONSERVATION OF WATER: (Water Code section 1011)

7. **[ ] YES [ ] NO** During the period covered by this Report, were you implementing any water conservation efforts? If **YES**, please describe:

8. If **YES** and you want to claim credit for the amount of water conserved towards the water use authorized under your license as allowed under Water Code section 1011, please show the amount of water conserved below:

Future amendments to this claim will not be accepted.	2007	2008	2009
Amount of water conserved. *Specify in acre-feet (AF) or million gallons (MG)*			

WATER QUALITY AND WASTEWATER RECLAMATION: (Water Code section 1010)

9. **[ ] YES [ ] NO** During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?

10. If **YES** and you want to claim credit for the substitution of this reclaimed, desalinated, or polluted water in lieu of the surface water authorized under your license as allowed by Water Code section 1010, please show the amount of reclaimed, desalinated, or polluted water used below:

Future amendments to this claim will not be accepted.	2007	2008	2009
Amount of reclaimed, desalinated, or polluted water used. *Specify in acre-feet (AF) or million gallons (MG)*			

CONJUNCTIVE USE OF GROUNDWATER AND SURFACE WATER: (Water Code section 1011.5)

11. **[ ] YES [ ] NO** During the period covered by this Report, were you using groundwater in lieu of the surface water authorized under your license?

12. If **YES** and you want to claim credit for the groundwater used in lieu of the surface water authorized under your permit as allowed under Water Code section 1011.5, please show the amount of groundwater used below:

Future amendments to this claim will not be accepted.	2007	2008	2009
Amount of groundwater used in lieu of surface water. *Specify in acre-feet (AF) or million gallons (MG)*			

REMARKS: (Identify the item you are explaining; additional pages may be attached.)

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

Signature:_____ Date: _____ Phone No.: ( ) _____
LICENSEE (OR AGENT / DESIGNEE)

File

United States Department of the Interior

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

December 12, 1995

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

Mr. John Wright
Associate WRC Engineer
Permit and License Unit
State of California
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Re:	License 002430	(Application A005073) Lower Spring
	License 004621	(Application A009510) Main Cow Creek
	License 006110	(Application A015381) Lower Emigrant Spring
	License 006343	(Application A008183) Saratoga Springs
	License 006559A	(Application A013852A) Burns Spring
	License 006740	(Application A018433) Goldbelt Spring
	License 007578	(Application A019538) Mesquite Spring
	License 010580	(Application A008423) UNSP
	License 010781	(Application A015539) Covered Spring
	License 010845	(Application A016096) Tarantula Springs

Dear Mr. Wright:

Enclosed please find the completed Report of Licensee forms for the above captioned water rights at Death Valley National Park.

Should you have any questions regarding these Report of Licensee, please contact Denise Newberry of my staff at (970) 225-3525.

Sincerely,

Owen R. Williams
Chief, Water Rights Branch
Enclosures

cc: DEVA - Superintendent (w/ enclosure)
PGSO - Kolipinski (w/o enclosures)
2380 - Pettee (w/o enclosures)
bcc: Dockets (w/ enclosures)
FNP:DNewberry:mf:12/12/95:S:\WRB\DENISE\1995ROL.DOC

State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000 SACRAMENTO, CA 95812-2000
901 P STREET, SACRAMENTO, CA
(916) 657-1364 FAX: (916) 657-1485

REPORT OF LICENSEE FOR 1992, 1993, 1994

OWNER OF RECORD: U S DEATH VALLEY NATL MONUMENT

c/o U S NATL PARK SERVICE, WEST REG, DWR
1201 OAKRIDGE DR STE 250
FORT COLLINS, CO 80525

APPLICATION: A018433

LICENSE: 006740

TELEPHONE NUMBER:
(970) 225 -3500

IF OWNER'S NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE:		COUNTY:
GOLDBELT SPRING		INYO
PURPOSE:	**DIVERSION/STORAGE SEASON:**	**ACRES/HP:**
WILDLIFE	JAN 01 TO DEC 31 /	0 AC
RECREATIONAL	JAN 01 TO DEC 31 /	0 AC

AMOUNT: 650 GPD 0 AC-FT

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is subject to the conditions therein. I have currently reviewed my license: YES [XX] NO [ ]. I am complying with the conditions of my license: YES [XX] NO [ ]. Identify any noncompliance by license term number under "Remarks" on reverse side. This report is important in providing the record of use needed in maintaining your water right. It should be filled out carefully and returned promptly to the above-listed address.

THE PROJECT HAS BEEN ABANDONED, AND I REQUEST REVOCATION OF THE LICENSE: YES [ ].

COMPLETE FOR DIRECT DIVERSION PROJECTS

1. Have you used the full licensed amount of water each year? YES [XX] NO [ ].
2. State the quantity of water used each month in gallons or acre-feet (if not known, check months water was used).

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1992	X	X	X	X	X	X	X	X	X	X	X	X	
1993	X	X	X	X	X	X	X	X	X	X	X	X	
1994	X	X	X	X	X	X	X	X	X	X	X	X	

COMPLETE FOR STORAGE PROJECTS	1992	1993	1994
3. Did your reservoir spill this year?	n/a	n/a	n/a
4. If not, how many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			

3/94

(Continues on reverse side)
FOR0135R1

1994

USE (COMPLETE FOR ALL PROJECTS) (see page 1 for year of use)

7. Acreage irrigated			
8. Stockwatering - number of stock			
9. Domestic - number of persons			
garden area, etc.			
10. Recreational - nature of use camping	x	x	x
11. Industrial - nature of use			
12. Municipal - approximate population			
13. Power generation - K.W.			
14. Other			

15. If no water was used in one or more years, briefly state the reason under "Remarks".
16. If the location of the point of diversion or place of use or type of use(s) has been changed and the permission of this Board has not yet been obtained, please describe nature of changes under "Remarks". _____

PLEASE ANSWER ONLY THOSE QUESTIONS BELOW WHICH ARE APPLICABLE TO YOUR PROJECT.

CONSERVATION OF WATER

17. Describe any water conservation efforts you may have started: Camping restrictions away from water source.

18. If credit toward beneficial use of water under this license for water not used due to a conservation effort is claimed under Water Code Section 1011, please show the amounts of water conserved (acre-feet or mg.):
19___ _____(af/mg) 19___ _____(af/mg) 19___ _____(af/mg

WATER QUALITY AND WASTEWATER RECLAMATION

19. Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES [ ] NO [ ]. n/a

If credit toward use under this water right through substitution of reclaimed water, desalinated water or polluted water in lieu of appropriated water is claimed under Section 1010 of the Water Code, please show amounts of reduced diversion and amounts of reclaimed water used: 19___ _____(af/mg) 19___ _____(af/mg) 19___ _____(af/mg

REMARKS: (Identify the item you are explaining. Additional pages may be attached.)

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief:

Date: 14 Dec 95 Sign Here: Owen R Williams Chief, Water Rights Branch
LICENSEE (OR AGENT OR DESIGNEE)

26

A copy of this document is
being recorded at your
County Recorder.

Please retain this copy
for your file.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 18433 PERMIT 12100 LICENSE 6740

ORDER CORRECTING THE PURPOSE OF USE

WHEREAS:

1. License 6740 was issued to U.S. Death Valley National Monument, on May 28, 1963, pursuant to Application 18433.

2. On May 31, 1963, License 6740 was recorded with the County Recorder of Inyo in Book 158, Page 16.

3. On August 16, 1991, the National Park Service informed the State Water Resources Control Board (State Board) that water is no longer used for domestic purposes, but is used for recreational and fish and wildlife purposes.

4. Section 798 of Title 23, California Code of Regulations (CCR) provides that recreational, and fish and wildlife uses at a reservoir are incidental uses and can be added as a correction.

5. The State Board has determined that said correction will not initiate a new right nor operate to the injury of any legal user of the water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The condition of the license regarding the Purpose of Use be amended to read:

   Purposes of Use are Recreational, and Fish and Wildlife Enhancement (0000003)

Dated: SEPTEMBER 13 1991

ORIGINAL SIGNED
BY GLENN K. MORK

for Edward C. Anton, Chief
Division of Water Rights

DEVA WR#26

PETITION FOR CHANGE IN PURPOSE OF USE

Application 18433 Permit _____ License 6740

State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95810

I request permission to change the purpose of use described in this permit or license as follows:

Water is used for domestic, recreational, and fish and wildlife purposes.
(State all purposes for which water is to be used)

Give reason for proposed change: Water is no longer used for mining -- all mining in the area ceased many years ago.

Does this change involve any place of use not described in the permit or license?

No (yes or no). If answer is yes, give legal description:

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.

Give names and addresses of persons known to you who may be affected by the proposed change:

None

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Dated: June 6, 19 88, at Fort Collins, Colorado, ~~California~~.

O R Williams

Owen R. Williams, Acting Chief, Water Rights Branch, National Park Service

Section 1547 of the Water Code requires a $100 filing fee with petitions for changes.

WR 22e (11/85)

State Water Resources Control Boar
DIVISION OF WATER RIGHTS
P.O. BOX 2000 SACRAMENTO, CA 95810
901 P STREET SACRAMENTO, CA
(916) 324-5626

REPORT OF LICENSEE FOR 1984, 1985, 1986

OWNER OF RECORD:

DEATH VALLEY NATL MONUMENT
C/O U S NATIONAL PARK SERVICE, WESTERN R
DIVISION OF WATER RESOURCES
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIF 94102

APPLICATION: A018433

LICENSE: 006740

TELEPHONE NUMBER:
( ) -

IF OWNER'S NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: GOLDBELT SPRING

COUNTY: INYO

PURPOSE:	DIVERSION/STORAGE SEASON:	ACRES/HP:
~~MINING~~ NO LONGER APPLICABLE	JAN 01 TO DEC 31	.0 AC
DOMESTIC	JAN 01 TO DEC 31	.0 AC

AMOUNT: 650.000 GPD 0.0 AC-FT

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is subject to the conditions therein. I have currently reviewed my license: YES [X]. NO [ ]. I am complying with the conditions of my license: YES [X] NO [ ]. Identify any noncompliance by license term number under "Remarks" on reverse side. This report is important in providing the record of use needed in maintaining your water right. It should be filled out carefully and returned promptly to the above-listed address.

THE PROJECT HAS BEEN ABANDONED, AND I REQUEST REVOCATION OF THE LICENSE: YES [ ] NO [X]

COMPLETE FOR DIRECT DIVERSION PROJECTS

1. Have you used the full licensed amount of water each year? YES [X] NO [ ].
2. State the quantity of water used each month in gallons or acre-feet (if not known, check months water was used).

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1984	X	X	X	X	X	X	X	X	X	X	X	X	X
1985	X	X	X	X	X	X	X	X	X	X	X	X	X
1986	X	X	X	X	X	X	X	X	X	X	X	X	X

COMPLETE FOR STORAGE PROJECTS	1984	1985	1986
3. Did your reservoir spill this year?	NA	NA	NA
4. If not, how many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			
USE (COMPLETE FOR ALL PROJECTS)			
7. Acreage irrigated			
Crops grown			
8. Stockwatering – number of stock			
kind of stock			
9. Domestic – number of persons	X	X	X
garden area, etc.			
10. Recreational – nature of use. CAMPING	X	X	X
11. Industrial – nature of use			
12. Municipal – approximate population			
13. Power generation – K.W.			
14. Other WILDLIFE	X	X	X

15. If no water was used in one or more years, briefly state the reason on the reverse side under "Remarks".
16. If either the location of the point of diversion or place of use has been changed and the permission of this Board has not yet been obtained, please describe nature of change on the reverse side under "Remarks".

WR-17 (11-83)
2964

(REPORT CONTINUES ON REVERSE SIDE)

REPORT OF LICENSEE FOR — PAGE 2

NOTE: The following questions relate to the Board's continuing responsibility to insure that appropriated water is best developed, conserved, and utilized in the public interest as required by the Water Code. Please answer those questions which are applicable to your project.

CONSERVATION OF WATER (WATER PURVEYORS)

17. What measures are you using or planning to reduce water losses in conveyance systems? (1) Seepage or leak detection program [ ]; (2) Lining canals [ ]; (3) Phreatophyte and aquatic vegetation control [ ]; (4) Other (describe in "Remarks") [ ].

18. What measures are used to encourage consumers to conserve water in agricultural use? (1) Program to encourage more efficient irrigation systems (sprinkler, drip, etc.) where applicable [ ]; (2) Return flow systems on individual farms [ ]; (3) Return flow system areawide [ ]; (4) Water pricing to encourage reduced use [ ]; (5) Charges for drainage of irrigated lands [ ]; (6) Other (describe in "Remarks") [ ].

19. What measures are used to encourage municipal and industrial consumers to conserve water? (1) Regulations to control wasteful use [ ]; (2) Public education program on water conservation [ ]; (3) Pricing to encourage reduced use [ ]; (4) Assistance to industry in design of recycle systems [ ]; (5) Other (describe in "Remarks" [ ].

20. What records are maintained on water use and conservation? (1) Loss rate from conveyance system [ ]; (2) Water use for major crops by each farm [ ]; (3) Other (describe in "Remarks") [ ].

CONSERVATION OF WATER (WATER USERS)

21. Describe any water conservation efforts you may have started: _____

22. If credit toward beneficial use of water under this license for water not used due to a conservation effort is claimed under Water Code Section 1011, please show the amounts of water conserved (acre feet or mg.):
1978 _____ 1979 _____ 1980 _____

WATER QUALITY AND WASTEWATER RECLAMATION

23. Describe methods you are using to minimize erosion and to prevent the entry of silt into surface waters:
Elimination of herds of feral burros, restriction of campsites away from water source proper.

24. After use, the water is (1) retained in reservoir [ ]; (2) discharged into a stream or lake [ ]; (3) discharged into settling ponds [ ]; (4) Other [ ]. Describe: NA

25. Does or will water being discharged contain waste materials? YES [ ] NO [ ].
(1) Domestic [ ]; (2) Municipal [ ]; (3) Industrial [ ]; (4) Agricultural [ ]; (5) Other [ ]. Describe: NA

26. Does or will water being discharged contain any specific material which is deleterious to fish and wildlife or which would impair the water for beneficial uses? YES [ ] NO [X]. Describe: _____

TO THE EXTENT THE FOLLOWING QUESTIONS APPLY TO YOUR LICENSE, PLEASE ANSWER IN REMARKS SECTION BELOW.

27. Are you now or have you been using reclaimed water from a wastewater treatment facility or water polluted by waste to a degree which unreasonably affects such water for other beneficial uses? YES [ ] NO [X]. NA

If credit toward use under this water right through substitution of reclaimed or polluted water in lieu of appropriated water is claimed under Section 1010 of the Water Code, please show amounts of reduced diversion and amounts of reclaimed water used.

28. Are you now or have you been reclaiming or reusing any of the water appropriated under this right? YES [ ] NO [X]. NA
If yes, please describe. _____

29. What is present availability or current potential for using reclaimed water from a wastewater treatment plant or polluted water in place of the appropriated water to satisfy all or part of your water needs? NA

30. What is the current potential for reusing the appropriated water to satisfy part of your water needs? NA

31. If you produce reclaimed water, or polluted water, is there a potential for others to use it? NA

REMARKS: (Identify the item you are explaining. Additional pages may be attached.)

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

Date 7/23/87 Sign Here: Pete A. Rabanda Chief Resources Mgmt
LICENSEE (OR AGENT OF DESIGNATE) Death Valley Nat. Monument

State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000 SACRAMENTO, CA 95810
901 P STREET SACRAMENTO, CA
(916) 324-5626

REPORT OF LICENSEE FOR 1981, 1982, 1983

OWNER OF RECORD:

DEATH VALLEY NATL MONUMENT
C/O U S NATIONAL PARK SERVICE, WESTERN R
DIVISION OF WATER RESOURCES
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIF 94102

APPLICATION: A018433

LICENSE: 006740

TELEPHONE NUMBER:
(415) 556 - 8660

IF OWNER'S NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE:
GOLDBELT SPRING

Declaration: The United States gives this notification to the State in the interest of comity, and does not concede that the State has power to regulate the rights of the United States to the use of water.

COUNTY:
INYO

PURPOSE:	DIVERSION/STORAGE SEASON:	ACRES/HP:
MINING	JAN 01 TO DEC 31	.0 AC
DOMESTIC	JAN 01 TO DEC 31	.0 AC
(Wildlife)		

AMOUNT: 650,000 GPD 0.0 AC-FT

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is subject to the conditions therein. I have currently reviewed my license: YES [X NO [ ]. I am complying with the conditions of my license: YES [X] NO [ ]. Identify any noncompliance by licens term number under "Remarks" on reverse side. This report is important in providing the record of use needed i maintaining your water right. It should be filled out carefully and returned promptly to the above-listed address.

THE PROJECT HAS BEEN ABANDONED, AND I REQUEST REVOCATION OF THE LICENSE: YES [ ] NO [X

COMPLETE FOR DIRECT DIVERSION PROJECTS

1. Have you used the full licensed amount of water each year? YES [X] NO [ ].
2. State the quantity of water used each month in gallons or acre-feet (if not known, check months water was used).

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1981	X	X	X	X	X	X	X	X	X	X	X	X	
1982	X	X	X	X	X	X	X	X	X	X	X	X	
1983	X	X	X	X	X	X	X	X	X	X	X	X	

COMPLETE FOR STORAGE PROJECTS	1981	1982	1983
3. Did your reservoir spill this year?			
4. If not, how many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			
USE (COMPLETE FOR ALL PROJECTS)			
7. Acreage irrigated			
Crops grown			
8. Stockwatering — number of stock			
kind of stock			
9. Domestic — number of persons			
garden area, etc.			
10. Recreational — nature of use	800 Annually	800	800
11. Industrial — nature of use			
12. Municipal — approximate population			
13. Power generation — K.W.			
14. Other — Wildlife preservation	X	X	X

15. If no water was used in one or more years, briefly state the reason on the reverse side under "Remarks".
16. If either the location of the point of diversion or place of use has been changed and the permission of this Board has not yet been obtained, please describe nature of change on the reverse side under "Remarks".

WR-17 (11-83)
2771

(REPORT CONTINUES ON REVERSE SIDE)

STATE OF CALIFORNIA – RESOURCES AGENCY
EDMUND G. BROWN JR., *Governor*
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 924-2462

In Reply Refer
to: 342:RJM:18433

MAY 26 1981

Gerard S. Witucki
U. S. National Park Service
Western Region
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Witucki:

NOTICE OF PROPOSED REVOCATION
LICENSE 6740 (APPLICATION 18433) GOLDBELT SPRING IN INYO COUNTY

Your letter of April 28, 1981 requests that the purpose of use be changed from "Mining and Domestic" to "Wildlife Preservation" in order that the full natural flow of the spring can be used by animals and plants and to re-establish the natural groundwater regime of the area. California law requires that an appropriative water right be based upon taking actual physical possession of the water. In your case, you are giving up all physical possession of the water.

The best definition of an appropriation of water is expressed in McDonald v. Bear River and Auburn Water and Mining Co. 13 Cal. 220, where the court said that an appropriation of water is "the intent to take, accompanied by some open physical demonstration of the intent, and for some valuable use". (Emphasis added). (See also E. C. Fullerton v. California State Water Resources Control Board 153 Cal. Rptr. 518 and California Trout, Inc. v. State Water Resources Control Board 153 Cal. Rptr. 672.) This open, physical demonstration of intent would have to be determined by the Board during a hearing process. Therefore, based on the information you provided a water right is not needed for "Wildlife Preservation" and we are proposing to revoke your license.

You may request a hearing before the State Water Resources Control Board for the purpose of presenting evidence or testimony to show cause why this license should not be revoked. However, unless a written request for hearing, signed by or on behalf of licensee is delivered or mailed to the Board within 15 days after receipt of this notice, the Board may act upon the proposed revocation without a hearing and without further notice.

If you have any questions, please contact Rick Miner at (916) 924-2462 between 7:30 a.m. and 4:00 p.m. weekdays.

Sincerely,

Raymond Walsh

Raymond Walsh, Chief
Division of Water Rights

CERTIFIED

cc: William Werrell
U. S. National Park Service,
Western Region
450 Golden Gate Avenue
San Francisco, CA 94102

for ~~Witucki~~ RW
psw

L54 April 28, 1981
DEVA/WR #26
(WR)RW

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325
Attention: Rick Miner

Reference: # 342:RJM:18433

Gentlemen:

This responds to your letter of February 25, 1981 and serves as a continuance of our letter of January 14, 1981 and the desire to change the use regarding our water license permit for the Goldbelt Spring source in Death Valley National Monument. We are requesting that the use of this water source be changed from "Mining and Domestic" to "Wildlife Preservation" in order that this water be most appropriately used in keeping with National Park Service objectives -- thus allowing the full natural flow of the spring to be used for the animals and plants, and to reestablish the natural ground water regime of the area. Examples of the beneficial use of the water is for the watering of big horn sheep and maintaining a population of a rare plant which has recently been discovered at the site.

Thank you for your assistance in this matter.

Sincerely yours,

~~(Sgd) Gerard S. Witucki~~
WILLIAM WERRELL
for Gerard S. Witucki
Chief, Division of
Water Resources

cc:
Supt., DEVA
WASO (497)
Attn: Vic Berte'

(WR)RW:Witucki:ms 4/28/81

02-25-1981: letter regarding receiving filing fee for change of use; license 6740;application 18433 ; february 25, 1981

STATE OF CALIFORNIA – RESOURCES AGENCY
EDMUND G. BROWN JR., *Governor*
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 924-2462

FEB 25 1981

In Reply Refer
to: 342:RJM:18433

Gerard S. Witucki
U. S. National Park Service,
Western Resources
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Witucki:

LICENSE 6740 (APPLICATION 18433) GOLDBELT SPRING IN INYO COUNTY

Your Petition for Change in Purpose of Use has been received and reviewed. The petition, which requests to change the purpose of use from mining and domestic to wildlife preservation, does not indicate how the water will be diverted and put to use. Additional information is needed including maps showing where the place of use will be and how the water will be conveyed from the spring to the place of use.

Your $10 filing fee will be placed in a special account and if we do not hear from you within 30 days your money will be returned.

If you have any questions, please contact Rick Miner at (916) 924-2462 between 7:30 a.m. and 4:00 p.m. weekdays.

Sincerely,

Jim Pankratz

Jim Pankratz, Chief
Extension, Change and
Compliance Unit

March 2 & 7th: Called Rick Miner concerning matter – he has investigated ____

1. How system works –
2. Maps – drawings
3. Who – animals to benefit

Must consult and transmit to SWRCB

(over)

Mr. Miner suggested that the Board was "reluctant" to grant licenses to only "wildlife propagation". Sounds fishy to me considering under State water Code §§1243 §1257 wildlife interests are considered beneficial uses.

But — result is we may have to tie in some domestic use w/ wildlife or document the need w/ maps, drawings and lists of animals

Hershey

4/7/81

PETITION FOR CHANGE IN PURPOSE OF USE

Application 18433 Permit 12100 License 6740

State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95825

I request permission to change the purpose of use described in this permit or license as follows:

Wildlife Preservation
(State all purposes for which water is to be used)

Give reason for proposed change: Mining has ceased at the site and the Mining Claims have been declared null and void.

Does this change involve any place of use not described in the permit or license? -NO- (yes or no). If answer is yes, give legal description:

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.

Give names and addresses of persons known to you who may be affected by the proposed change:

-NONE-

I declare under penalty of purjury that the above is true and correct to the best of my knowledge and belief.
Dated: January 14, , 1981, at San Francisco, California.

Gerard S. Witucki, Chief
Division of Water Resources
National Park Service, Western Region
450 Golden Gate Ave., S.F., CA. 94102

Section 1547 of the Water Code requires a $10 filing fee with petitions for changes.

SWRCB 22e (4/75)

HERSHEY

WERRELL

WITUCKI

L54
DEVA/WR #26
(WR)RW

January 14, 1981

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325

Reference: Application #18433
License #6740

Gentlement

Enclosed is a petition for a change of use regarding our water permit for the Goldbelt Spring source in Death Valley National Monument. We request that the use for this water source be changed from "Mining and Domestic" to "Wildlife Preservation".

Payment in the amount of $10.00 will be forwarded to your office by the United States Treasury Department under separate cover for the filing fee of the application.

Thank you for your assistance in this matter.

Sincerely yours,

Gerard S. Witucki, Chief
Division of Water Resources

Enclosure

cc:
Superintendent, Death Valley w/encl.
WASO (492) Atten: Vic Berte' w/encl.
(WR)AFP, Accounts Payable w/encl. and S.F. 1034

GOVERNMENT PRINTING OFFICE: 1979—28

Standard Form 1034
September 1973
4 Treasury FRM 2000
1034-116

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION
U.S. Department of the Interior
National Park Service, Western Region
Attn: Water Resources
450 Golden Gate Ave; Box 36063
San Francisco, CA 94102

DATE VOUCHER PREPARED

CONTRACT NUMBER AND DATE

REQUISITION NUMBER AND DATE

SCHEDULE NO.

PAID BY

PAYEE'S NAME AND ADDRESS
State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 94825

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT (1)
		Filing Fee for Petition of Change in purpose of use, Application #18433, Permit #12100, Death Valley National Monument, Goldbelt Spring Water System	1	10.00	ea	$10.00

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below) TOTAL 10.00

PAYMENT:
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

APPROVED FOR =$

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

TITLE

Amount verified; correct for

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

January 27, 1981 (Date) (Sgd) Gerard S. Wituckl (Authorized Certifying Officer) [3] Chief, Division of Water Resources (Title)

ACCOUNTING CLASSIFICATION

1411036-8094-1081-414

AGENCY

CHECK NUMBER ON TREASURER OF THE UNITED STATES

CHECK NUMBER ON (Name of bank)

CASH $

DATE

PAYEE [3]

PER

TITLE

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name must be given exactly as incorporated, and the receipt must be signed by an officer mentioned in the last paragraph of section 3 of the Act of March 3, 1797 (41 U.S.C. 15), or by an agent duly authorized to receipt vouchers for such officer, as well as the capacity in which he signs. Proof of authority of agent to receipt for corporation must be filed with the first voucher receipted by him. Vouchers payable to corporations may be signed in the name of the corporation by any person duly authorized to sign checks drawn on the Treasurer of the United States.

State Water Resources Control Board
DIVISION OF WATER RIGHTS
77 Cadillac Drive, Sacramento, CA 95825
(916) 920-6151

REPORT OF LICENSEE FOR 1978, 1979, 1980

OWNER OF RECORD:

DEATH VALLEY NATL MONUMENT
C/O U S NATIONAL PARK SERVICE, WESTERN R
DIVISION OF WATER RESOURCES
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIF 94102

APPLICATION: A018433

LICENSE: 006740

TELEPHONE NUMBER:
(415) 556 - 8660

IF OWNER'S NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: GOLDBELT SPRING

Declaration: The United States gives this notification to the State in the interest of comity, and does not concede that the State has power to regulate the rights of the United States to the use of water.

COUNTY: INYO

PURPOSE:	DIVERSION/STORAGE SEASON:	ACRES/HP:
MINING	JAN 01 TO DEC 31	.0 AC
DOMESTIC	JAN 01 TO DEC 31	.0 AC

AMOUNT: 650.000 GPD 0.0 AC-FT

Declaration: The United States gives this notification to the State in the interest of comity, and does not concede that the State has power to regulate the rights of the United States to the use of water.

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is subject to the conditions therein. I have currently reviewed my license: YES [X] NO [ ]. I am complying with the conditions of my license: YES [X] NO [ ]. Identify any noncompliance by license term number under "Remarks" on reverse side. This report is important in providing the record of use needed in maintaining your water right. It should be filled out carefully and returned promptly to the above-listed address. Do you need a copy of your license: Yes [ ] No [X]. If yes, please include a stamped, addressed envelope with your request.

THE PROJECT HAS BEEN ABANDONED, AND I REQUEST REVOCATION OF THE LICENSE: YES [ ] NO [X]

COMPLETE FOR DIRECT DIVERSION PROJECTS

1. Have you used the full licensed amount of water each year? YES [X] NO [ ].
2. State the quantity of water used each month in gallons or acre feet (if not known, check months water was used).

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1978	x	x	x	x	x	x	x	x	x	x	x	x	
1979	x	x	x	x	x	x	x	x	x	x	x	x	
1980	x	x	x	x	x	x	x	x	x	x	x	x	

COMPLETE FOR STORAGE PROJECTS	1978	1979	1980
3. Did your reservoir spill this year?			
4. If not, how many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			
USE (COMPLETE FOR ALL PROJECTS)			
7. Acreage irrigated			
Crops grown			
8. Stockwatering — number of stock			
kind of stock			
9. Domestic — number of persons	800 annually	800 annually	800 annually
garden area, etc.			
10. Recreational — nature of use			
11. Industrial — nature of use	mining	mining	mining
12. Municipal — approximate population			
13. Power generation — K.W.			
14. Other Wildlife preservation	X	X	X

15. If no water was used in one or more years, briefly state the reason on the reverse side under "Remarks".
16. If either the location of the point of diversion or place of use has been changed and the permission of this Board has not yet been obtained, please describe nature of change on the reverse side under "Remarks".

WR-17 (6-80)

(REPORT CONTINUES ON REVERSE SIDE

WR # 26

State Water Resources Control Board
DIVISION OF WATER RIGHTS
77 Cadillac Drive Sacramento, CA 95825
(916) 322-9128

REPORT OF LICENSEE FOR 1975, 1976, 1977

APPLICATION: 18433

LICENSE: 6740

OWNER OF RECORD:

(415) 556-8660
Area Code and Telephone Number

DEATH VALLEY NATL MONUMENT
c/o U S NATIONAL PARK SERVICE, WESTERN REGION, DIVISION OF WATER RESOURCES,
450 GOLDEN GATE AVENUE, BOX 36063,
SAN FRANCISCO, CALIF 94102

If the information shown above is wrong, please correct.

SOURCE: GOLDBELT SPRING

COUNTY: INYO

AMOUNT: 650 GAL/DAY

PURPOSE: MINING & DOMESTIC

Declaration: The United States gives this notification to the State in the interest of [illegible] and does not concede that the State has power to regulate the rights of the United States to the use of water.

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is subject to the conditions therein. I have currently reviewed my license: YES ☒ NO ☐. I am complying with the conditions of my license: YES ☒ NO ☐. Identify any noncompliance by license term number under "Remarks" on reverse side. This report is important in providing the record of use needed in maintaining your water right. It should be filled out carefully and returned promptly to the above-listed address.

THE PROJECT HAS BEEN ABANDONED, AND I REQUEST REVOCATION OF THE LICENSE. ☐ YES ☒ NO

COMPLETE FOR DIRECT DIVERSION PROJECTS

1. Have you used the full licensed amount of water each year? ☒ Yes ☐ No
2. State the quantity of water used each month in gallons or acre-feet (if not known, check months water was used).

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1975	x	x	x	x	x	x	x	x	x	x	x	x	
1976	x	x	x	x	x	x	x	x	x	x	x	x	
1977	x	x	x	x	x	x	x	x	x	x	x	x	

COMPLETE FOR STORAGE PROJECTS	1975	1976	1977
3. Did your reservoir spill this year?			
4. If not, how many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			
USE (COMPLETE FOR ALL PROJECTS)			
7. Acreage irrigated			
Crops grown:			
8. Stockwatering – number of stock			
kind of stock			
9. Domestic – number of persons	800 annually	800 annually	800 annually
garden area, etc.			
10. Recreational – nature of use			
11. Industrial – nature of use	mining	mining	mining
12. Municipal – approximate population			
13. Power generation – K.W.			
14. Other wildlife preservation			

15. If no water was used in one or more years, briefly state the reason on the reverse side under "Remarks".
16. If either the location of the point of diversion or place of use has been changed and the permission of this Board has not yet been obtained, please describe nature of change on the reverse side under "Remarks".

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

Date: April 25, 1978 Sign Here: (pen) Gerard S. Witucki

Gerard S. Witucki LICENSEE

1977 Chief, Div.

(REPORT CONTINUES ON REVERSE SIDE)

REPORT OF LICENSEE FOR 1975, 1976, 1977—PAGE 2

NOTE: The following questions relate to the Board's continuing responsibility to insure that appropriated water is best developed, conserved, and utilized in the public interest as required by the Water Code. Please answer only those questions which are applicable to your project.

CONSERVATION OF WATER

17. What measures are you using or planning to reduce water losses in conveyance systems? (1) Seepage or leak detection program ☐; (2) Lining canals ☐; (3) Phreatophyte and aquatic vegetation control ☐; (4) Other (describe in "Remarks") ☐.

18. What measures are used to encourage consumers to conserve water in agricultural use? (1) Program to encourage more efficient irrigation systems (sprinkler, drip, etc.) where applicable ☐; (2) Return flow systems on individual farms ☐; (3) Return flow system areawide ☐; (4) Water pricing to encourage reduced use ☐; (5) Charges for drainage of irrigated lands ☐; (6) Other (describe in "Remarks") ☐.

19. What measures are used to encourage municipal and industrial consumers to conserve water? (1) Regulations to control wasteful use ☐; (2) Public education program on water conservation ☐; (3) Pricing to encourage reduced use ☐; (4) Assistance to industry in design of recycle systems ☐; (5) Other (describe in "Remarks") ☐.

20. What records are maintained on water use and conservation? (1) Loss rate from conveyance system ☐; (2) Water use for major crops by each farm ☐; (3) Other (describe in "Remarks") ☐.

WATER QUALITY AND WASTEWATER RECLAMATION

21. Describe methods you are using to minimize erosion and to prevent the entry of silt into surface waters:

22. After use, the water is (1) retained in reservoir ☐; (2) discharged into a stream or lake ☐; (3) discharged into settling ponds ☐; (4) other ☐. Describe:

23. Does or will water being discharged contain waste materials? ☐ Yes ☐ No.
(1) Domestic ☐; (2) Municipal ☐; (3) Industrial ☐; (4) Agricultural ☐; (5) Other ☐. Describe:

24. Does or will water being discharged contain any specific material which is deleterious to fish and wildlife or which would impair the water for beneficial uses? ☐ Yes ☐ No. Describe:

25. Describe what steps you are taking, have been taking, or can take to reclaim or indirectly reuse the water appropriated:

REMARKS

Please indicate the number of the item you are explaining:

(If additional space is needed for remarks, attach numbered sheets.)

STATE OF CALIFORNIA – THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

REPORT OF LICENSEE FOR 1972, 1973, 1974

OWNER OF RECORD: APPLICATION 18433

DEATH VALLEY NATL MONUMENT
c/o U S NATIONAL PARK SERVICE, WESTERN REGION,
DIVISION OF WATER RESOURCES,
450 GOLDEN GATE AVENUE, BOX 36063,
SAN FRANCISCO, CALIF 94102

Telephone Number and Area Code

If the information shown above is wrong, please correct

SOURCE: GOLDBELT SPRING

AMOUNT: 650 GAL/DAY
PURPOSE: MINING & DOMESTIC

Declaration: The United States gives this notification to the State in the interest of comity, and does not concede that the State has power to regulate the rights of the United States to the use of water.

LICENSE 6740

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

IMPORTANT! EVERY license is issued subject to the conditions therein expressed. I have currently reviewed my license: YES [x] NO [ ]. I am complying with the conditions under which my license has been issued: YES [x] NO [ ]. Identify any non-compliance by license term number under "remarks" on reverse side. This report is important in providing the record of use needed in establishing your water right. It should be filled out carefully and returned promptly to the *STATE WATER RESOURCES CONTROL BOARD, DIVISION OF WATER RIGHTS, 2125 Nineteenth Street, Sacramento, California 95818*

The project has been abandoned, and I request revocation of the License. [ ] Yes [x] No

DIRECT DIVERSION

1. Have you used the full licensed amount of water each year? [x] Yes [ ] No
2. State the quantity of water used each month in gallons or acre-feet (if not known, check months water was used.)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1972	x	x	x	x	x	x	x	x	x	x	x	x	
1973	x	x	x	x	x	x	x	x	x	x	x	x	
1974	x	x	x	x	x	x	x	x	x	x	x	x	

STORAGE

	1972	1973	1974
3. Did your reservoir spill this year?			
4. How many feet below spillway vertically was the water level at maximum storage?			
5. Have you emptied the reservoir?			
6. How many feet below spillway vertically was it drawn down at end of season?			

USE

7. Acreage irrigated			
Crops grown:			
8. Stockwatering – head			
Kind			
9. Domestic – number of persons	800 annually	800 annually	800 annually
Garden area, etc.			
10. Recreational – nature of use			
11. Industrial – nature of use	mining	mining	mining
12. Municipal – approximate population			
13. Power generation – K.W.			
14. Other wildlife preservation			

15. If no water was used in one or more years, briefly state the reason on the reverse side under "Remarks."
16. If either the location of the point of diversion or place of use has changed and the permission of this Board has not yet been obtained, please describe nature of change on the reverse side under "Remarks."

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

Date: March 21, 1975 Sign Here: (SGD) GERARD S. WITUCKI
LICENSEE

SWRCB-17(9/74) Sent to State of Co. on 4/11/75 1974 Gerard S. Wit[illegible] (Report continues on reverse side)
Chief, Division of Water Resources

NOTE: The following questions relate to the Board's continuing responsibility to insure that appropriated water is best developed, conserved, and utilized in the public interest as required by the Water Code.

CONSERVATION OF WATER

17. What measures are you using or planning to reduce water losses in conveyance systems? (1) Seepage or leak detection program ☐ (2) Lining canals ☐; (3) Phreatophyte and aquatic vegetation control ☐; (4) Other (describe in remarks) ☐.

18. What measures are used to encourage consumers to conserve water in agricultural use? (1) Program to encourage more efficient irrigation systems (sprinkler, drip, etc.), where applicable ☐; (2) Return flow systems on individual farms ☐; (3) Return flow system areawide ☐; (4) Water pricing to encourage reduced use ☐; (5) Charges for drainage of irrigated lands ☐; (6) Other (describe in remarks) ☐;

19. What measures are used to encourage municipal and industrial consumers to conserve water? (1) Regulations to control wasteful use ☐; (2) Public education program on water conservation ☐; (3) Pricing to encourage reduced use ☐; (4) Assistance to industry in design of recycle systems ☐; (5) Other (describe in remarks) ☐.

20 What records are maintained on water use and conservation? (1) Loss rate from conveyance system ☐; (2) Water use for major crops by each farm ☐; (3) Other (describe in remarks) ☐.

WATER QUALITY AND WASTEWATER RECLAMATION

21. Describe methods you are using to minimize erosion and to prevent the entry of silt into surface waters:

22. After use, the water is (1) retained in reservoir ☐; (2) discharged into a stream or lake ☐; (3) discharged into settling ponds ☐; (4) Other ☐; Describe:

23. Is or will water being discharged contain waste materials? ☐ Yes ☐ No
(1) Domestic ☐; (2) Municipal ☐; (3) Industrial ☐; (4) Agricultural ☐; (5) Other ☐; Describe:

24. Is or will water being discharged contain any specific material which is deleterious to fish and wildlife or which would impair the water for beneficial uses? ☐ Yes ☐ No Describe:

25. Describe what steps you are, have been, or can take to reclaim or directly reuse the water sought being appropriated:

REMARKS

Please designate by number the question you are answering:

(If additional space is needed for remarks, attach numbered sheets.)

STATE OF CALIFORNIA—THE RESOURCES AGENCY

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

CENTRAL REGION

REPORT OF LICENSEE FOR 1969, 1970, 1971

OWNER OF RECORD:

U S DEATH VALLEY NATL MONUMENT
C/O U S NATIONAL PARK SERVICE,
DIVISION OF WATER RESOURCES, SSC,
450 GOLDEN GATE AVENUE, BOX 36025,
SAN FRANCISCO, CALIF 94102

APPLICATION 18433

WR26

TELEPHONE NUMBER

If the information shown above is wrong, please correct

SOURCE: GOLDBELT SPRING

AMOUNT: 650 GAL/DAY
PURPOSE: MINING & DOMESTIC

LICENSE 6740

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

Please fill out carefully and return promptly to the State Water Resources Control Board, Division of Water Rights, Room 1140, Resources Building, 1416 Ninth Street, Sacramento, California 95814.

The project has been abandoned, and I request revocation of the license. ☐ Yes ☒ No

DIRECT DIVERSION

1. Have you used the full licensed amount of water each year? ☒ Yes ☐ No
2. State the quantity of water used each month in gallons or acre-feet. (If not known check months water was used.)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1969	x	x	x	x	x	x	x	x	x	x	x	x	
1970	x	x	x	x	x	x	x	x	x	x	x	x	
1971	x	x	x	x	x	x	x	x	x	x	x	x	

STORAGE	1969	1970	1971
1. Did your reservoir spill this year?			
2. How many feet below spillway vertically was the water level at maximum storage?			
3. Have you emptied the reservoir?			
4. How many feet below spillway vertically was it drawn down at end of season?			
USE			
1. Acreage irrigated			
Crops grown:			
2. Stockwatering—head			
Kind			
3. Domestic—number persons	800 annually	800 annually	800 annually
Garden area, etc.			
4. Recreational—nature of use	x	x	x
5. Industrial—nature of use	mining	mining	mining
6. Municipal—approximate population			
7. Power generation—H.P.			
8. Other 6-8 persons for mining			

If no water was used in one or more years, briefly state the reason:

If either the location of the point of diversion or place of use has changed and the permission of this Board has not yet been obtained, please describe nature of change No change

REMARKS
(If more space is needed, use reverse side)

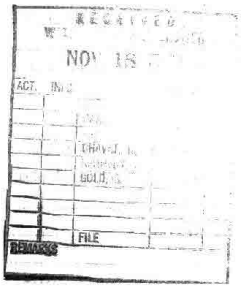
Date March 1, 1973 Sign Here (SGD) GERARD S. WITUCKI

Gerard S. Witucki
Chief, Division of Water Resources

1971

WRCB-17 (8-71)

11-18-1973: report of licensee for 1969,1970,1971;date received; november 18, 1973. ; november 18, 1973



STATE OF CALIFORNIA—THE RESOURCES AGEN
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

REPORT OF LICENSEE FOR 1966, 1967, 1968

OWNER OF RECORD: APPLICATION 18433

U S DEATH VALLEY NATL MONUMENT
DEATH VALLEY, CALIF 92328

If the owner or address shown above is wrong, please correct

SOURCE: GOLDBELT SPRING

AMOUNT: 650 GAL/DAY
PURPOSE: MINING & DOMESTIC

LICENSE 6740

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF YOUR LICENSE

Please fill out carefully and return promptly to the State Water Resources Control Board, Division of Water Rights, Room 1140, Resources Building, 1416 Ninth Street, Sacramento, California 95814.

1. Please give a specific answer in each of the following spaces in regard to beneficial use of water under the license:

1966: Was water used? Yes What was the maximum rate of diversion (if known)? Unknown

Purpose (irrigation, domestic, etc.) domestic, mining and recreation

Number of units served 6-8 persons for mining, approximately 800 vistors annually
Total acres irrigated, number of stock watered, average number of persons served, etc.

What quantity of water was used each month in gallons or acre-feet? (If not known check months water was used.)

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
x	x	x	x	x	x	x	x	x	x	x	x	

1967: Was water used? Yes What was the maximum rate of diversion (if known)? Unknown

Purpose Domestic, mining and recreation

Number of units served 6-8 persons for mining, approximately 800 visitors annually

What quantity of water was used each month in gallons or acre-feet? (If not known check months water was used.)

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
x	x	x	x	x	x	x	x	x	x	x	x	

1968: Was water used? Yes What was the maximum rate of diversion (if known)? Unknown

Purpose Domestic, mining and recreation

Number of units served 6-8 persons for mining, approximately 800 visitors annually

What quantity of water was used each month in gallons or acre-feet? (If not known check months water was used.)

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
x	x	x	x	x	x	x	x	x	x	x	x	

If no water was used in one or more years, briefly state the reason:

2. If either the location of the point of diversion or place of use has changed and the permission of this Board has not yet been obtained, please describe nature of change

3. The project has been abandoned, and I request revocation of the license. ☐ Yes ☒ No

REMARKS
(If more space is needed, use reverse side)

Date December 31, 1968 Sign Here Robert J. Murphy
Robert J. Murphy Licensee Superintendent

1968

WRCB 17 (8-68) 24202-883 8-68 5M ⓘ OSP

REMARKS

26

STATE OF CALIFORNIA—RESOURCES AGENCY
STATE WATER RIGHTS BOARD
RESOURCES BUILDING, ROOM 1140
1416—9TH STREET
SACRAMENTO, CALIFORNIA 95814

REPORT OF LICENSEE FOR THE YEARS 1963, 1964 AND 1965

OWNER OF RECORD: APPLICATION 18433

U S DEATH VALLEY NATL MONUMENT
DEATH VALLEY,
CALIF

If the owner or address shown above is wrong, please correct

SOURCE: (1) GOLDBELT SPRING (2)
(3) (4)
(5) (6)
(7) LICENSE 6740

THIS REPORT IS REQUIRED BY THE TERMS AND CONDITIONS OF THE ABOVE-NUMBERED LICENSE

1. Please give a specific answer in each of the following spaces in regard to beneficial use of water under the license:

1963: Was water used? yes Amount (if known) 650 gal. per day
Purpose (irrigation, domestic, etc.) domestic, mining & recreation
Season of use (months) all 12 months
Number of units served (acres, persons or ?) 6 to 8 persons for mining, 600 to 800 visitors annually

1964: Was water used? yes Amount (if known) 650 gal. per day
Purpose domestic, mining & recreatior
Season of use all 12 months
Number of units served 6-8 persons for mining, 600-800 visitors annually

1965: Was water used? yes Amount (if known) 650 gal. per day
Purpose domestic, mining & recreation
Season of use all 12 months
Number of units served 6-8 persons for mining, 600-800 visitors annually

If no water was used in one or more years, briefly state the reason:

2. If either the location of the point of diversion or place of use has changed and the permission of this Board has not yet been obtained, please describe nature of change

3. The project has been abandoned, and I request revocation of the license. ☐ Yes ☐ No

REMARKS

Date November 19, 1965 Sign Here John A. Aubuchon Superintendent
United States of America
YEAR 1965 National Park Service
Death Valley National Monument

SWRB 17 (REV. 7-65)

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 18433 PERMIT 12100 LICENSE 6740

THIS IS TO CERTIFY, *That* United States Death Valley National Monument
Death Valley, California

has *made proof as of* March 27, 1962, *(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of* Goldbelt Spring in Inyo County

tributary to Marble Canyon

for the purpose of mining and domestic uses *under Permit* 12100 *of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from* December 15, 1958, *and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed* six hundred fifty (650) gallons per day to be diverted from January 1 to December 31 of each year.

The point of diversion of such water is *located:*

North ten degrees twelve minutes east (N 10° 12' E) forty three thousand six hundred (43,600) feet from NW corner of Section 7, T17S, R42E, MDB&M, being within SE¼ of SW¼ of projected Section 29, T15S, R42E, MDB&M.

A description of the lands or the place where such water is put to beneficial use is as follows:

Within SE¼ of SW¼ of projected Section 29, T15S, R42E, MDB&M.

This license is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

Licensee shall not construct or maintain fences or other works which may prevent access to water from the source hereunder by the public or wildlife.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

FORM 64

This license is granted censee accepts all rights herein confirmed t to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: MAY 2 8 1963

L. K. Hill
L. K. Hill
Executive Officer

LICENSE 6740
STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO U.S. Death Valley National Monument

DATED MAY 2 8 1963

STATE OF C 'FORNIA—STATE WATER RIGH BOARD
1401 21ST STREET
P. O. BOX 1592
SACRAMENTO

PROGRESS REPORT BY PERMITTEE FOR THE YEAR 1961

This report is of importance to you in establishing your water right. It will be used as a basis for action by the State Water Rights Board. It should therefore be filled out carefully and returned promptly. See reverse side of this sheet.

SOURCE Goldbelt Spring APPLICATION 18433

PERMIT 12100

ANSWER ALL QUESTIONS—IF A QUESTION DOES NOT APPLY, SO STATE

1. Names of all parties who are owners of this permit United States of America for Death Valley National Monument

MAILING ADDRESS Superintendent, Death Valley National Monument, Death Valley, California

2. Has the project been abandoned? no Has construction work commenced? Yes

3. Has all construction work been completed? Yes If not, give estimated date of completion

4. State approximate cost of construction work on this project during the past 12 months None

Describe briefly the portions of the project upon which the above amount was expended

5. What construction work remains to be done to complete the project? None

6. Has use of water commenced? Yes State maximum rate of use if known Not known

If so, check (x) purposes for which it was used and indicate acreage, number of persons, etc., served.

(a) ☐ Irrigation — Total acres irrigated — Name crops served and acreage of each

(b) ☐ Stock watering — Number of animals

(c) ☐ Industrial — Nature of use

(d) ☒ Domestic — Number of persons: Mining Camp & Monument Visitors — Area of garden, lawn, etc.

(e) ☐ Municipal — Approximate population

(f) ☒ Mining — Method of water use: Engine cooling, jack hammers and other equipment

(g) ☐ Recreational — Nature of use

(h) ☐ Power — Installed horsepower capacity

(i) ☐ Other

7. During what months was water used in 1961? All months. Mining activity declines after October

Do you expect to use it over a longer or different season in the future?

If so, state other months of use

8. *Have you used as much water this year as you expect to use in any future year under this permit?* Yes

If not, estimate year in which use will be full and complete

9. Has location of the intake or place of use been changed? No

IF PROJECT INVOLVES STORAGE ANSWER 10 AND 11

10. Have you filled in your reservoir during the 1960-61 collection season—if not, do you expect to fill it in any one future collection season? Not applicable How much of the stored water has been used?

Have you emptied the reservoir? If not, have you drawn down the reservoir as far as you intend to use in any one season? State acre-feet used if known

11. During which months was water collected in the reservoir? Not applicable.

UNITED STATES OF AMERICA
Sign Here /s/ Granville B. Liles
Permittee

Date November 14, 1961

By: Granville B. Liles
Superintendent
Death Valley National Monument

RECEIVED WITH MEMO OF 11-27-61

(OVER)

YEAR 1961

FORM 67

44032-F 6-61 4M ⓘ SPO

INSTRUCTIONS

Please bear in mind that neither the filing of an application nor the approval thereof constitutes a water right. Beneficial use alone establishes the right. When you have used the greatest amount of water you ultimately expect to use, and use has been made over the full period of the year intended, an inspection will be made and license will be issued confirming your right to the water theretofore actually put to beneficial use.

If the time allowed in your permit within which to complete either construction or beneficial use has expired and additional time is required an extension may be allowed upon a showing of good cause, which showing should include a description of the further development proposed and indicate the probable date of completion. Lack of funds can not be accepted as good cause for failure to complete.

REMARKS

The space below may be used for describing in greater detail progress which has already been made toward completion of the project and plans for further development. Particularly if the time heretofore allowed for completion of either construction or use has expired and further time is needed, the cause of failure to complete should be stated and an estimate given of additional time required.

DO NOT WRITE IN THIS SPACE

Regional Director

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD
1401 21st STREET
P. O. BOX 1592
SACRAMENTO

PROGRESS REPORT BY PERMITTEE FOR THE YEAR 1960

This report is of importance to you in establishing your water right. It will be used as a basis for action by the State Water Rights Board. It should therefore be filled out carefully and returned promptly. See reverse side of this sheet.

SOURCE Goldbelt Spring APPLICATION 18433

PERMIT 12100

ANSWER ALL QUESTIONS—IF A QUESTION DOES NOT APPLY, SO STATE

1. Names of all parties who are owners of this permit **United States of America for Death Valley National Monument**

MAILING ADDRESS **Superintendent, Death Valley National Monument, Death Valley, California**

2. Has the project been abandoned? **No.** Has construction work commenced? **Yes.**

3. Has all construction work been completed? **Yes** If not, give estimated date of completion

4. State approximate cost of construction work on this project during the past 12 months **None**

Describe briefly the portions of the project upon which the above amount was expended

5. What remains to be done to complete the project? **None**

6. Has use of water commenced? **Yes** State amount used if known **Not known**

If so, check (x) purposes for which it was used and indicate acreage, number of persons, etc., served.

(a) ☐ Irrigation — Total acres irrigated — Name crops served and acreage of each

(b) ☐ Stock watering — Number of animals

(c) ☐ Industrial — Nature of use

(d) ☒ Domestic **Mining Camp and Monument visitors** — Number of persons, Area of garden, lawn, etc.

(e) ☐ Municipal — Approximate population

(f) ☒ Mining **Engine cooling, jack hammers and other equipment** — Method of water use

(g) ☐ Recreational — Nature of use

(h) ☐ Power — Installed horsepower capacity

(i) ☐ Other

7. During what months was water used in 1960? **All months.** **Mining activity declines after October.**

Do you expect to use it over a longer or different season in the future?

If so, state other months of use

8. *Have you used as much water this year as you expect to use in any future year under this permit?* **Yes.**

If not, estimate year in which use will be full and complete

9. Has location of the intake or place of use been changed? **No**

IF PROJECT INVOLVES STORAGE ANSWER 10 AND 11

10. Have you stored as much water in your reservoir during the 1959-60 collection season as you expect to store in any future collection season? **Not applicable** How much of the stored water has been used?

Have you emptied the reservoir? If not, have you used all the water that you intend to use in any one season? State acre-feet used if known

11. During which months was water collected in the reservoir? **Not applicable.**

UNITED STATES OF AMERICA

Sign Here Granville B. Liles
Permittee

Date Dec 13, 1960

By: Granville B. Liles
Superintendent
Death Valley National Monument

(OVER)
YEAR 1960

FORM 67

19207 5-60 3M ⓘ SPO

INSTRUCTIONS

Please bear in mind that neither the filing of an application nor the approval thereof constitutes a water right. Beneficial use alone establishes the right. When you have used the greatest amount of water you ultimately expect to use, and use has been made over the full period of the year intended, an inspection will be made and license will be issued confirming your right to the water theretofore actually put to beneficial use.

If the time allowed in your permit within which to complete either construction or beneficial use has expired and additional time is required an extension may be allowed upon a showing of good cause, which showing should include a description of the further development proposed and indicate the probable date of completion. Lack of funds can not be accepted as good cause for failure to complete.

REMARKS

The space below may be used for describing in greater detail progress which has already been made toward completion of the project and plans for further development. Particularly if the time heretofore allowed for completion of either construction or use has expired and further time is needed, the cause of failure to complete should be stated and an estimate given of additional time required.

DO NOT WRITE IN THIS SPACE

04-22-1959: affidavit of posting notice; application 18433; signed by j. howard parr. ; april 22, 1959

Director

AFFIDAVIT OF POSTING NOTICE

In the Matter of Application 18433
Before the State Water Rights Board,
State of California.

STATE OF CALIFORNIA
COUNTY OF Inyo } ss.
(Name name of county where affiant is sworn)

J. Howard Parr, being first duly sworn, deposes and says:
(Name of person who posted copies of notice)

that acting on behalf of the applicant
(Insert here "that he is the applicant" or "that acting on behalf of the applicant")

National Park Service
Death Valley National Monument, in the matter of Application 18433 before the
(Name of applicant)

State Water Rights Board, State of California, he did on the 22nd day
("said did" or "he did")

of April, 1959, post two copies of notice of said application and that annexed

is a full, true and correct copy

That he posted one copy of said notice Mining claim residence, 300 feet from spring
(Here describe how and where posted as accurately as possible)

and the other copy of said notice Bulletin board at Grapevine Ranger Station
(Here describe how and where posted as accurately as possible)

That each of said copies thus posted occupied a conspicuous place in the locality to be affected by said proposed appropriation.

Subscribed and sworn to before me this
27th day of April, 1959

Notary public in and for said County

James H. Parr
(Signature of person who posted copies of notice)

My commission expires
September 22nd 1962

DO NOT DETACH

Form 6-D

FILE IN DUPLICATE

(For full information concerning the filing out of this form refer to Article 4 of Rules and Regulations Pertaining to Appropriation of Water)

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

Memo 12/15/60

Application No. 18433 Filed December 15, 1958 at 9:12 A. M.
(Applicant must not fill in the above blanks)

APPLICATION TO APPROPRIATE UNAPPROPRIATED WATER

AMENDED APPLICATION RECEIVED 3-9-59

I, U. S. Death Valley National Monument
Name of applicant

of Death Valley, County of Inyo
Address

State of California, do hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS*:

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Goldbelt Spring
Give name of stream, lake, etc., if named; if unnamed state nature of source and that it is unnamed

located in Inyo County, tributary to Marble Canyon

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 650 gallons per day cubic feet per
1 cubic foot per second equals 40 statute miner's inches or 646,317 gallons per day

second, to be diverted from January 1 to December 31 of each year.
Beginning date Closing date

(b) For diversion to be stored and later applied to beneficial use acre-feet
1 acre-foot equals 325,851 gallons

per annum, to be collected between and of each season.
Beginning date Closing date

NOTE.—Answer *(a)* or *(b)* or both *(a)* and *(b)* as may be necessary. If amount under *(a)* is less than .025 cubic foot per second, state in gallons per day. Neither the amount nor the season may be increased after application is filed. If underground storage is proposed a special supplemental form will be supplied by the State Water Rights Board upon request.

3. The use to which the water is to be applied is mining and domestic
Domestic, irrigation, power, municipal, mining, industrial, recreational

purposes.

4. The point of diversion is to be located N. 10° 12' E 43,600 feet from NW corner Section 7,
State bearing and distance or coordinate distances from section or quarter section corner

T17S, R42E, MDB&M.

being within the SE¼ of SW¼
State 40-acre subdivision of public land survey or projection thereof

projected of Section 29, T. 15S, R. 42E, MD B. & M., in the County of Inyo

5. The main conduit terminates in SE¼ of SW¼ of Sec. 29, T. 15S, R. 42E, MD B. & M.
State 40-acre subdivision of U. S. Government survey or projection thereof

Description of Diversion Works

NOTE.—An application cannot be approved for an amount grossly in excess of the estimated capacity of the diversion works.

6. Intake or Headworks (fill only those blanks which apply)

(a) Diversion will be made by pumping from
Sump, offset well, unobstructed channel, etc.

(b) Diversion will be by gravity, the diverting dam being 2 feet in height (stream bed to level of overflow); 10 feet long on top; and constructed of earth and concrete
Concrete, earth, brush, etc.

(c) The storage dam will be feet in height (stream bed to overflow level); feet long on top; have a freeboard of feet, and be constructed of
Concrete, earth, etc.

7. Storage Reservoir
Name

The storage reservoir will flood lands in
Indicate section or sections, also 40-acre subdivisions unless shown upon map

It will have a surface area of acres, and a capacity of acre-feet.

☞ In case of insufficient space for answers in form, attach extra sheets at top of page 3 and cross reference.

FORM 1

RECEIVED WITH MEMO OF 12-5-60

8. **Conduit System** (describe main conduits only)

(a) Canal, ditch, flume: Width on top (at water line) ____ feet; width at bottom ____
Cross out two not used

feet; depth of water ____ feet; length ____ feet; grade ____ feet per 1,000 feet; materials

of construction ____
Earth, rock, timber, etc.

(b) Pipe line: Diameter 1 inches; length 600 feet; grade 20 feet per

1,000 feet; total fall / lift from intake to outlet 13 feet; kind galvanized iron
Riveted steel, concrete, wood-stave, etc.

NOTE.—If a combination of different sizes or kinds of conduit is to be used, attach extra sheets with complete description, also show location of each clearly on map.

9. **The estimated capacity** of the diversion conduit or pumping plant proposed is Ample
State cubic feet per second or gallons per minute

The estimated cost of the diversion works proposed is $700.00
Give only cost of intake, or headworks, pumps, storage reservoirs and main conduits described herein

Completion Schedule

10. **Construction work** will begin on or before May 1, 1958.

Construction work will be completed on or before July 1, 1958.

The water will be completely applied to the proposed use on or before July 1, 1958.

Description of Proposed Use

11. Place of Use. SE¼ of SW¼ of projected Section 29, T15S, R4E, MDB&M.
State 40-acre subdivisions of the public land survey. If area is unsurveyed indicate the location as if lines of the public land survey were projected. In the case of irrigation use state the number of acres to be irrigated in each 40-acre tract; if space permits. If space does not permit listing of all 40-acre tracts, describe area in a general way and show detail upon map.

Do(es) applicant(s) own the land whereon use of water will be made? YES Jointly? ____
Yes or No Yes or No

If applicant does not own land whereon use of water will be made, give name and address of owner and state what arrangements have been made with him.

12. **Other Rights.** Describe all rights except those on file with the State Water Rights Board under which water is served to the above named lands.

Nature of Right (riparian, appropriative, purchased water, etc.)	Year of First Use	Use made in recent years including amount if known	Season of Use	Source of Other Supply
1.				
2.				
3.				
4.				

Attach supplement at top of page 3 if necessary.

13. **Irrigation Use.** The area to be irrigated is ____ acres.
State net acreage to be irrigated

The segregation of acreage as to crops is as follows: Rice ____ acres; alfalfa ____ acres;

orchard ____ acres; general crops ____ acres; pasture ____ acres.

NOTE.—Care should be taken that the various statements as to acreage are consistent with each other, with the statement in Paragraph 11, and with the map.

The irrigation season will begin about ____ and end about ____
Beginning date Closing date

14. **Power Use.** The total fall to be utilized is ____ feet.
Difference between nozzle or draft tube water level and first free water surface above

The maximum amount of water to be used through the penstock is ____ cubic feet per second

The maximum theoretical horsepower capable of being generated by the works is ____ horsepower.
Second feet × fall ÷ 8.8

The use to which the power is to be applied is ____
For distribution and sale or private use, etc.

The nature of the works by means of which power is to be developed is ____
Turbine, Pelton wheel, etc.

The size of the nozzle to be used is ____ inches.

The ____ will ____ returned to ____ of

15. Municipal Use. This application is made for the purpose of serving _____ Name city or cities, town or towns. Urban area only

_____ having a present population of _____

_____ estimated average daily consumption during the month of maximum use and at the end of each five-year period until the full amount applied for is put to beneficial use is as follows:

_____

_____

_____

16. Mining Use. The name of the mining property to be served is Ubehebe Name of claim

_____ and the nature of the mines is Talc Gold placer, quartz, etc.

The method of utilizing the water is cooling of engines, jackhammers, and other mining equipment.

It is estimated that the ultimate water requirement for this project will be 150 gallons per day Cubic feet per second, gallons per minute. State basis of estimate

The water will ~~xxxxxx~~ be polluted by chemicals or otherwise grease, oils, and antifreeze Explain nature of pollution, if any

and it will ~~xxxxxx~~ be returned to Sand Flat Name stream in SW¼ of NE¼ State 40-acre subdivision of projected

Sec. 14, T. 15S, R. 41E, MD B. & M.

17. Other Uses. The nature of the use proposed is domestic use at mine camp and by Monument visitors, Industrial, recreational, domestic, stockwatering, fish culture, etc.

500 gallons per day.

State basis of determination of amount needed. 8 persons, 2 bunk houses and 1 boarding house Number of persons, residences, area of domestic lawns and gardens, number and kind of stock, type

8 people at 50 gallons per day per person, plus 100 gallons per day for visitors industrial use, and unit requirements.

and wildlife use.

_____

_____

_____

_____

_____

General

18. Are the maps as required by the Rules and Regulations filed with Application? yes Yes or No. If not, state specifically the time required for filing same _____

19. Does the applicant own the land at the proposed point of diversion? yes Yes or No. If not, give name and address of owner and state what steps have been taken to secure right of access thereto _____

_____

20. What is the name of the post office most used by those living near the proposed point of diversion?

Death Valley, California

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion? Nothing herein shall constitute a waiver of any other rights w

United States may have to the same water.

_____

_____

/s/ The United States of America
By Fred W. Binnewies

[SIGNATURE OF APPLICANT] Fred W. Binnewies, Superintendent
Death Valley National Monument

APPLICANT MUST NOT FILL IN BLANKS BELOW

PERMIT No. 12100

This is to certify that the application of which the foregoing is a true and correct copy has been considered and approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed six hundred fifty (650) gallons per day to be diverted from January 1 to December 31 of each year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before June 1, 1960, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1962.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1963.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

8. This permit is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

9. Permittee shall not construct or maintain fences or other works which may prevent access to water from the source hereunder by the public or wildlife.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JAN 8

STATE WATER RIGHTS BOARD

W. A. Hill

W. A. Hill
Executive Officer

04-17-1959: notice of application to appropriate water; application 18433. ; april 17, 1959

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD
1401 21st STREET
P. O. BOX 1592
SACRAMENTO, CALIFORNIA

Docket 24 Death Valley
Ck'd Map
L5U
V.E. Lee

NOTICE OF APPLICATION TO APPROPRIATE WATER

Application 18433

NOTICE IS HEREBY GIVEN, THAT U. S. - Death Valley National Monument
Death Valley,
California

~~have~~
has under the date of December 15, 1958, applied to the State Water Rights Board for a permit to appropriate **unappropriated** water, subject to vested rights.

Description of Project

Water to be appropriated from Goldbelt Spring tributary to Marble Canyon.

In the County of Inyo.

Amount applied for: 650 gallons per day.

Diversion season named: January 1 to December 31 of each year.

Water to be used for Domestic and mining purposes.

Point of diversion within SE¼ of SW¼ of Projected Section 29, T15S, R42E, MDB&M.

Place of use described: SE¼ of SW¼ of Projected Section 29, T15S, R42E, MDB&M, as shown on map filed with State Water Rights Board.

Relative to Protests

Blanks upon which to submit protests will be supplied free upon request.

Any person desiring to protest against the granting of such permit shall within 40 days from date hereof file with the State Water Rights Board, Sacramento, California, a written protest. Such protest shall clearly set forth the protestant's objections to the approval of the application and shall contain the following information:

(1) Statement of the injury which would result to protestant from such appropriation and use.

(2) The basis of protestant's water right.

(3) Protestant's past and present use of water both as to amount used and land irrigated, or use made of water if other than irrigation.

(4) The approximate location of protestant's land or place of use and point of diversion of the water.

A copy of the protest should be sent to the applicant and this office notified that the same has been done.

L. K. HILL
Executive Officer

Dated: Sacramento, California,
~~April 17~~, 19~~59~~

DEVH

FORM 8-A

85722 10-58 10M © SPO

11-14-1958: application to appropriate unappropriated water; application 18433 see memo of : ; november 14, 1958

FILE IN DUPLICATE

[For full information concerning the filling out of this form refer to Article 4 of Rules and Regulations Pertaining to Appropriation of Water]

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

See memo of 11/14/58 re Supt. from Manley concerning filing

Application No. 18433 Filed _____ at _____ M.
(Applicant must not fill in the above blanks)

APPLICATION TO APPROPRIATE UNAPPROPRIATED WATER

I, The United States of America by Fred W. Binnewies, Superintendent
Name of applicant

of Death Valley National Monument County of Inyo
Address

State of California, do hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS:*

Source, Amount, Use and Location of Diversion Works

1. **The source** of the proposed appropriation is Goldbelt Spring
Give name of stream, lake, etc., if named; if unnamed state nature of source and that it is unnamed

located in Inyo County, tributary to Salt Creek

2. **The amount of water** which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 650 gals per day (.001 cfs) cubic feet per second, to be diverted from January 1 to December 31 of each year.
1 cubic foot per second equals 40 statute miner's inches or 646,317 gallons per day
Beginning date Closing date

(b) For diversion to be stored and later applied to beneficial use _____ acre-feet per annum, to be collected between _____ and _____ of each season.
1 acre-foot equals 325,851 gallons
Beginning date Closing date

NOTE.—Answer *(a)* or *(b)* or both *(a)* and *(b)* as may be necessary. If amount under *(a)* is less than .025 cubic foot per second, state in gallons per day. Neither the amount nor the season may be increased after application is filed. If underground storage is proposed a special supplemental form will be supplied by the State Water Rights Board upon request.

3. **The use** to which the water is to be applied is domestic, mining and recreation
Domestic, irrigation, power, municipal, mining, industrial, recreational

_____ purposes.

4. **The point of diversion** is to be located 400 ft. S50°W from USGS benchmark 38D
State bearing and distance or coordinate distances from section or quarter section corner

being within the S-1/2 of S-1/2 (projected from T 17 S, R42E, MDB)
State 40-acre subdivision of public land survey or projection thereof

of Section 29, T. 15S, R. 42 E, MD B. & M., in the County of Inyo

5. **The main conduit** terminates in N-1/2 of S-1/2 Sec. 29, T. 15S, R. 42 E, M D B. & M.
State 40-acre subdivision of U. S. Government survey or projection thereof

Description of Diversion Works

NOTE.—**An application cannot be approved for an amount grossly in excess of the estimated capacity of the diversion works.**

6. **Intake or Headworks** (fill only those blanks which apply)

(a) Diversion will be made by pumping from _____
Sump, offset well, unobstructed channel, etc.

(b) Diversion will be by gravity, the diverting dam being 2 feet in height (stream bed to level of overflow); 10 feet long on top; and constructed of earth and concrete
Concrete, earth, brush, etc.

(c) The storage dam will be _____ feet in height (stream bed to overflow level); _____ feet long on top; have a freeboard of _____ feet, and be constructed of _____
Concrete, earth, etc.

7. **Storage Reservoir** _____
Name

The storage reservoir will flood lands in _____
Indicate section or sections, also 40-acre subdivisions unless shown upon map

It will have a surface area of _____ acres, and a capacity of _____ acre-feet.

☛ In case of insufficient space for answers in form, attach extra sheets at top of page 3 and cross reference.

FORM 1

8. **Conduit System** (describe main conduits only)

(a) Canal, ditch, flume: Width on top (at water line) _____ feet; width at bottom _____ feet; depth of water _____ feet; length _____ feet; grade _____ feet per 1,000 feet; materials of construction _____
(Cross out two not used; Earth, rock, timber, etc.)

(b) Pipe line: Diameter 1 inches; length 600 feet; grade 20 feet per 1,000 feet; total $\frac{\text{fall}}{\text{lift}}$ from intake to outlet 13 feet; kind galvanized iron
(Riveted steel, concrete, wood-stave, etc.)

NOTE.—If a combination of different sizes or kinds of conduit is to be used, attach extra sheets with complete description, also show location of each clearly on map.

9. **The estimated capacity** of the diversion conduit or pumping plant proposed is _____
(State cubic feet per second or gallons per minute)

The estimated cost of the diversion works proposed is $700.00
(Give only cost of intake, or headworks, pumps, storage reservoirs and main conduits described herein)

Completion Schedule

10. **Construction work** will begin on or before May 1, 1958

Construction work will be completed on or before July 1, 1958

The water will be completely applied to the proposed use on or before July 1, 1958

Description of Proposed Use

11. **Place of Use.** NE-1/4, SW-1/4, S 29, T 15 S, R 42 E unsurveyed
(State 40-acre subdivisions of the public land survey. If area is unsurveyed indicate the location as if lines of the public land survey were projected. In the case of irrigation use state the number of acres to be irrigated in each 40-acre tract, if space permits. If space does not permit listing of all 40-acre tracts, describe area in a general way and show detail upon map.)

Do(es) applicant(s) own the land whereon use of water will be made? Yes (Yes or No) Jointly? _____ (Yes or No)

If applicant does not own land whereon use of water will be made, give name and address of owner and state what arrangements have been made with him.

12. **Other Rights.** Describe all rights except those on file with the State Water Rights Board under which water is served to the above named lands.

Nature of Right (riparian, appropriative, purchased water, etc.)	Year of First Use	Use made in recent years including amount if known	Season of Use	Source of Other Supply
1.				
2.				
3.				
4.				

Attach supplement at top of page 3 if necessary.

13. **Irrigation Use.** The area to be irrigated is _____ acres.
(State net acreage to be irrigated)

The segregation of acreage as to crops is as follows: Rice _____ acres; alfalfa _____ acres; orchard _____ acres; general crops _____ acres; pasture _____ acres.

NOTE.—Care should be taken that the various statements as to acreage are consistent with each other, with the statement in Paragraph 11, and with the map.

The irrigation season will begin about _____ (Beginning date) and end about _____ (Closing date)

14. **Power Use.** The total fall to be utilized is _____ feet.
(Difference between nozzle or draft tube water level and first free water surface above)

The maximum amount of water to be used through the penstock is _____ cubic feet per second.

The maximum theoretical horsepower capable of being generated by the works is _____ horsepower.
(Second feet × fall ÷ 8.8)

The use to which the power is to be applied is _____
(For distribution and sale or private use, etc.)

The nature of the works by means of which power is to be developed is _____
(Turbine, Pelton wheel, etc.)

The size of the nozzle to be used is _____ inches.

The water $\frac{\text{will}}{\text{will not}}$ be returned to _____ (Name stream) in _____ (State 40-acre subdivision) of Sec. _____, T. _____, R. _____, _____ B. & M.

Application.....
Permit.....
License.....

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

Applicant UNITED STATES OF AMERICA

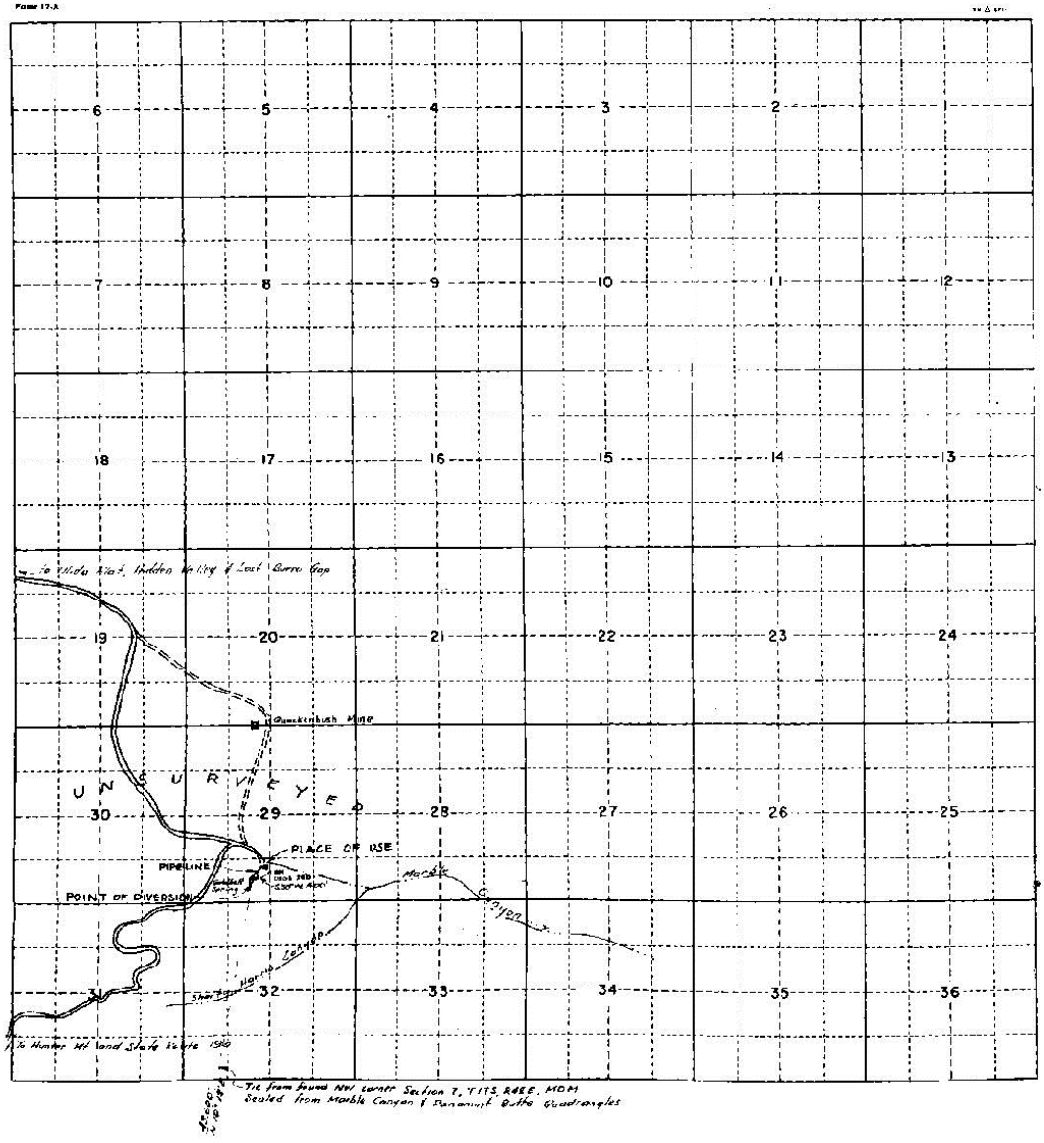
Sec. 29 Township 15 S. Range 42 E., MD Meridian
UNSURVEYED - Township projected from T 15 S, R 42 E, MDM

Mapped by Robert Fleming & L. Spaulding

County INYO

NOTE.—Maps are to be drawn on this plat only when total amount of water to be diverted does not exceed three cubic feet per second for direct diversion or does not involve storage in a reservoir having a capacity in excess of 200 acre-feet. For amounts less or reservoirs smaller than those above stated the average applicant can prepare a very satisfactory map without the aid of a surveyor by observing instructions on the reverse side of this plat.

Form 17-A



DO NOT WRITE IN THIS SPACE
ATTACH EXTRA SHEETS HERE

15. **Municipal Use.** This application is made for the purpose of serving _____ (Name city or cities, town or towns. Urban areas only) having a present population of _____

The estimated average daily consumption during the month of maximum use at the end of each five-year period until the full amount applied for is put to beneficial use is as follows:

16. **Mining Use.** The name of the mining property to be served is Ubehebe (Name of claim) and the nature of the mines is talc (Gold placer, quartz, etc.)

The method of utilizing the water is cooling of engines, jackhammers, and other mining equipment

It is estimated that the ultimate water requirement for this project will be 150 gals. per day (Cubic feet per second, gallons per minute. State basis of estimate)

The water will ~~will not~~ be polluted by chemicals or otherwise grease, oils, and antifreeze (Explain nature of pollution, if any) and it ~~will~~ will not be returned to Marble Canyon (Name stream) in NW-1/4 of SE-1/4 (State 40-acre subdivision) of Sec. 29, T. 15S, R. 42 E, MD B. & M.

17. **Other Uses.** The nature of the use proposed is domestic use at mine camp and by Monument visitors (Industrial, recreational, domestic, stockwatering, fish culture, etc.) 500 gals per day

State basis of determination of amount needed. 8 persons, 2 bunk houses and 1 boarding house (Number of persons, residences, area of domestic lawns and gardens, number and kind of stock, type) 8 people at 50 gals per day per person, plus 100 gallons per day for industrial use, and unit requirements. visitors and wildlife use

General

18. Are the maps as required by the Rules and Regulations filed with Application? yes (Yes or No). If not, state specifically the time required for filing same _____

19. Does the applicant own the land at the proposed point of diversion? yes (Yes or No). If not, give name and address of owner and state what steps have been taken to secure right of access thereto _____

20. What is the name of the post office most used by those living near the proposed point of diversion?

Death Valley

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion? _____

Nothing herein shall constitute a waiver of any other rights which the United States may have to the same water.

[SIGNATURE OF APPLICANT] The United States of America
by
Superintendent, Death Valley National Monument

APPLICANT MUST NOT FILL IN BLANKS BELOW

PERMIT No._____

This is to certify that the application of which the foregoing is a true and correct copy has been considered and approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before

5. Complete application of the water to the proposed use shall be made on or before

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: STATE WATER RIGHTS BOARD

57214 6-57 5M © GPO

L54
File Copy

Jan. 9, 1981

Memorandum

To: File

From: Legal Clerk

Subject: Mining Claims at the Goldbelt Springs area

Attached is a decision of Administrative Law Judge Ratzman declaring that the claims for mining rights at Goldbelt Springs are null and void. This would confirm the fact that no mining is or has recently been conducted in that area, nor is there likely to be any mining there in the near future.

A note has been left with the mining office to notify this division of any appeals concerning Goldbelt Springs water source.

James H. Hershey

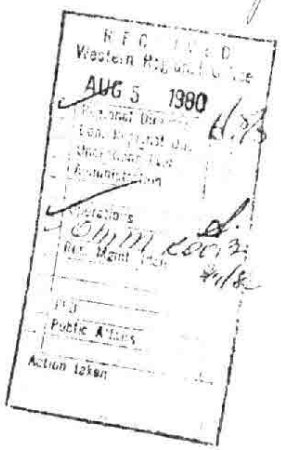
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file 9

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
SAN FRANCISCO FIELD OFFICE
450 GOLDEN GATE AVENUE, BOX 36061
SAN FRANCISCO, CALIFORNIA 94102

August 5, 1980



Memorandum

To: Regional Director, Western Region,
National Park Service

From: Field Solicitor, San Francisco

Subject: United States v. Victor Material Company
(Contest No. CA-5207) Death Valley

Enclosed is a recent decision by Judge Ratzman which declared all of Contestee's claims in Death Valley, except one, to be null and void. Please review the decision as soon as possible in order to apprise our office on whether or not you wish to pursue an appeal on the judge's dismissal of the Government's case against Contact No. 2 Lode Mining Claim.

Ralph G. Mihan
Field Solicitor

John W. Burke, III
For the Field Solicitor

Enclosure
cc:
Assistant Solicitor, Parks and Recreation, w/encl
Attention: Barbara Levin
Chief, Mining and Minerals, NPS, WASO, w/encl
Superintendent, Death Valley, w/encl

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION
Suite 170, 2020 Hurley Way
Sacramento, California 95825



August 1, 1980

United States of America,	:	Contest No. CA-5207
	:	
Contestant	:	Involving the Gold Belt Talc #1; Gold Belt Talc #2; Gold Belt Talc #3, all as amended, Lode Mining Claims; and Gold Belt Mill Site, formerly "Gold Belt Springs Mill Site" Mill Site Claim
v.	:	
Victor Material Co.,	:	
Contestee	:	
	:	
	:	Contest No. CA-5250
	:	
	:	Involving the White Horse Talc #1; White Horse #2; White Horse Talc #3; and White Horse Talc #4, formerly called White Horse No. 1 through No. 4 Lode Mining Claims
	:	
	:	Contest No. CA-5269
	:	
	:	Involving the Spar No. 1 Lode Mining Claim
	:	
	:	Contest No. CA-5271
	:	
	:	Involving the Contact No. 1 and Contact No. 2 Lode Mining Claims
	:	
	:	All situated in Inyo County, California

DECISION

Appearances: John W. Burke III, Attorney at Law Office of the Solicitor, San Francisco, California for the Contestant

James F. Ball, Attorney at Law, Los Angeles, California for the Contestee

Before: Administrative Law Judge Ratzman

This is an action brought by the United States Department of the Interior, Bureau of Land Management, on behalf of the National Park Service (NPS) to contest the validity of the above-named lode mining claims and mill site. It was instituted under the Hearings and Appeals Procedures of the Department of the Interior, 43 CFR Part 4.

The contestant filed a complaint on February 5, 1979, which alleged as to each lode claim:

> "There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery."

As to the mill site claim the complaint asserts:

> "The land involved is not being used or occupied for mining or milling purposes in connection with a lode mining claim, nor does it contain a quartz mill or reduction works."

An answer was filed on behalf of Victor Material Company which contains a general denial of the charges set forth above, except that it admitted the mill site was not being used for milling or processing ore. Rowena R. and Charles R. Munns were named as contestees and served with the complaint, but filed no answer. Their interest in the contested claims has been acquired by Victor Material Company, according to Mr. Ralph Harris, an executive of Victor Material Company.

The mining claims in this contest occupy land which was withdrawn from operation of the mining laws on September 28, 1976 [16 U.S.C. Sec 1901, et seq. (1976)]. For that reason the validity of the claims must be tested by the value of mineral deposits as of the date of the withdrawal as well as of the date of the hearing. If a claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit increased due to a change in the market. United States v. Rodgers, 32 IBLA 77 (1977); United States v. Garner, 30 IBLA 42, 66 (1977); United States v. Milton Wichner, 35 IBLA 240 (1978).

The contestee acquired the claims approximately five years ago. The Gold Belt Talc and White Horse Talc claims are far to the north in the Monument from the Spar and Contact claims. The principal material of interest on the Spar is feldspar. On the Contacts it is wollastonite.

Mr. Fred Spicker, a geologist for the NPS, was the first witness at the hearing in this proceeding. He has a master's degree in geology from a state university, worked about two years for a private mineral exploration company, and has worked for more than four years for Federal agencies. When he examined the contested claims in 1978, representatives of Victor Material Company pointed out the discovery points and general areas covered by the claims. Tr. 11.

Mr. Spicker inspected the talc claims (Gold Belt and White Horse) in April, 1978. He visited the Contact claims on three occasions in 1978, and once in 1979. He looked at the Spar claim twice in 1978, and once in 1979. Tr. 14.

Mr. Spicker learned from literature on the Gold Belt Talc claims (formerly Quackenbush Mine) that a 50-foot shaft was sunk on No. 1 in 1967, but the properties have been inactive since that time. On Gold Belt Talc No. 1 the shaft is caved in and extends only 15 feet. A shallow cut and diggings were excavated starting at the shaft--this working was about ten feet wide and 75 feet long. Tr. 14. On Gold Belt Talc No. 2 there is a caved stope area which is unsafe to enter. Gold Belt Talc No. 3 overlaps No. 2 and No. 1. On the overlapping portion of the claims Mr. Spicker examined a 120-foot long adit which intersects no talc, and an incline which is 116 feet in length. That incline intersects thinly bedded talc which is "virtually unmineable" because of the presence of other material. Tr. 22.

On the Gold Belt mill site, geologist Spicker found some abandoned and dilapidated cabins. The windows are broken and the rooms are empty. Tr. 17.

Two vertical shafts on White Horse Talc No. 1 are unsafe to enter. In addition, there are two adits which are open and safe. The whitish colored bodies of talc observed by Spicker on White Horse No. 1 and White Horse No. 2 are very small. On the latter claim he found a larger exposed deposit of green talc. No talc was observed on White Horse No. 3 and White Horse No. 4. Tr.24.

On the Contact No. 2 claim a cut which is 10 feet high and 15 feet wide has been excavated. Nearby there is a wollastonite stockpile with dimensions of 30 by 15 by five feet.

A small discovery pit and an outcrop which has been blasted can be seen on Contact No. 1. Tr. 25.

In checking the market for wollastonite, Mr. Spicker visited producing mines in New York. The largest concern produces wollastonite from a 50 million ton deposit and a nearby four and a half million ton deposit. Another company recently commenced production from a large deposit. Tr. 29. Mr. Spicker learned that the New York material is about 58% wollastonite, 40% garnet (easily separated by a magnetic method), and two percent diopside calcite quartz. The Eastern companies sell and ship between 3,000 and 4,000 tons of ground processed wollastonite to the West Coast each year. Tr. 42.

According to geologist Spicker removal of iron oxide and diopside calcite quartz from the Victor Material wollastonite would be more difficult and expensive than removal of non-wollastonite ingredients in the New York deposits. Tr. 30. He expressed the opinion that the quantity of wollastonite on the contested (Contact) claims is insufficient to sustain an ongoing operation, and the quality is too low for sales to be made. Tr. 33. He acknowledged upon cross-examination that he had never mined wollastonite and had no prior experience in the Death Valley areas.

Mr. Spicker inspected a feldspar operation in the Ord Mountains in Southern California. The concern which conducts that operation has more than 20 million tons of reserves. The material in the Ord Mountains is "much more pure" than that on the (contested) Spar claim and does not require sorting or separation. Mica and hornblende must be removed from the Spar material before it could be ground and sold.

On the Spar claim Mr. Spicker inspected a discovery cut 30 feet long by 50 feet wide. In this cut an upper bench exposes a 12-foot high face, but the face on a lower bench is covered with debris. A deposit of feldspar can be seen on the Spar claim. Tr. 26.

In the opinion of Spicker the feldspar bodies on the Spar claim are "much too small" to sustain continued production. Tr. 32. Also the crystals are too small, and cannot be easily separated.

There is no evidence on the Gold Belt mill site of use or occupation for mining or milling purposes, or of a quartz mill or production works. Tr. 33, 34.

As to each of the contested lode claims Mr. Spicker expressed the opinion that a prudent person would not be justified in expending his labor or means with a reasonable prospect of success in developing a viable mine. Tr. 34.

Mining engineer Charles T. Weiler, a NPS employee with more than 35 years of experience in his profession, examined the claims under consideration. When he was employed in the private sector Mr. Weiler gained experience with industrial (non-metallic) minerals. Tr. 56. He has found that in many instances a market for non-metallics must be developed. He visited each of the contested lode claims more than once, and observed much of the sampling and evaluation work performed by Mr. Spicker. Mr. Weiler testified that all places shown by the contestee's president, and several additional locations, were sampled. Tr. 61.

The greenish color in the talc bodies on the contested talc claims is attributed by Weiler to a very high chlorite content. Colored talc can be utilized for several purposes, but is unsuitable for some of the principal uses in Southern California. Tr. 66. The producing talc mines which he has inspected ship a good white all-purpose talc that is consistent from the standpoint of quality. Tr. 68. He testified that none of the White Horse or Gold Belt claims contain a commercial talc ore body. Tr. 69.

Mr. Weiler's observations and conclusions regarding the Gold Belt mill site were the same as Mr. Spicker's. He also viewed the East Coast wollastonite deposits. He determined that some of the Contact claims wollastonite is granular and does not assay well. The quality of better quality Contact wollastonite is higher than the Eastern material, but a better end product can be produced from the New York wollastonite because it is very easy to mill and upgrade. Mr.

Weiler is unaware of any market for the crystal Contact wollastonite--in his view it would be necessary for someone to do "sufficient work to show that some other wollastonite product can be sold...." Tr. 73. The granular material has no potential.

According to Weiler the dispersal of mica and hornblende throughout the feldspar on the Spar claim creates an insurmountable separation or "mineral dressing" problem. Therefore it is not possible to come up with a product with commercial possibilities. Tr. 76. As to each of the contested lode claims Mr. Weiler expressed the opinion that a prudent man would not be warranted in devoting time and expense in an attempt to develop a paying mine. Tr. 77.

The selling price for the processed wollastonite product (not the ore) in New York at the time of the hearing was $80 to $83 per ton.

President Ralph Harris of Victor Material Co., testified that he negotiated with two concerns for the sale of wollastonite "just prior to the moratorium." Tr. 90. It is his position that the prospect of selling wollastonite was dampened by provisions of the legislation enacted on September 28, 1976. A geologist for Southern Clay Products was favorably impressed with the quality of the wollastonite on the Contact claims. Tr. 91. Mr. Harris explained the outcome of his negotiations with Southern Clay Products:

> "We were going to get a couple of carloads for them to send back for a sample, but the moratorium was close, so close that I called them and told them there wasn't any use to it because they wouldn't be able to mine it anyway." Tr. 92.

The plan of Southern Clay Products was to mine the wollastonite and pay Victor Material a royalty.

Pfizer Company, which had mined wollastonite at other locations, and sold it along with talc and limestone, examined the quality of the Contact wollastonite, and submitted a contract for approval in 1975. Tr. 94. Mr. Harris testified that the sale to Pfizer was not consummated due to the "moratorium," and because the NPS imposed stringent requirements relating to permits. Tr. 96.

Mr. Harris, who is in the trucking business, estimated that shipping charges for wollastonite would be at least $60 per ton, New York to Los Angeles. Tr. 97. In his opinion an ordinarily prudent person would proceed with development and marketing on the wollastonite claims.

In the years 1972 through 1975, inclusive, Pfizer's production of wollastonite in the west averaged 1,467 tons per year. Exhibit A, attached to Second Supplemental Declaration of the contestee, filed on February 7, 1980. (Exhibit A will be referred to as "Pfizer exhibit").

In March, 1975, Pfizer geologists inspected the wollastonite stockpile on the Contact No. 2 claim. It came from a bed which varies from 30 feet to 40 feet in width, and can be traced for a distance of more than 1,200 feet in length. They concluded that some of the wollastonite is too high in calcite or silica, but there is a "central portion of the bed varying from 10 feet to 20 feet thick that appears to be nearly pure wollastonite." Item 1, Pfizer exhibit, dated March 10, 1975. They determined that the bed is at a location easily accessible to mining. They envisioned that cleaning the surface and breaking the wollastonite might present problems. Their estimate of reserves was 20,000 tons open pit ore at a 1.5:1 stripping ratio. The crystalline ore was found to be good from the standpoint of color and purity. The Victor Material wollastonite was one of five tested by Pfizer geologists and rated "acceptable." (Attachment to Item 1, Pfizer exhibit.)

In the fall of 1975, Pfizer officials decided to attempt to obtain a lease under which 2,200 tons of wollastonite could be removed from one of the contested claims annually. The proposed lease contemplated that a total of 7,500 tons would be removed under its terms, at a royalty of $2 per ton. Attachment (mining lease) to Item 3, Pfizer exhibit. Pfizer also conducted a study of wollastonites, and issued the results of the study in a document dated November 19, 1975. U.S. Gypsum and Interpace wollastonites were found to be of premium grade, and a material from a third supplier (De Zan) was said to be close to the premium grade wollastonite, when blended. Two wollastonites, including the Victor Material wollastonite, were reported to "meet the requirements for a substitute for CF 97-50" (presumably the latter reference is to material which had been utilized by Pfizer). Item 4, Pfizer exhibit.

Initially, Pfizer's interest in the mid-1970s was to lease the Contact No. 2 claim (the one with the stockpiled material). However, because the geologist for the Southern Clay Co. had recommended that Southern Clay obtain a lease on Contact No. 2, the president of Victor Material indicated that only Contact No. 1 would be available to Pfizer.

Eventually, Pfizer decided that Contact No. 1 would satisfy its needs, since it might mine wollastonite over a relatively short period. The company was reluctant to guarantee that wollastonite would be mined and hauled in 1977. In addition, a royalty of $2.50 per ton was agreed upon by the negotiating parties. On January 22, 1976, an official in the Minerals, Pigments and Metals Division of Pfizer wrote a letter pointing out that the Pfizer mill sample had been taken from the Contact No. 2 claim. (No. 1 in the letter, but Pfizer's Manager of Mines has the claim numbers reversed), that mining of ore on the Contact No. 1 claim would require road construction of at least 1,000 feet up a steep hillside, and that the "previous mining could be very important with the pending legislation in Death Valley." Page 1, Item 7, Pfizer exhibits. The mine manager requested that another effort be made to obtain a lease on the Contact No. 2, (the claim lying to the northwest of the common boundary).

Several weeks later Victor Material agreed to lease Contact No. 2, the one with the stockpiled wollastonite. At this point Pfizer representatives were indicating concern over the possibility that NPS officials might delay the issuance of needed permits until the moratorium became effective, and the time that otherwise would be required for negotiations with the NPS. Pfizer's Manager of Mines wrote that these factors might make the Victor Material wollastonite "a dead issue," and suggested that an approach might be made to another company for a 3,000 ton purchase, or Pfizer could mine wollastonite from its own deposits "as a last resort." Item 8, Pfizer exhibit. On March 2, 1976, the Mine Manager informed Pfizer's attorney that Victor Material should be advised that Pfizer no longer had an interest in pursuing the lease, "pending the outcome of the Death Valley mine closing legislation and a review of the wollastonite market." Item 10, Pfizer exhibit.

A report filed by a Pfizer salesman in August, 1976, (an internal document) furnished information on three significant inquiries as to the supply of wollastonite on the West Coast. Foseco Minsep, Inc., intended to buy up to 45 tons per month from Interpace. Norris Industries had used a Pfizer low quality material, but had switched its 250 ton per year requirement to Interpace. Supro Corp. was using 2,400 tons per year of wollastonite produced by Interpace as a replacement for asbestos in mixes. A quantity of 3,190 tons annually was shipped from the East Coast to the three named concerns at a freight cost of $64 per ton.

Portions of an affidavit from the Pfizer official who is responsible for reviewing and analyzing the potential of industrial minerals were received in evidence. Information included in the affidavit is as follows:

> Wollastonite is an industrial mineral with many applications in ceramics, paint, plastics, floor tile, caulks and adhesives. The many end use markets for Wollastonite have experienced rapid growth since 1973, at which time two structural shifts impacted the marketplace.
>
> The first was the Arab oil embargo which increased the demand for all filler materials to extend the resin derived from petro-chemical feedstocks. When increased filler levels were experimented with, it was found that the physical properties of many plastic materials were significantly improved. Wollastonite, in particular, was shown to improve the strength of many plastic materials.
>
> The second structural shift was the discovery that asbestos had serious health implications. The link between cancer and exposure to asbestos fibers created a strong incentive to replace asbestos fibers with acicular Wollastonite particles.
>
> Wollastonite, as a fibrous filler, can be used at between 12% and 15% of the body formula in ceramic applications. It imparts increased green strength and improved dimensional stability. My company has assayed samples of the [Victor Material] ore and finds that the ground product exceeded all of the specifications of commercial wollastonite previously marketed by Pfizer or the West Coast.

[Pfizer's statement that its average selling price, 1974 through 1976, for wollastonite was $62.56, was accepted.]

National Park Service mining engineer Weiler did not modify his negative view as to the marketability and quality of the Contact claims wollastonite upon reviewing the affidavit of

Mr. Wenzel. Weiler stressed the high grade and consumer acceptance of Willsboro, New York wollastonite products. A sample from the Contact No. 2 stockpile was better quality than Pfizer's West Coast wollastonite, but Mr. Weiler asserted that Pfizer has discontinued the sale of its wollastonite on the West Coast. Paragraphs b.(1), b.(2), and b.(5), pages 4-6, Weiler Declaration dated March 11, 1980.

Mr. Weiler stated that a strong market for high quality wollastonite existed on the west coast in 1976, but noted that Pfizer apparently elected not to develop deposits which it regarded as superior to the Victor Material wollastonite. Page 17, Weiler Declaration dated March 11, 1980.

Summary of Applicable Law

A mining claimant must discover a valuable mineral deposit before he may receive title to a mining claim located on public land. Under Federal mining laws a discovery of valuable minerals exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. United States v. Coleman, 390 U.S. 599 (1968); Chrisman v. Miller, 197 U.S. 313 (1905); Castle v. Womble, 19 L.D. 455, 457 (1894).

The Government bears the initial burden of going forward with sufficient evidence to establish a prima facie case that no valuable mineral discovery has been made. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Clare Williamson, et al., 45 IBLA 264 (1980). The burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid. Humboldt Placer Mining Co. v. Secretary of the Interior, 549 F.2d 622 (9th Cir.) cert. denied, 434 U.S. 836 (1977); United States v. Springer, 491 F.2d 239 (9th Cir.), cert. denied, 419 U.S. 834 (1974).

A prima facie case that a discovery of a valuable mineral deposit is lacking is established when a Government mineral examiner gives his expert opinion that he examined a claim and found insufficient values to support a finding of discovery. United States v. Alex Bechthold, 25 IBLA 77, 82 (1976); United States v. Fisher, 37 IBLA 80 (1978). A finding of mineralization may suggest the possibility of minerals of sufficient value to justify further exploration, but it does not establish a discovery. Chrisman v. Miller, 197 U.S. 313 (1905); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

Government mineral examiners are not required to perform discovery work for claimants, nor to explore beyond a claimant's workings. United States v. Harder, 42 IBLA 206 (1979); United States v. Bechthold, 25 IBLA 27 (1976).

Where a mill site is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the mill site, and where no quartz or reduction works exist on the mill site, the mill site must be declared null and void. 30 U.S.C. Sec. 42 (1970); United States v. Robert A. Rukke, 32 IBLA 155 (1977); United States v. Wayne E. Highley, 30 IBLA 21 (1977).

In United States v. Verrue, 457 F.2d 1202 (9th Cir. 1972) the Court held that "the lack of evidence as to sales and the fact there was other material available does not constitute the substantial evidence required to support the conclusion of the Secretary, when, as here, there is positive evidence in the record of marketability." In Verrue the conclusion of the Secretary was based upon the presumption that a claimant has failed to discover valuable mineral deposits if the claimant has held claims for several years and has attempted little or no development or operations.

While a mineral claimant is required to show that the material is, and was on the date of withdrawal, marketable, there has never been any requirement that actual production occur, or that a mine be established. United States v. Hooker, 48 IBLA 22 (1980). In Hooker the Interior Board of Land Appeals stated also that there has never been a requirement that a mining claimant must block out a deposit to show its extent. Thus, where a mineral examiner had testified that there "is no tonnage" involved because the length of a mineralized area had been established, but no depth had been ascertained, the Board stated that it was troubled by his inference that a claimant must know, as an established fact, the full dimensions of a mineralized deposit.

Determination

The contestant established a prima facie case against the validity of the four White Horse Talc claims, three Gold Belt Talc claims, and the Spar No. 1 (feldspar) claim which was virtually unrebutted. Some of the old workings on those claims are unsafe to enter. The exposed mineralized material is not suitable for sale because of other minerals which are found in the deposit, or because of an unacceptable color. It is clear as to each of the talc claims and the feldspar claim that a discovery of valuable minerals did not exist on September 28, 1976.

The contestant also made a very strong showing in support of its charge that the Gold Belt mill site is not being used or occupied for mining or milling purposes in connection with a lode mining claim, and does not contain a quartz mill or reduction works. The contestee concedes the mill site is not being used for milling or processing. It has not been demonstrated that the contested mill site is serving, or can serve any recognized purpose which will facilitate development or operation of a valid lode claim. Therefore, the contestant has sustained the charge against the mill site incorporated in Paragraph 5B of the Complaint.

In establishing a prima facie case against the two Contact claims, the NPS mineral examiners emphasized the strong competitive position enjoyed by the New York wollastonite producers, and pointed out that on the Contact No. 2 the contestee had excavated and stockpiled a quantity of good crystalline wollastonite, but over a period of years had made no sales. However, against those factors one must consider Mr. Weiler's statement that in 1976 there was a strong market for high grade wollastonite and that the quality of better grade Contact wollastonite is higher than the New York material (he did add that the eastern wollastonite ore can be milled and upgraded with ease and gives a better product). Mr. Weiler's views are significant because he is the most experienced of the two NPS experts.

It is clear that Victor Material came very close to selling some of its wollastonite in 1975. The sales were not made, for reasons that were not related to the quality of the material, or possible difficulties with milling and processing. The Pfizer geologists reported a central portion ten feet to 20 feet thick extending 1,200 in length (on Contact No. 2) "that appears to be nearly pure wollastonite." The Contact No. 2 claim is served by a road, and their inspection of the crystalline ore revealed that it is good from the standpoint of color and purity--"acceptable" to Pfizer in one report, and in another, exceeding all "specifications of commerical wollastonite previously marketed by Pfizer on the West Coast." The Pfizer estimate of reserves on the claim is 20,000 tons. The known dimensions of the deposit would indicate that this is conservative.

After 1973 there was an increased requirement for filler material and substitutes for asbestos--wollastonite meets both of those needs. The contestee provided information as of 1976 relating to planned purchases by named concerns. They did not say they would buy from Victor Material, but Victor Material certainly was in a position to compete for business with other suppliers. The lack of evidence as to sales and the fact there other material was available does

not stand up to the Pfizer-Victor negotiations, which, I conclude, provide positive evidence of marketability of the type referred to in United States v. Verrue, 457 F.2d 1202 9th Cir 1972). The establishment of a depth, length and estimated ore body on the Contact No. 2 by the Pfizer geologists more than meets the requirement set forth in United States v. Hooker, 48 IBLA 22 (1980). Under the doctrine enunciated in that decision Victor Material need not establish a mine or show that there has been actual production. A strong interest in mining properties (such as an offer to mine) expressed by a responsible concern which has investigated the feasibility of conducting an operation on the properties can be sufficient to overcome the presumption which arises solely on the basis of a lack of production. United States v. Hooker, supra, at 48 IBLA 37.

The contestee's case relating to the Contact No. 2 claim has preponderated over the prima facie case presented by the NPS--the experts for that agency seemed to be preoccupied with the large operations in New York, and gave little consideration to the prospects for a small operator who wished to sell an acceptable grade of wollastonite on the West Coast. The prudent person test has enough flexibility to allow a mining claimant to undertake an apparently marginal enterprise if it has a reasonable prospect of success. Charleston Stone Products, Inc. v. Andrus, 533 F.2d 1209 (9th Cir. 1977), rev'd on other grounds, 430 U.S. 604 (1978).

The following facts concerning the Contact No. 1 (southwesterly wollastonite) claim must be taken into account:

1. The road does not pass through or near the wollastonite deposit on that claim. Construction of a new road up a steep hillside would be necessary before development could take place.

2. In April, 1978 Mr. Spicker observed only a blasted outcrop and a six foot by six foot by eight foot cut on Contact No. 1. The face of the cut was predominately limestone, and he concluded that virtually the entire outcrop at that point had been dug out. Exhibit A-1 indicates that one NPS sample was obtained from the Contact No. 1 which contained more than 70% wollastonite. However,

the contestee did not submit any evidence to show that the Contact No. 1 claim had been sampled, or the dimensions of an ore body on that claim had been determined prior to September 28, 1976.

3. Southern Clay Products wanted the Contact No. 2 claim, and Pfizer's mine manager made it clear that he preferred No. 2 over No. 1. By early 1976 the Victor Material-Southern Clay negotiations had not produced an agreement, and the attorney for Pfizer was able to obtain an offer from Victor Material under which wollastonite would be removed from the claim near the road (Claim No. 2).

Because of insufficient exploration work and the evidence that there was a general lack of promise for the claim as of September 28, 1976, I conclude the contestee did not overcome the prima facie case established against the Contact No. 1 (southwesterly) claim--it has not been shown that a discovery of valuable minerals existed on that claim on the specified date.

Summary

The contest complaint against the Contact No. 2 lode mining claim is dismissed. For the reasons stated above the remaining claims in this contest (four White Horse Talc lode claims, three Gold Belt Talc claims, one Gold Belt mill site claim, and the Spar No. 1 lode mining claim and the Contact No. 1 lode mining claim) are hereby declared null and void.

Dean F. Ratzman

Dean F. Ratzman
Administrative Law Judge

Appeal Information

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1978). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with

the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party should be served with a copy of the notice of appeal and other documents. Rules that became effective February 25, 1980 state that, the Associate Solicitor of the Division of Energy and Resources must be served with a copy of the notice of appeal and any statement of reasons, written arguments, or briefs. (Address: Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.

Enclosure: Additional information concerning appeals.

Distribution:
James F. Ball, Attorney at Law, 615 South Flower Street, Suite 1900, Los Angeles, California 90017 (Cert.)
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90-1-12-342 (2852)

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JAN 10 1968

Memorandum

To: Director, National Park Service

From: Associate Solicitor, Parks and Recreation

Subject: Trespass action -- Roy Hunter v. United States
Death Valley National Monument

There is enclosed for your information a copy of the opinion of the Circuit Court of Appeals in the above-entitled action which concluded that the Hunters have an appropriative water right, that they do not have an easement to graze livestock within the Monument, and that they must be allowed a right-of-way over Monument lands to divert the water so it can be used by them.

(Sgd.) BERNARD R. MEYER
Bernard R. Meyer

Enclosure

cc:
Regional Director, Western Regional Office
San Francisco, California NPS
Superintendent, Death Valley National Monument NPS

JAN 11 11 44 AM '68

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90-1-12-3-2
INTERIOR DEPT.
JAN 3 - 1968
SOLICITOR

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROY HUNTER,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 20,093

[December 19, 1967]

Appeal from the United States District Court
for the Southern District of California
Northern Division

Before: BARNES and KOELSCH, Circuit Judges, and TAYLOR, District Judge.

KOELSCH, Circuit Judge.

The United States, complaining that Roy Hunter persistently grazed and watered his cattle within the boundaries of the Death Valley National Monument without a permit from the National Park Service, brought this suit against him in the United States District Court to secure an injunction against further trespasses.[1]

Hunter urged justification; in addition, he sought a declaration that he possessed water and grazing rights. He alleged that long

[1]The Death Valley National Monument was duly created on February 11, 1933, by the President of the United States from unassigned lands comprising part of the public domain. Pres. Proc. No. 2028, Feb. 11, 1933, 47 Stat. 2554. Use of those lands thereupon became subject to regulations promulgated by the Secretary of the Interior pursuant to 39 Stat. 535-36 (1916), *as amended*, 16 U.S.C. § 3; one of those regulations prohibits "[t]he running at large, herding, driving across, or grazing of livestock . . . except where authority therefor has been granted pursuant to a revocable permit issued by an authorized officer or employee of the National Park Service." 36 C.F.R. § 1.20.

before the monument was established his predecessors in interest continually had watered livestock, which they pastured within its present boundaries, at 26 springs and a stream therein. His theory was that this taking and use of the water constituted an appropriation vesting in his predecessors a water right, together with an appurtenant right of way to graze cattle, which rights the general government was bound to honor under the provisions of the Act of 1866, REV. STAT. § 2339 (1875), 43 U.S.C. § 661, para. 1 (1964), *formerly* Act of July 26, 1866, ch. 262, § 9, 14 Stat. 253 (hereinafter cited as Act of 1866).[2]

The District Court found that:

> "7. Prior to 1880 Wm. Lyle Hunter, grandfather and predecessor of defendant, Roy Hunter, discovered certain springs within the area now known as Death Valley National Monument, and developed said springs by diverting spring water through pipes or other conduits into tanks and troughs constructed by him for livestock watering purposes.
>
> 8. Defendant, Roy Hunter, and his predecessors in interest, his father and grandfather, have watered cattle and other livestock from the tanks and troughs adjacent to said springs and from a free flowing stream within said area, have maintained the original diversions and said use, and have grazed cattle and other livestock adjacent to said sources of water continuously since prior to 1880.
>
> 9. The watering of cattle and livestock by defendant and his predecessors in interest from the springs and from the free flowing stream within the Death Valley National Monument constituted a beneficial use of said waters."

Despite these favorable findings, the court concluded that Hunter possessed no rights either to the waters or in the lands and granted an injunction. Hunter has appealed.

1. *The Water Right:*

> "For many years prior to the passage of the Act of July 26, 1866, c. 262, § 9, 14 Stat. 251, 253, the right to the use of

[2] In the proclamation, the President expressly declared that the removed lands remained "subject to all existing rights. . . ." Pres. Proc. No. 2028, Feb. 11, 1933, 47 Stat. 2554.

waters for mining and other beneficial purposes in California and the arid region generally was fixed and regulated by local rules and customs. The first appropriator of water for a beneficial use was uniformly recognized as having the better right to the extent of his actual use. . . . The rule generally recognized throughout the states and territories of the arid region was that the acquisition of water by prior appropriation for a beneficial use was entitled to protection. . . . The rule was evidenced not alone by legislation and judicial decision, but by local and customary law and usage as well. *Basey v. Gallagher,* 20 Wall. 670, 683-4 [87 U.S. 670 (1874)]; *Atchison v. Peterson,* 20 Wall. 507, 512-13 [87 U.S. 507 (1874)].

This general policy was approved by the silent acquiescence of the federal government, until it received formal confirmation of Congress by the Act of 1866, *supra. Atchison v. Peterson, supra.* Section 9 of that Act provides:

'That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: . . .' . . . And in order to make it clear that the grantees of the United States would take their lands charged with the existing servitude, the Act of July 9, 1870, c. 235, § 17, 16 Stat. 217, 218, amending the Act of 1866 provided that—

'. . . all patents granted, or preëmption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired or recognized by the ninth section of the act of which this act is amendatory.'

The effect of these acts is not limited to rights acquired before 1866. They reach into the future as well, and approve and confirm the policy of appropriation for a beneficial use, as recognized by local rules and customs, and the legislation

> and judicial decisions of the arid-land states, as the test and measure of private rights in and to the non-navigable waters on the public domain." *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 154-55 (1935).

The trial court in the instant case concluded that ". . . no legal basis for the acquisition of an appropriation to water by virtue of local customs, laws or decisions of California has been established." We believe that the District Court misconstrued the applicable local authority and that Hunter did establish a legal basis for the acquisition of an appropriation to water by virtue of local decisions.

It is clear that Hunter need prove the appropriative right only by local customs, laws *or* decisions, for "[t]he union of the three conditions in any particular case is not essential to the perfection of a right by priority." *Basey v. Gallagher*, 87 U.S. (20 Wall.) 670, 684 (1874). The local customs regarding proprietorship by appropriation have long since become crystalized into law by judicial decision or statute. As Mr. Weil notes in his work entitled WATER RIGHTS IN THE WESTERN STATES, vol. 1, § 635 (3d ed. 1911):

> "The local customs referred to in United States Revised Statutes, section 2339 [Act of 1866], need not be alleged or proved. . . . The principle is, as stated in Basey v. Gallagher [*supra*], that the rules of appropriation have everywhere in the West now passed into judicial decision or statute or both, thereby superseding the original customs on which decisions and statutes are based."

In 1872 the California Legislature enacted statutes providing for the appropriation of public waters; but the Supreme Court of that State held that the statutory method was not exclusive:

> "One may by a prior actual and completed appropriation and use, without proceeding under the code, acquire a right to the water beneficially used, which will be superior and paramount to the title of one making a subsequent appropriation from the same stream in the manner provided by that statute."

Lower Tule River Ditch Co. v. Angiola Water Co., 149 Cal. 496, 499, 86 P. 1081, 1052 (1906); See also *Duckworth v. Watsonville Water and Light Co.*, 158 Cal. 206, 211, 110 P. 927, 929-30 (1910). Thus it was not incumbent upon Hunter to establish compliance with a positive provision of California law and furthermore no statute precluded his claim.

Judicial authority makes the law on appropriation quite clear. Justice Field, commenting upon the declaration of the California Supreme Court in *Tartar v. Spring Creek Water and Mining Co.*, 5 Cal. 395 (1855), which announced the settled policy of the State regarding recognition of rights, added: "Ever since that decision it has been generally held throughout the Pacific States and Territories that the right to water by prior appropriation for any beneficial purpose is entitled to protection." *Basey v. Gallagher*, *supra* at 683. Moreover, Justice Field unequivocally declared: "No distinction is made in those States and Territories by the custom of miners or settlers, or by the courts, in the rights of the first appropriator from the use made of water, if the use be a beneficial one." *Basey v. Gallagher*, *supra* at 682.

To constitute an appropriation, therefore, there must co-exist "the intent to take, accompanied by some open, physical demonstration of the intent, and for some valuable use." *McDonald & Blackburn v. The Bear River and Auburn Water and Mining Co.*, 13 Cal. 220, 232-33 (1859). The outward manifestation is most often evidenced by a diversion of the water from its natural source prior to the use; [*Simons v. Inyo Cerro Gordo Mining & Power Co.*, 48 Cal. App. 524, 192 P. 141 (1920) *hearing denied by California Supreme Court*, 48 Cal. App. 541, 192 P. 152 (1920)] but it also can be evidenced in other ways, for example, as in this case, by watering livestock directly from the source [*Steptoe Livestock Co. v. Gulley*, 53 Nev. 163, 295 P. 772 (1931)] or as in other cases, by placing water wheels into a stream in order to use the flowage as power to operate a mill located on the bank. *Ortman v. Dixon*, 13 Cal. 33 (1859); *Tartar v. Spring Creek Water and Mining Co.*, *supra*.

In this case there is no lack of proof of the asserted appropriation; to the contrary, a clearer showing could hardly be imagined. The Hunters' intent to use the water is made plain by the evidence. Year after year for nearly a century they have pastured their live-

stock in this isolated enclave, surrounded by miles of impassable desert; except for the water provided by these springs and the stream, there has been none other available to keep their animals alive.

Their intended (and actual) use has been for a beneficial purpose, as the trial court specifically found. Indeed a contrary finding could hardly have been justified, particularly since cattle watering has been judicially recognized in California as "a reasonable beneficial use." *Rancho Santa Margarita v. Vail*, 11 Cal.2d 501, 561, 81 P.2d 533, 563 (1938).

And their use has been prior in point of time to that of any other person; indeed it appears that few people have ever ventured into this desolate area and there have never been any users other than the Hunters.

We believe that a legal basis for the acquisition of an appropriation to water by virtue of local decisions has been established. On the basis of the facts found by the district court, we conclude that Hunter's predecessors must be deemed to have appropriated these waters; that the right is the equivalent of a grant of the use of the waters from the federal government; and that it is entitled to protection.[3]

2. *The Grazing Right:*

Whether this "grant" carried with it an easement to graze is a question readily answered. Hunter's contention is based upon the well-settled rule that the grant of a right in real property includes all incidentals possessed by the grantee and without which the property granted cannot be fully enjoyed. He urges that the adjoining lands provide the means to use the water beneficially and must therefore be deemed appurtenant to it. He claims too much. The appurtenance must be limited to that which

[3]In view of its conclusion that Hunter had no water right, the district court did not determine what amount of water Hunter and his predecessors had regularly used—this being the measure of the right. The proof on this issue was fully developed by Hunter and was not controverted by the government in any particular. It showed that, although the flow of the springs and the creek fluctuated from year to year, the Hunters had always used all the water that was available from those sources. Following remand, no further proof need be taken on this issue and the trial court should shape its judgment accordingly.

is essential to the use of the right granted; it does not include the thing with which the right granted is used. As well and succinctly said by the Colorado Court in the case of *Cleary v. Skiffich*, 28 Colo. 362, 373, 65 P. 59, 63 (1901), in answer to a proposition identical to the one argued by Hunter:

> "The appurtenance which could pass by virtue of a grant to a right to the use of water would be that necessary to its utilization, so that it could be applied to the purpose for which it was appropriated. The right might become appurtenant to that in connection with which it was beneficially used, but the latter could not be appurtenant to such right. It might as well be argued that, because a vested right to the use of water had been acquired for irrigation purposes, there attached to such right, as an appurtenance, land upon which to apply the water, as to say, as in this instance, there passed with the water right land in connection with which such water was utilized."

Turning to the statutory provisions, we are mindful that the Act of 1866 specifies that appurtenances shall consist of the "right of way for the construction of ditches and canals" and that its companion, the Act of 1870, REV. STAT. § 2340 (1875), 43 U.S.C. § 661, para. 2 (1964), *formerly* Act of July 9, 1870, ch. 235 § 17, 16 Stat. 218, makes patents issued to persons other than the appropriator subject to "rights to ditches and reservoirs used in connection with such water rights. . . ." These provisions are specific and there is no other language that suggests the public lands are to be encumbered by additional or other easements.

However, not being bound by the "bare words" of the provisions. [*Lynch v. Overholser*, 369 U.S. 705, 710 (1962)] we have investigated further to ascertain whether, despite this literal language, Congress meant to include a right of way such as the one claimed in this case.

Historically the general government tacitly allowed and encouraged all persons to use the open range as a public common. *Buford v. Houtz*, 133 U.S. 320 (1890). The provision in the Act of 1866, recognizing a right of way for ditches and canals needful to conduct appropriate water from the public domain, constituted a limitation on the otherwise free use of those lands.

We have found nothing to indicate that Congress intended to impose a greater limitation than those of the type specifically mentioned in the Act itself. We agree with the Eighth Circuit that:

> "'[N]one of the legislation, to which reference has been made . . . either in letter or in spirit contemplates the use of the ground within the public lands for other uses and purposes . . . It is also apparent that such prior rights . . . could not extend to power houses, cottages and transmission lines as distinguished from reservoirs, dams, canals, ditches, flumes, pipes and tunnels constructed for the storing and transmission of the water itself."

Utah Light & Traction Co. v. United States, 230 Fed. 343, 345-46 (8th Cir. 1915).

In sum, the judgment of the district court granting the injunction was correct and is affirmed. However, we conclude that, although Hunter is not entitled to an easement to graze livestock on the lands within the boundaries of the Monument, he should be allowed a right of way over those lands to divert the water by one of the methods contemplated by the statute.[4] The district court was not called upon to define and fix such a right of way for Hunter made no claim in his pleadings and submitted no proof looking to the establishment of one. In short, the matter was not placed in issue.

If we simply modify the judgment to declare Hunter's water right and affirm the portion granting the injunction, the question of right of way will remain in limbo to plague the parties and the courts.[5] Conversely, if Hunter is given the opportunity to amend his pleadings [*Wiggins Ferry Co. v. Ohio & Miss. Ry.*, 142 U.S. 396, 413 (1892); *Blue v. Blue*, 92 W. Va. 574, 116 S.E. 134 (1922)] and assert a claim to an easement provided for by the statute, then all phases of the dispute will be finally settled

[4]The rule is well settled that a squatter on the public domain may acquire by appropriation the right to the use of water that is used by him to irrigate such land and that if he is evicted he may nevertheless divert the water elsewhere if he is able. Patterson v. Ryan, 37 Utah 410, 108 P. 1118 (1910); Davis v. Gale, 32 Cal. 26 (1867).

[5]Ultimately, of course, if Hunter took no action an abandonment would result. Patterson v. Ryan, 37 Utah 410, 417, 108 P. 1118, 1120 (1910).

by this one suit. In the circumstances of this case, we conclude the latter course is clearly the one to follow.

The judgment is affirmed in part, modified in part, and the cause is remanded with directions to proceed as directed herein.[6]

[6]Hunter also urged that in this case no basis was shown for equitable intervention; that even assuming a sufficient showing the court should not have exercised this power; and that, in any event, the injunction must be set aside for failure to "set forth the reasons for its issuance." FED. R. CIV. P. § 65(d).

The unauthorized pasturing of cattle upon the lands within the Monument is a tort and the trespass, being wilful and continuous, is an injury for which an injunction may be granted. Mendelson v. McCable, 144 Cal. 230, 77 P. 915 (1904). It matters not that the act is made criminal for it also involves an invasion of a property right of the United States. Thus the question is not one of equitable jurisdiction but whether under the facts of this case the granting of injunctive relief constituted an abuse of the trial court's discretion. That it did not, seems manifest.

During the settlement of the Western United States it was the common practice of the immigrants and others to graze their livestock upon the public lands. The government acquiesced in this practice and,

> "[t]here thus grew up a sort of implied license that these lands, thus left open, might be used so long as the Government did not cancel its tacit consent. Buford v. Houtz, 133 U.S. 320, 326. Its failure to object, however, did not confer any vested right on the complainant, nor did it deprive the United States of the power of recalling any implied license under which the land had been used for private purposes."

Light v. United States, 220 U.S. 523, 535 (1911).

Although the Hunters labored long and hard and went to some expense to put in and build access roads and several shacks upon the lands incidental to their livestock operations, they did so in the knowledge that they were mere squatters and that the government could and might at any time exercise its full proprietorship and dispossess them without payment of any compensation. Osborne v. United States, 145 F.2d 892 (9th Cir. 1944).

Many years ago, this court in Shannon v. United States, 160 Fed. 870, 876 (9th Cir. 1908), a case similar to the present one, answered the appellant's argument that an injunction would impose a "grievous burden" upon him with this quotation from Camfield v. United States, 167 U.S. 518, 525 (1893): "the inconvenience, or even damage, to the individual proprietor does not authorize an act which is in its nature a purpresture of government lands."

In attacking the injunction as to form, Hunter appears to labor under the assumption that FED. R. CIV. P. § 65(d) applies to the injunction itself. He is mistaken. That rule in terms relates exclusively to the "order

No costs are allowed.

granting an injunction" in its requirement of a statement of "the reasons for its issuance." Here the requirement was met. The order for the injunction—as distinguished from the injunction proper—is embodied in the court's Finding of Fact and Conclusion of Law and therein appear the reasons for its issuance.

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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs- ROY HUNTER, Defendant.	No. 2315-ND MEMORANDUM AND ORDER

This is an action by the Government to enjoin defendant from watering and grazing his cattle within the boundaries of Death Valley National Monument. The presidential proclamation which created the Death Valley National Monument on February 11, 1933, provided that:

> "The Director of the National Park Service under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the Act of Congress entitled 'An ACT to establish a National Park Service, and for other purposes,' approved August 25, 1916 (39 Stat. 535-536), and acts additional thereto or amendatory thereof."

This statute provides that the Secretary may issue grazing permits in all National Parks (except Yellowstone) and monuments. (16 U.S.C. Sec. 3). The defendant has refused to apply for a permit although by Title 36 Code of Federal Regulations 1.20, the running at large, herding, driving across, or

grazing of any livestock is prohibited, unless a permit has first been procured, and he has refused the request of the Superintendant of the Death Valley National Monument to remove his cattle from the monument.

Defendant claims a vested right to continue to water his cattle at springs within the area now known as Death Valley National Monument without securing a permit, and without any interference by any agent of the United States Government. This claim is based upon the apparently undisputed fact that he and his predecessors in interest, his father and grandfather, have watered cattle at said springs continuously since 1871. Defendant claims that by the continuous consumption of water by his cattle at those springs upon the public domain he has acquired an appropriative right to continue to water his stock there without supervision or regulation by the Government. Defendant concedes that possibly his use of the said water at the springs may be enjoined by the Government, but claims that if so, he should receive compensation for the deprivation of his use. He has indicated his willingness to waive any claim to compensation in excess of the jurisdictional amount of $10,000.

It is the Government's contention that defendant in grazing his cattle in Death Valley National Monument without a permit is a trespasser, and it is legally entitled to have him perpetually enjoined from causing his cattle to graze therein.

Defendant's claim to a legally vested right is based upon the Act of 1866, enacted by the United States Congress in that year. The area in which the springs are located is public domain, so defendant is not claiming any right to the water as a riparian owner. Likewise, it is well-settled that no right by prescription may be obtained as against the Government.

It necessarily follows that the only possible basis

for defendant's defiance of the Government's order to either secure a license or remove his cattle from the public domain within Death Valley National Monument is a right acquired by appropriation. Defendant claims that by the continuous watering of his cattle at the springs he not only acquired an appropriative right to the quantity of water consumed by the cattle - from 200 to 400 head -, but he also claims that he acquired a right to graze the cattle at the springs as a necessary incident to the watering of the cattle, since it is a physical impossibility for him to water the cattle at the springs unless he can also permit the cattle to graze upon the land upon which the springs are located. He likens the right to graze his cattle to an easement for the conduct of water over another's land by means of pipes, conduits, canals and ditches. In other words, it is defendant's contention that he not only acquired the vested right to an indefinite amount of water from the springs by appropriation but that he likewise acquired a vested right to the use of an indefinite area upon which the springs are located for grazing purposes.

The arguments sustaining his position are somewhat convincing, but an examination of the history of the Act of 1866 and an analysis of the decisions interpreting that Act compel the conclusion that under the facts of the instant case no rights by appropriation, either to the use of the water of the springs for the watering of defendant's cattle or to the nearby contiguous land for grazing purposes, were ever acquired by defendant.

It is well-settled that prior to the passage by Congress of the Act of 1866 any person settling upon or occupying land of the public domain in the Western States, or using any of the water thereon, was a mere trespasser and could acquire no rights as against the owner, the United States

Government. However, the United States Government took no steps as against such trespassers, and such a failure to assert its rights of ownership, in effect, encouraged and promoted the occupancy of the lands and the use of their natural resources by the trespassers. After the discovery of gold in California in January 1848, followed by the ceding of part of the public lands of Mexico to the United States by the Treaty of Guadalupe Hidalgo on July 4, 1848, a rush of population from the East poured into California to occupy and mine the public lands now belonging to the United States. As disputes arose between the miners as to possession of mining locations as well as the use of water necessary to successful hydraulic or placer mining operations, customs became established in the mining camps to the use of water by prior appropriation - "first in time, first in right" - which became valid local law in the absence of any specific State or Federal legislation authorizing the appropriation of water, or providing procedural steps for acquiring appropriative rights therein. Hutchin's "California Law of Water Rights," p. 43, et seq.; Jennison v. Kirk (1879) 98 U.S. 453, 457-458. These customs and regulations upheld in court as valid local laws were naturally favorable to the mining industry, and on April 20, 1952, an enactment by the California legislature entitled, "An Act prescribing the Mode of maintaining and defending possessory actions on Public Lands in this State," specifically provided that any person "now occupying and settled upon, or who may hereafter occupy or settle upon public lands in this state for the purpose of cultivating and grazing the same" could maintain an action for interference with or injury done his possession, "PROVIDED, that if the lands so occupied and possessed, contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid, shall not preclude the working of such mines by any person or persons desiring to do so as fully and

unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes."

The Supreme Court of California interpreted the Act as giving miners superiority of possession not as against all non-miners, but only as against occupiers and settlers of public lands for the purpose of cultivating or grazing the same. Tartar v. The Spring Creek Water & Mining Co., 5 Cal. 395; Fitzgerald v. Urton, 5 Cal. 308, 309; Burdge v. Underwood, 6 Cal. 45, 46. It will be noted that this early California legislation as interpreted by the courts with reference to the water rights of settlers upon land for the purpose of agriculture or grazing placed such settlers in a distinctly third-class category.

These rules and regulations, although applicable as between the holders of possessory rights, could not, of course, be controlling in any litigation as between the holders of a possessory right and the paramount title of the United States as the owner of the public domain. This lack of any possibility of acquiring a secure title by such settlers necessarily militated against the expenditure of large sums of money or time and effort in the development of mines, and to remedy this situation Congress enacted the Act of 1866 which was primarily a mining law but also contained a section relating to water rights on the public domain. 14 Stats. 253, sec. 9; U.S. Revised Stats. sec. 2339 (July 26, 1866. This Act was motivated by a desire to promote the industrial growth of the Western States by recognizing pre-existing rights secured by the expenditure of time and money and by encouraging and promoting the expenditure of time and money in the future. This legislation was not only a recognition of pre-existing rights but the establishment of a rule for the future. Broder v. Natoma Water and Mining Co., 101 U.S. 274-277.

Section 9 of said Act reads as follows:

> "Whenever by priority of possession, right to the use of water for mining, agricultural, manufacturing or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."

In 1870 this section was supplemented by Section 2340 of the Revised Statutes which provided:

> "All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section."

The Act of 1866 contained no procedure by which rights could be acquired from the United States but recognized and acknowledged rights established by local customs, laws and decisions of courts. In California, therefore, the local customs, laws and decisions of courts of California, became the criteria for the determination of the acquisition of water rights in that state. In 1872 the California legislature provided specific procedure for the appropriation of water. Cal. Civ. Code, §§ 1410-1422. However, this procedure was not exclusive, and non-statutory appropriations could be made simply by diverting water and putting it to use without following the statutory procedure.

Defendant argues that the raising of cattle is a beneficial use of water, and this being so, his right to use the water of the springs on the Government land is similar to and equal to the appropriative rights acquired by the miners under the customs, laws and decisions of the courts with

reference to mining rights. He then argues that since an easement may be acquired for the conducting of appropriated water by means of pipes, conduits, canals and ditches, he obtained an easement or right to permit his cattle to graze upon land owned by the Government, since the watering of his cattle did not require him to conduct water from the springs through pipes, conduits, ditches or canals.

But, the analogies upon which he depends to support the final conclusion which he reaches are not true analogies. Conceding that cattle raising is a beneficial use of water, and even conceding for the sake of argument that it is an even more beneficial use than mining, nevertheless, the rights to be protected under the Act of 1866 were the rights established by local customs, laws and decisions in California and these did not equate the business of cattle raising with the mining industry. The fact that, in fairness, perhaps the cattle business should have been treated with the same favoritism as the mining industry does not compel the conclusion that it did so. No decision has been cited directly supporting defendant's contention that vested appropriative rights were secured by cattle owners merely permitting their cattle to graze on Government owned land. Evidence as to such custom has not been offered, and the law as indicated by the California Act of 1852 points to the contrary, and a determination that an appropriative right to the water under the Act of 1866 depends upon the customs, laws and decisions of courts of California. In the absence of any proof, a claim of the acquisition of an appropriative right fails.

An actual diversion of the water from its non-adjacent land is not always necessary to the acquisition of an appropriative right to the water. The appropriation of water to carry on mining operations on the bank of a stream could be

acquired. The case of mill sites for reducing ore, or appropriation of water for a saw mill upon the bank of a stream, are examples of appropriation without diversion. The decision herein is predicated solely upon the conclusion that in the instant case no legal basis for the acquisition of an appropriation to water cattle by virtue of local customs, laws or decisions of California has been established.

However, it may also be noted that the argument that an easement for grazing is necessarily an incident to an appropriative right to watering livestock also lacks merit. The right to graze cattle on another's land is quite different from an easement to traverse another's land by pipes, conduits, ditches, or canals. The right to graze cattle could destroy the entire usefulness of the land for other purposes, whereas the traversing of the land by pipes, conduits, ditches or canals would cause a trivial inconvenience.

The injunction is therefore granted.

Counsel for plaintiff is directed to prepare and lodge findings of fact, conclusions of law and form of judgment in accordance with Local Rule 7.

The clerk of this court is directed to serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

Dated: October 20, 1964.

M. D. CROCKER
United States District Judge

vrg

March 6, 1963

DRW:JMM
90-1-12-342

Frank J. Barry, Esquire
Solicitor
Department of the Interior
Washington, D. C.

Attention: Bernard R. Meyer, Esquire
Acting Associate Solicitor
Territories, Wildlife and Parks

Dear Mr. Barry:

This refers to the case entitled United States v. [illegible] Hunter, Civil No. 2315-ND, in the United States District Court for the Southern District of California, Northern Division. (Your reference: Bureau of Land Management, 6-52-2134.18.)

The Government's motion to strike answer and [illegible] counterclaims (a copy of the document was forwarded to you with our letter of November 8, 1962), was heard on November 26, 1962, and, thereafter, taken under advisement by the court pending the filing of memoranda. We are enclosing one copy each of defendant's opposition to plaintiff's motion to strike answer and dismiss counterclaims filed December 13, 1962, and the Government's reply thereto. We will keep you informed regarding the further developments in this case.

Sincerely,

RAMSEY CLARK
Assistant Attorney General
Lands Division

By:
David R. Warner
Chief, General Litigation Section

Enclosures

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ROY HUNTER, Defendant.	No. 2315-ND Civil PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ANSWER AND DISMISS COUNTERCLAIM

1. DEFENDANT'S ANSWER AND COUNTERCLAIMS DO NOT STATE FACTS WHICH CONSTITUTE A DEFENSE TO THE ACTION HEREIN OR CLAIMS UPON WHICH RELIEF CAN BE GRANTED.

Defendant's Opposition to Plaintiff's Motion to Strike Answer and Dismiss Counterclaim (hereinafter referred to as "Memorandum") filed herein following the hearing on Plaintiff's Motion to Strike Answer and Dismiss Counterclaims advises plaintiff, with particularity, of the true nature of his defense and counterclaims in this action--which in plaintiff's opinion he did not do in his answer. Therefore, plaintiff's contention at the aforementioned hearing that defendant's answer and counterclaims are defective in that they merely state legal conclusions rather than facts, is moot, and plaintiff will not attempt to reply to defendant's arguments in his Memorandum relating thereto. Furthermore, since nowhere in the Memorandum does defendant contend that he has "prescriptive rights" to graze or water his cattle on the land which is now known as

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Death Valley National Monument, but only asserts the existence of certain "appropriative" rights to water thereon which he carefully distinquishes from "prescriptive rights", plaintiff assumes that he has abandoned any claim thereto and will not discuss that matter herein. Accordingly, plaintiff will, for the purpose of this Reply, deem that defendant's Answer to Complaint and Counterclaim for Declaratory Relief, Injunction and Damages (hereinafter referred to as "Answer") includes the allegations set forth on pages 2 and 3 of his Memorandum as to his "appropriative" water rights and grazing rights incidental thereto, and that they constitute the sole basis of his defense and counterclaims herein.

A. Defendant Has No Appropriative Water Rights

The facts alleged in support of defendant's defense and counterclaims are few and uncomplicated. He and his predecessors in interest have used certain springs on the land now known as Death Valley National Monument for a beneficial purpose--namely the watering of cattle--, continuously since 1871. These cattle have grazed in the area adjacent to the springs while so watering. Defendant maintains that, under certain case, and statutory, law cited in his Memorandum, such facts give rise to a valid defense to the action herein and a good claim against the United States for the relief prayed for in his Answer. He asserts that he and his predecessors in interest had a vested right to water and graze cattle on a portion of what is now known as Death Valley National Monument before the monument was established in 1933. 1/

It seems clear that after the enactment of the Act of Congress of July 26, 1866 (hereinafter referred to as "Act of 1866")2/

1/ Death Valley National Monument was established by a presidential proclamation on February 11, 1933, under authority of Act of Congress of June 8, 1906 (34 Stat. 225), and management thereof given by the President, in the proclamation, to the Secretary of the Interior as provided in Act of Congress of August 25, 1916 (39 Stat. 535, 536).

(Continued on Page 3)

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it was possible to make an appropriation of water on public lands in California which would be legally protected against subsequent interference by any other party, including a grantee of the United States. Hull v. Johnson, 89 F. 556. Jennison v. Kirk, 98 U. S. 453. However, defendant has cited no case, and plaintiff knows of none, in which a court has directly held that such an "appropriation" was enforceable against the United States itself, and in Smith v. Hawkins, 110 Cal. 122, the court (at page 125) refers to the "appropriator", before he acquires title to the land from the United States, as a "licensee of the general government." [emphasis added] Nevertheless, for the purposes of this Reply, plaintiff will assume, without conceding, that after the enactment of the Act of 1866 a person could obtain appropriative rights to water on public lands which would be enforceable against the sovereign. In order to qualify, legally, as an "appropriator" of water on public lands in California circa, 1871 it was necessary for one to actually divert water from a stream or spring to his own land by means of a ditch or other type of conduit. Upon completion of this diversion a right to the water so diverted became vested in the appropriator. In Utt v. Frey, 106 Cal. 392, the court said (p. 395) "One who in California desires to appropriate the water of a stream upon vacant and unappropriated public lands of the United States for a lawful purpose may do so by construction of a ditch or other medium of conduit, and actually appropriating the water and conducting it to some point where it can be utilized in fulfillment of such lawful purpose, and by so doing he acquires, as against all subsequent appropriators and riparian proprietors acquiring title from the United States

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Footnote 1/ continued from page 2.

A copy of the proclamation is attached hereto and marked "Exhibit A."

2/ Now found in 43 U.S.C. 661.

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subsequent to such an appropriation the right to the quantity of water thus appropriated and an easement or right of way into and over the public land traversed by his ditch or conduit so constructed and used for such purpose." The California Civil Code provided for the posting of a Notice of Appropriation, initially, at the source of the water, in anticipation of the actual diversion, but the only effect of such posting, and subsequent recordation thereof, was to protect the inchoate appropriator from attempted appropriations by others during the construction of the diversion works upon condition that he complete the system within a specified time prescribed therefor in the code. 3/ Possession of the water by means of a diversion thereof onto the appropriator's land through a conduit alone gave rise to an "appropriative right" which would be protected by the law. Utt v. Frey, supra. Consequently, defendant's predecessors in interest, under the facts stated in his Answer as deemed amended by his Memorandum, could not have acquired an appropriative right in the springs located in the area now known as Death Valley National Monument, for it is clear from those documents that, at all times, the cattle watered at the spring itself, on public land--that no ditch or other conduit was ever constructed to carry water from the spring to land occupied by the defendant and his predecessors in interest for use there by the cattle. It may be that the defendant and his predecessors built drinking troughs of some sort at the springs for the convenience of the cattle, but this does not constitute the "appropriation" required by the law as aforesaid. "To appropriate" is defined in Webster's New International Dictionary, Second Edition, as "to take to oneself in exclusion of others; to claim or use as by an exclusive or pre-eminent right". Certainly, then, one cannot

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3/ De Necochea v. Curtis, 80 Cal. 397

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"appropriate" water by taking cattle to the water; rather, the water must be taken to the cattle through a diversion works in the possession of the appropriator. 4/

Defendant is attempting to convert a long time practice of watering cattle on plaintiff's land into an appropriation of the water itself and this cannot be done legally or logically. Such practice, if maintained on private land under claim of right, would have given rise to a prescriptive easement to enter the land for the purpose of watering cattle thereon--akin to a "right of pasturage"--but could never, by reason of the very nature of the concept as described hereinabove, have been the basis of an appropriative right to the water itself. Of course, defendant must make this attempt because,as he knows, one cannot obtain an easement by prescription against the sovereign.

4/ In this connection, it is regarded as significant that in all of the following cases the appropriation was by means of a ditch or canal which carried water from public lands to property occupied by the diverter.

Smith v. Hawkins, 110, 122; Simmons v. Inyo Cero Gordo Co., 48 C.A. 525; Howell v. Johnson, supra; Sherwood v. Wood, 38 C.A. 745; Ely v. Ferguson, 91 Cal. 187; De Necochea v. Curtis, Supra; Taylor v. Abbott, 103 Cal. 421; Utt v. Frey, 103 Cal. 392.

Also, in Missoula Light and Water Co. v. Hughes, 77 P. 2d 1041 (Mont.) the court held that, prior to the enactment of the Montana water rights statute in 1885, all appropriations were made pursuant to the rule and customs of California which had been adopted in the Montana territory and the essential elements of an "appropriation" were a completed ditch and application of water through it to a beneficial use. Plaintiff has found no case where there was even an attempted appropriation of water involving the use thereof at its source.

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Defendant and his predecessors in interest have, of necessity, used large, irregular, and continuously changing portions of the land on which the spring is located, as well as the water of the spring, in the course of watering their cattle, which, of course, is because cattle cannot be confined when taken on open range land for water. Such use is obviously a real burden on the land, and necessitates the acquisition of a separate interest in the land itself. 5/ Defendant describes, very graphically, one aspect of this heavy burden, himself, on page 3 of his Memorandum. He says, beginning at line 24: "Where, as in the case at bar, cattle are moved for considerable distances in order to water them at springs within and without the Death Valley National Monument, it would be inconceivable to expect, or to demand, that such cattle not graze at the same time on lands adjacent to said sources of water." Surely, there is nothing in the water law of California or any other state, which gives such extensive "fringe" benefits to the appropriator of water, at the expense of the poor land owner! Water is quite properly regarded as a public resource which must be fully developed in order to satisfy society's urgent needs therefor, and consequently, under certain circumstances is subject to "appropriation", but such development must be accomplished in the manner least likely to interfere with the full development of the land on which the water is located--by a conduit carrying the water to the land of the appropriator. In years gone by, the defendant and his predecessors in interest could have built a canal to carry water from

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5/ On the other hand, a ditch diverting water from a spring on the land of another is confined to a relatively small area and constitutes such a minor burden to the land that the right to appropriate water carries with it of necessity, the ancillary right to maintain a ditch or other conduit for the diversion.

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springs to their ranch, and if they had done so they would have thereby made a valid appropriation of the water thus diverted, which would not be taken by the United States without the payment of just compensation therefor in accordance with the Fifth Amendment of the Constitution. For their own convenience they chose not to do this and defendant must now bear the legal consequences of that decision.

Finally, how can there have been an effective, enforceable appropriation of water in our case, when the amount taken, annually, by defendant and his predecessors in the past is not subject to measurement? Water flowing in a canal, or other conduit, can be measured easily, but how can the quantity of water drunk by herds of cattle in years gone by, be determined with any degree of accuracy?

B. Defendant Has No Grazing Rights.

Although defendant states in his Memorandum at page 3, line 23-24 that "there exists, in the case at bar, a right to graze cattle, which is part and parcel of defendant's perfected water rights", and therefore, logically, it would appear that if he has no water rights he cannot have any grazing rights, plaintiff will, nevertheless, discuss this issue briefly, since technically, at least, the two types of rights could exist separately, and defendant has referred to them in the conjunctive in his Answer.

In Buford v. Houtz, 133 U.S. 320, 33 L.Ed 618, 620, the court said "We are of the opinion that there is an implied license growing out of the custom of nearly a hundred years that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals shall be free to the people who use them, where they are left opened and uninclosed, and no act of Government forbids this use." Subsequently, it was held in United States v. Dastervignes, 118 F. 199,

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that the Government could validly prohibit such a use. In that case, the Government sought to restrain defendants from pasturing their sheep upon public lands designated by the president as "Stanislaus Forest Reservation" on the ground that under a regulation of the Secretary of the Interior made pursuant to the Act of June 4, 1897 (now 16 U.S.C. 551) pasturing was prohibited within the forest in the absence of a permit, and no permit had been issued. The defendant claimed rights of pasturage by long user, and relied upon Buford, supra, but the court said (p. 202) "that case only says that unInclosed public lands of the Government may be used for pasturage by the people when 'no act of Government forbids this use'. In the present case the Government has forbidden this use".

The presidential proclamation ("Exhibit A") which created Death Valley National Monument, page 2, supra, gives the Secretary of the Interior the management thereof in accordance with the provisions of 39 Stat. 535-536, now 16 U.S.C. 3. This statute provides, among other things, that the Secretary may issue grazing permits in all national parks (except Yellowstone) and monuments. The Secretary issued no such permit to the defendant or his predecessors in interest, and, therefore, he is a trespasser in the Monument and may be enjoined from causing his cattle to graze thereon.

C. Defendant has No Valid Claim, Under the Tucker Act, to Compensation for the Taking of Any Right in the Premises.

Defendant states in his Memorandum, page 8, line 19 to page 9, line 1:

> "It is further urged that, if plaintiff has a right to an injunction, defendant, of necessity, has no rights and thus defendant's Second Counterclaim is

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fatally inconsistent. It is not the prosecution of this suit by the United States which might be deemed to constitute the taking, but rather the establishment of the Death Valley National Monument, itself. It is conceivable that the Court will find that the defendant had certain existing rights of property but that the creation of the Death Valley National Monument precluded the further exercising of those rights by defendant, by reason of the nature of the National Monument or of the power of the sovereign. In such event, although the property rights of defendant are now taken, the establishment of the Monument, and not this suit, was the action which constituted the taking of defendant's property rights, for which defendant is entitled to just compensation."

The court could not find that any "existing rights" of defendant were taken by the establishment of the Death Valley National Monument, since the Monument was established "subject to all valid existing rights" [see "Exhibit A", emphasis added]. Moreover, as the Monument was created in 1933, any action, under the Tucker Act, for compensation for the taking of rights thereby would now be barred by the six-year limitation period therefor. 28 U.S.C. 2401(a)

2. THE COURT LACKS JURISDICTION TO HEAR AND DETERMINE DEFENDANT'S FIRST COUNTERCLAIM SINCE PLAINTIFF HAS NOT CONSENTED TO SUCH A SUIT AND, AS SOVEREIGN, IS IMMUNE THEREFROM.

Defendant, on page 7 of his Memorandum cites Rank v. Krug, 142 F. Supp. 1 as authority for his contention that the United States has, in 43 U.S.C. 666, consented to be sued in all types of water rights cases. Although there is language in the decision to this effect, the case itself purported to be concerned with the adjudication of the rights of numerous parties to the use of the

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water of a river system--the San Joaquin River and certain of its tributaries. More importantly, the Court of Appeals for the Ninth Circuit in The State of California, etc. v. Rank, 292 F. 2d 340 declared that due to the absence of certain necessary parties there could be no such adjudication and, reversed the lower court on this point, and ordered the dismissal of the United States from the action. The Appellate Court made it very clear in the course of its discussion of 43 U.S.C. 666, on pages 346-348, that it applied only to the adjudication of the rights to the use of the water of a river system by various claimants thereto, including the United States. 6/

DATED: February 12, 1963.

Respectfully submitted,

FRANCIS C. WHELAN
United States Attorney

JOHN B. READ
Assistant U. S. Attorney

By John B. Read

Attorneys for Plaintiff

6/ In this connection, it is interesting to note certain correspondence prior to the enactment of the statute, between Senators Magnuson and McCarran concerning the reason therefor, as set forth on page 346 of the opinion:

"The senate report also incorporated correspondence between Senators Magnuson and McCarran. The former was disturbed by the though that private water disputes could, under the bill, interfere with reclamation projects in which he was interested. Senator McCarran wrote (S. Rep. No. 755, 82d Congress, 1st Session 9 (1951):-

'You indicate that you visualize the possibility of an individual or group, having water rights on that stream,

6/ Continued from Page 10

bringing suit to adjudicate their respective rights thereby preventing the Bureau of Reclamation from going ahead with the Hells Canyon project while litigation is in process or pending.

'S.18 is not intended to be used * * * for any other purpose than to allow the United States to be joined in a suit wherein it is necessary to adjudicate all of the rights of various owners on a given stream."

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USA12-LD-2

CERTIFICATE OF SERVICE BY MAIL

I, Marjorie Preston, state:

That I am a citizen of the United States and a resident of Los Angeles County, California; that my business address is 821 Post Office and Court House Building, Los Angeles 12, California; that I am over the age of eighteen years, and not a party to the above-entitled action;

That on Feb. 12, 1963, I deposited in the United States mails in the post office at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of

PLAINTIFF's REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ANSWER AND DISMISS COUNTERCLAIM

addressed to Butterworth & Smith
Att orneys at Law
Pacific Coast Stock Exchange
Ground Floor - Suite B
618 South Spring Street
Los Angeles 14, California

their last known address, at which place there is delivery service by United States mail from said post office.

This certificate is executed on February 12, 1963 (date) at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Marjorie Preston

DEATH VALLEY NATIONAL MONUMENT—CALIFORNIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A Proclamation

WHEREAS it appears that the public interest would be promoted by including certain lands known as Death Valley, in California, within a national monument for the preservation of the unusual features of scenic, scientific, and educational interest therein contained:

NOW, THEREFORE, I, HERBERT HOOVER, President of the United States of America, by virtue of the power in me vested by section 2 of the act of Congress entitled "AN ACT For the preservation of American antiquities," approved June 8, 1906 (34 Stat. 225), do proclaim and establish the Death Valley National Monument and that, subject to all valid existing rights, the area indicated on the diagram hereto annexed and forming a part hereof be, and the same is hereby, included within the said national monument.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "AN ACT To establish a National Park Service, and for other purposes," approved August 25, 1916 (39 Stat. 535–536), and acts additional thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 11th day of February, in the year of our Lord nineteen hundred and thirty-three, and of the Independence of the United States of America the one hundred and fifty-seventh.

(SEAL)

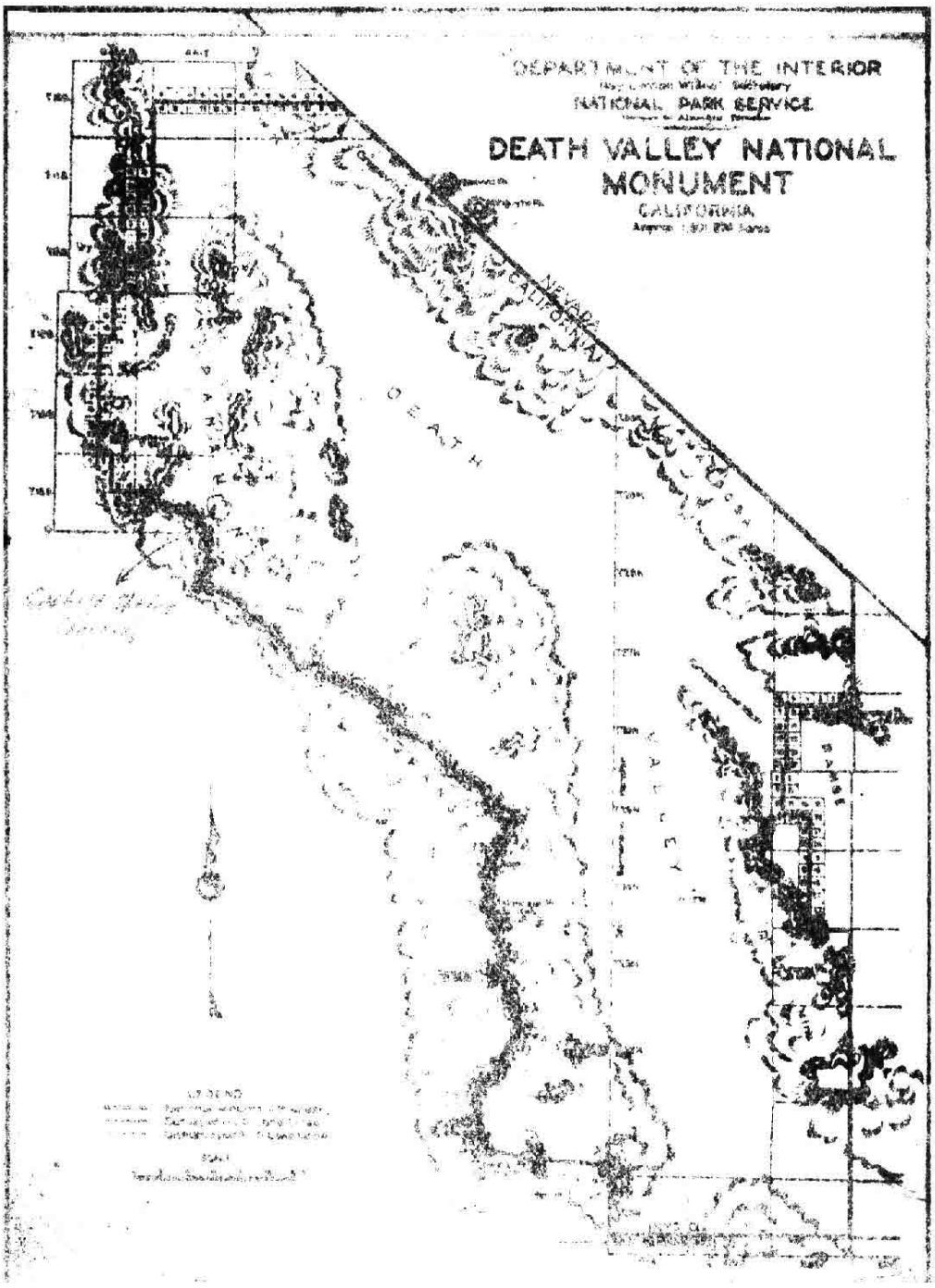
HERBERT HOOVER

By the President:

HENRY L. STIMSON

Secretary of State.

[No. 2028]


DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
DEATH VALLEY NATIONAL MONUMENT
CALIFORNIA
NEVADA
CALIFORNIA
DEATH
VALLEY

(SPACE BELOW FOR FILING STAMP ONLY)

Filed Dec 13, 1962

JBR

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DEC 13 1962
U. S. Atty. - Lands Division

LAW OFFICES
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616 SOUTH SPRING STREET
LOS ANGELES 14, CALIFORNIA
MADISON 7-3141

Attorneys for Defendant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ROY HUNTER, Defendant.	No. 2315-ND Civil DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ANSWER AND DISMISS COUNTERCLAIMS

Defendant herewith opposes plaintiff's Motion to Strike Answer and Dismiss Counterclaims heard on November 26, 1962, on the following grounds, relying on the following points and authorities:

DEFENDANT'S MOTION TO STRIKE ANSWER

1. The Answer of Defendant is Legally Sufficient.

The legal sufficiency of defendant's Answer was placed in issue by plaintiff in oral argument on this Motion. Plaintiff urged that the gravamen of defendant's Answer and affirmative defense is a claim of prescriptive rights in the subject water and land. Although acknowledging the existence of factual allegations of continuous and beneficial use of the water arising from said land since 1871, plaintiff argues that the failure to allege adverse use renders said allegations immaterial, and thus not sufficient to state a defense. Further, even assuming that defendant could amend his Answer to include an allegation of adverse use, plaintiff

asserts that no defense would be stated, since no prescriptive rights can be acquired against the sovereign, the United States.

Defendant has alleged a continuous, beneficial use of the waters on the subject land by himself and his predecessors in interest since 1871, and the existence of appropriative and statutory rights which were thereby perfected with respect to said waters within Death Valley National Monument. [Def. Answer, page 2, lines 28 through 32; page 3, lines 1 through 7] Adverse use is clearly not an element of an appropriative, as contrasted with a prescriptive, water right. Smith v. Hawkins, 110 Cal. 122, 126, 42 Pac. 453 (1895). In general, an appropriative right to the use of water is created by the diversion or actual appropriation of water from a source for a beneficial use, and is maintained by the continuous exercise thereof. Simons v. Inyo Cerro Gordo Co., 48 Cal. App. 524, 536, 192 Pac. 144 (1920); Calif. Pastoral Co. v. Madera Irr. Co., 167 Cal. 78, 138 Pac. 718 (1914). The use of water in California for domestic purposes, including the watering of livestock, is not only a beneficial use, but is first entitled to preference. Prather v. Hoberg, 24 Cal. 2d 549, 562, 150 P.2d 405; Rancho Santa Margarita v. Vail, 11 Cal. 2d 501, 81 P.2d 533 (1938) California Water Code § 106.

With respect to the statutory rights asserted by defendant, the following history is pertinent. Prior to 1866 the right of a prior appropriator to use water for mining, agricultural and manufacturing purposes had been recognized as against any other person claiming the same, but not as against the national government. The federal government early recognized the necessity of permitting persons in the arid regions of the west to acquire an interest in water sources on public lands distinct from the lands themselves; and in 1866 (14 Stats. 253; Rev. Stats., sec. 2339), Congress passed an act which provides, among other things, as follows:

"Whenever by priority of possession, rights

to the use of water for mining, agricultural, manufacturing or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same."

As pointed out by the Court in Howell v. Johnson, 89 Fed. 556 (1898) at 558, the statute recognizes the right of the prior appropriator of water upon the public domain, even as against the United States and its grantees, if said appropriation was recognized under local custom, statutes or court decisions. See also Duckworth v. Watsonville Water, etc. Co., 170 Cal. 425, 432, 150 Pac. 38 (1915). It is equally clear that the statute applies to rights acquired after, as well as before its enactment, as in the case of defendant herein and his predecessors in interest. California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 419, 79 L.Ed. 1356; Jacob v. Lorenz, 98 Cal. 332, 33 Pac. 119 (1893). The above-cited statute, in its original form, today comprises § 661 of Title 43, U.S.C.A. and § 51 of Title 30, U.S.C.A.

Defendant also alleges the existence of certain grazing rights in the subject lands. It is submitted that there exists, in the case at bar, a right to graze cattle, which is part and parcel of defendant's perfected water rights. Where, as in the case at bar, cattle are moved for considerable distances in order to water them at springs within and without the Death Valley National Monument, it would be inconceivable to expect, or to demand, that such cattle not graze at the same time on lands adjacent to said sources of water. The watering and grazing of the cattle are so inextricably tied to one another that the right to water cattle is of no moment unless the cattle can at the same time be grazed. To say that there are no grazing rights, in the case at

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bar, would be to destroy defendant's perfected water rights by indirection. The law does not do vain acts, and it is submitted that grazing rights in the lands adjacent to those from which waters were taken, as aforesaid, are possessed by defendant as a necessary incident to his perfected water rights.

Defendant respectfully submits that the allegations of the Answer and affirmative defense are material, and that the Answer of defendant is legally sufficient.

2. Legal Conclusions in Defendant's Answer should not be Stricken under the Liberal Federal Rules of Civil Procedure.

Plaintiff urges that numerous allegations in the Answer are mere conclusions of law, adding nothing to the defense, and should be stricken. In its points and authorities, plaintiff cites a number of pre-1938 cases, all decided prior to the adoption of the Federal Rules of Civil Procedure, for the proposition that conclusions of law in pleadings were to be condemned. It is submitted that even assuming all of the purported conclusions of law were stricken, there would still be sufficient factual allegations to constitute a valid defense. However, the cases under the Federal Rules indicate that conclusions of law are not necessarily to be condemned, but on the contrary are to be encouraged at times as the clearest way of stating a claim or defense. United States v. Employing Plasterers' Assn., 347 U.S. 186, 188 (1954); Boesstler v. American Medical Assn., 16 FedRDec 437, 443 (1954); George v. Long Transport Co., 11 FedRDec 305 (1951). In Howitt v. St. John, 9 FedRDec 608 (1948), a motion was made to strike portions of the pleadings as conclusions of law. In overruling the motion, the court stated:

> "If conclusions of law are relevant and raise issues, the mere fact that they may be conclusions of law does not require that they be stricken."

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Under the Federal Rules, the purpose of pleading is to give notice of what an adverse party may expect to meet rather than to frame issues, Kellogg Co. v. National Biscuit Co., 38 F.Supp 643, and it suffices to plead conclusions, whether of fact or of laws, provided the pleading is sufficiently definite so as to give fair notice to the opposite party of the nature of the claim or defense. Thus, a generalized summary of the claim or defense that afford fair notice is all that is required. Mails v. Kansas City Public Service Co., 51 F.Supp. 962; See especially, SEC v. Timetrust Inc., 28 F.Supp 34, 41 (N.D. Calif. 1939).

The conclusions of law attacked by plaintiff, that defendant is possessed of prescriptive, appropriative, statutory and other rights [Def. Answer page 2, lines 28 through 32, and page 3, lines 1 and 2] are not only relevant, and raise issues, but they afford plaintiff ample notice of the nature of defendant's defense. These allegations have substantial factual support in the allegations of continuous and beneficial use since 1871. In addition, the allegations contained in Paragraphs 3 and 4 of the Answer refer to defendant and his predecessors in interest "lawful right" to water and graze cattle upon the subject land. [Def. Answer, page 2, lines 12 through 14, and lines 21 through 22]. The factual allegations referred to above, and the subsequent allegations of prescriptive, appropriative, statutory and other rights possessed by defendant lend substance and meaning to these allegations. They are not, as asserted by plaintiff, bare, unsupported conclusions of law.

3. Motions to strike Matter from an Answer should be denied unless it is clear that the matter criticized is so unrelated to plaintiff's claim as to be unworthy of any consideration as a defense. Where the allegations attacked will result in no prejudice to the adverse party and they may serve to a better understanding of the claim or defense, a motion to strike should be

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denied. Calif. Brewing Co. v. Rino, 143 F.Supp 801, 804 (1956); Rosenblatt v. United Air Lines Inc., 21 FedRDec 110(1957); 1A Barron & Holtzoff, Fed. Prac. & Proc., at 479-480.

MOTION TO DISMISS COUNTERCLAIMS

1. FIRST COUNTERCLAIM - For Declaratory Relief and Injunction.

a. The ground that it fails to state a claim and which relief can be granted.

Plaintiff here raises substantially the same objections as were made to defendant's Answer: that there is no allegation of adverse use regarding the allegations of lines 12 through 14 and lines 20 through 24 of Paragraph 1 on page 3; and that lines 15 through 19 and lines 25 through 28 are mere conclusions of law, which do not aid defendant. As stated previously, adverse use is not an element of appropriative water rights, or the statutory protection afforded thereto, nor with respect to the incidental grazing rights. Additionally, the purported conclusions of law do have factual support, do raise issues, and afford ample notice of defendant's claim.

b. The ground that the Court lacks jurisdiction in the premises since plaintiff has not consented to such a suit and, as sovereign, is immune therefrom.

Where a counterclaim is asserted against the United States, in determining whether the United States has waived its sovereign immunity with respect to such claim, it must be determined whether suit on such a claim is authorized by statute. U. S. v. Sherwood, 312 U.S. 584, 85 L.Ed. 1058. The counterclaim in question is for declaratory relief and an injunction as to water rights and certain rights incidental thereto claimed by defendant.

43 U.S.C.A. § 666, enacted in 1952, provides in part:

"666. Suit against the United States.--

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> (a) Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the Court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: ....."

It is clear under the above-quoted section that Congress has authorized and the United States has consented to be made a defendant in a suit for a declaration or establishment of water rights on public land. Although plaintiff in oral argument urged that the statute only applies to rights to the use of water of a river or stream, and thus not to the case at bar, the use of the words "or other source" indicates that no such limitation was intended. Under subsection (1) of § 666, when the United States is made a party, it is deemed to have waived any right to claim sovereign immunity. Under subsection (2), it has been held that an injunction is enforceable against the United States with respect to water rights adjudicated. Bank v. Krug, 142 F.Supp. 1, 175, 176 (D.C.

Calif. 1956). Thus, suit on a claim such as that asserted here by defendant is authorized by statute and otherwise consented to by the sovereign. The United States having waived its sovereign immunity with respect to the type of claim asserted, the Court does have jurisdictions over said Counterclaim.

2. SECOND COUNTERCLAIM - In the Alternative, for Damages for Taking of Defendant's Property.

a. The grounds that it fail to state a claim upon which relief can be granted.

Plaintiff again points to the failure to allege adverse use, and defendant's purported conclusions of law. Defendant refers to the earlier discussion respecting these contentions of plaintiff.

It is clear that water rights are rights of property. Adamson v. Black Rock Power & Irr. Co., 12 F.2d 437; Thayer v. California Dev. Co., 164 Cal. 117, 128 Pac. 21. Plaintiff urged in oral argument, however, that the government's suit is neither one for condemnation, nor one which might result in inverse condemnation. It is further urged that, if plaintiff has a right to an injunction, defendant, of necessity, has no rights and thus defendant's Second Counterclaim is fatally inconsistent. It is not the prosecution of this suit by the United States which might be deemed to constitute the taking, but rather the establishment of the Death Valley National Monument, itself. It is conceivable that the Court will find that the defendant had certain existing rights of property but that the creation of the Death Valley National Monument precluded the further exercising of those rights by defendant, by reason of the nature of the National Monument or of the power of the sovereign. In such event, although the property rights of defendant are now taken, the establishment of the Monument, and not this suit, was the action which constituted the taking of defendant's property rights, for which defendant is

entitled to just compensation.

b. The ground that the Court has no jurisdiction since there is no allegation that the fair market value of defendant's alleged property rights allegedly taken by plaintiff is within the $10,000.00 limit allowed by § 1346(a)(2) of Title 28 U.S.C.A.

As pointed out in oral argument, defendant presently has no knowledge of the value of said property rights. He is making efforts to determine said value, and will, at the time of the trial of the case at bar, establish said value. Under such circumstances, it would be placing an impossible burden on the defendant to demand that he allege the value of said rights, or that said rights is within the $10,000.00 limit allowed by the above-mentioned statute. To the extent that there is a potential excess in value of said rights over $10,000.00, defendant herein freely waives such excess, and, if the Court deems it proper, will amend his Second Counterclaim herein to provide that any excess over $10,000.00 attributed to the value of such rights is waived.

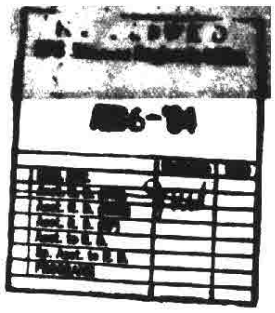
DATED this 13th day of December, 1962.

BUTTERWORTH & SMITH

By David G. Waller
Attorney for Defendant.

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-3-



Death Valley National Monument
Death Valley, California

L3023

August 4, 1964

Richard D. Dear
Musick, Peeler & Garrett
Attorneys at Law
621 South Hope Street
Los Angeles, California

Dear Mr. Dear:

Thank you for informing us of the transfer of the assets of the Sierra Talc Company.

The assignment of Special Use Permit, No. DEVA-25-62 and permit for water use, No. DEVA-1-59-WP to Cyprus Mines Corporation is hereby granted.

Sincerely yours,

William N. Burgen
Acting Superintendent

cc:
RegionalDirector, Western Region
District Ranger, Grapevine w/c of inc.
File
Reading file

WNBurgen:fc

07-28-1964: letter from richard dear, attorney regarding assets of sierra tac company to become a part of cyprus mines corporation

ELVON MUSICK
JOSEPH D. PEELER
JOHN M. ROBINSON
MELVIN D. WILSON
DAVID P. EVANS
JAMES E. LUDLAM
GERALD G. KELLY
ALBERT MOSHER
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MORTIMER A. KLINE
OF COUNSEL

LEROY A. GARRETT
1906-1963

CABLE "PEELGAR"
AREA CODE 213
MADISON 9-3322

JUL 29 '64

July 28, 1964

Director, National Park Service
Death Valley National Monument
Death Valley, California

Dear Sir:

Sierra Talc Company is the holder of a Special Use Permit, No. DEVA-25-62, and a Permit for Water Use, No. DEVA-1-59-WP.

All of the assets of Sierra Talc Company are being acquired by Cyprus Mines Corporation, a New York corporation, qualified to transact and transacting business in the State of California. It is the desire of Cyprus Mines Corporation to continue the operations of Sierra Talc Company which will become an operating division of Cyprus Mines Corporation and to that end, the consent of the National Park Service to the assignment of the aforementioned Permits is requested.

If you have any questions or comments, please contact the undersigned or Leonard E. Castro.

Very truly yours,

Richard D. Dear

Richard D. Dear
for MUSICK, PEELER & GARRETT

RDD:ss

Docket 26 RS

File DEVA Docket 26

United States
Department of the Interior
National Park Service

No. DEVA-1-59-MP
Previous Permit No. ~~X Spaulding~~ ✓ Lantis 8/7/20 LSS 8/12

PERMIT FOR WATER USE
incidental to mining operations in
DEATH VALLEY NATIONAL MONUMENT

Pursuant to the act of August 25, 1916 (39 Stat. 535) and the act of June 13 1933 (48 Stat. 139) and the regulations governing surface use thereunder (36 C.F.R. 20.26) Don Kempfer Sierra Talc Company of Shoshone, California is hereby authorized to use the surface of lands in Death Valley for the construction, maintenance, and operation of the water system described by the attached plan which is hereby approved and made a part of this permit; and to use .0002 sec.ft. _____ acre ft. per annum for domestic
_____ sec.ft. or _____ acre ft. per annum for milling
.0008 sec.ft. _____ acre ft. per annum for mining
(strike out inapplicable unit)
purposes of the waters of Goldbelt Spring
(give names of sources)
under water right Application No. 18433 as said water right is designated by the State Engineer of California, with subpriority No. 2
(California or Nevada)
at no fee but subject to the special conditions on the following pages.

Signed at Death Valley NM this 27th day of May 19 59.

Fred W. Bennewitz
Superintendent

The undersigned hereby accepts this permit subject to the terms, obligations and reservations, expressed or implied therein.

SIERRA TALC COMPANY

x Ivan Hopkins * By x Don Kempfer

Address 1608 Huntington Dr. S. Pasadena, Calif. Address Shoshone, California

x Leora Johnson

Address 1608 Huntington Dr. S. Pasadena, Calif. Address _____

APPROVED: Regional Director, Region _____ National Park Service.

_____

Date _____

*Sign name or names as written in body of permit; for copartnership permittees should sign as "members of firm"; for corporation, the officer authorized to execute contracts etc., should sign, with title, the sufficiency of such signature being attested by the Secretary, with corporate seal, in lieu of witnesses.

(This copy for the Permittee)
(This copy for the Superintendent's water right docket)
(This copy for the Director's water right docket)
(This copy for the Regional Director's water right docket)
(This copy for the Western Office of Design and Construction water right docket)


NATIONAL PARK SERVICE
RECEIVED
JUL 20 1959
REGION FOUR OFFICE

SPECIAL CONDITIONS

1. This permit is granted subject to assignment to the United States of all rights to the use of waters of the designated source(s) by the permittee(s).

2. In the absence of recorded Federal water rights or those assigned herewith, the designated use of water is granted subject to the perfection of necessary Federal water rights in accordance with the applicable state water laws and provisions of this permit.

3. The United States reserves paramount rights, with subpriority No. 1 under the designated water right Application No. [redacted], to such quantities of the designated source(s) as may be needed by the transient general public, for fire protection and other incidental administrative, maintenance and operating purposes; it being understood that subpriorities for major permanent water development and use by the United States and permittee(s) shall be in the order initiated unless a special reservation for Federal use is made a part of this instrument.

4. The United States reserves the rights to authorize other miners and prospectors to use water when available, from the same source, and under the same Federal water right, or such junior Federal rights as may be necessary, and permittee(s) agree(s) to joint land use and equitable consolidation of water systems by the United States or other permittee(s) as may be necessary for the most efficient and beneficial diversion and use of the water, subject to equitable proration of the cost of the consolidated water system, and provided that no permittee(s) shall be liable for the enlargement or modification of his water system if said water system is already sufficient for his needs.

5. The permittee(s) may assign his subpriority of use of the water of one or more springs covered by a single water right, but such assignment shall not be binding until a copy is recorded with the County Recorder and filed with the Director, National Park Service, and such assignment is subject to the granting or amendment of Surface Use Permits to the grantor and assignee.

6. Water use will be authorized under established Federal rights or those assigned as herein provided, when practical it being the objective to establish adequate, permanent Federal rights in compliance with the state water laws for any Federally authorized uses on the surface of the land in Death Valley National Monument.

7. All necessary future applications for the appropriation of water, and other instruments relating to the perfection of water rights in accordance with the state water laws, which are needed in connection with water use by the permittee(s), shall be prepared by the permittee(s), on behalf of the United States in accordance with instructions to be supplied by the Director, National Park Service, and submitted to the Superintendent with a check or money order for prescribed statutory fees made payable to the State Engineer, for execution and transmittal to the State Engineer by the authorized Federal official.

8. All posting, and other actions prescribed by the State Engineer shall be carried out by permittee(s) when and as directed by the Director, National Park Service; and permittee(s) shall supply check or money order made payable to proper recipient to cover prescribed state fees and advertising costs, provided that permittee(s) shall supply the Director, National Park Service, with 4 copies of a receipt if he or they, elect to pay in person by cash.

9. The permittee(s) shall use all possible diligence in the construction of the water system and perfection of rights, provided that the United States may assume, or participate in such responsibilities at the discretion of the Director, National Park Service, to protect other Federal or public interests.

10. The permittee(s) shall supply the Director, National Park Service with information on construction and its cost, and water use progress, during each preceding year if the rights are evidenced by permit or on the proper alternate years if rights are licensed during the first 2 weeks of September, and the Director, or his authorized representative, will file the annual or biennial reports required by the State Division of Water Resources, based on that information, with copy (copies) to the permitee(s).

11. The permittee(s) shall comply with the terms of Federal water rights as prescribed in copies of the applications, permits licenses and other instruments to be supplied by the Director, National Park Service.

12. No withdrawal or cancellation of Federal water claims or rights shall be made except by the Director National Park Service, or his authorized representative.

13. No portion of a water diversion and supply system which is essential to the preservation of a water right shall be removed without the prior approval of the Director, National Park Service, who shall be given 90 days notice of any intent to abandon the use of water and the right to arrange for Federal acquisition of permittee(s) interest in such structures at reasonable depreciated value within said 90 days.

14. Failure to use the water system herein authorized for more than one year shall be cause for forfeiture of the subpriority of water right granted, provided that permittee(s) may preserve said subpriority by a filing with the Superintendent prior to the end of each year of nonuse, of a notice of intention to resume the use of said water system, and the mining claim or millsite where the water is used, within the time permitted under the mining laws.

15. In the event of claim jumping, the use of the water system herein authorized, the surface of the Federal land and the source of the water shall be regulated in accordance with a permit to be issued to said claim jumper, and neither the United States nor its agents, including the Director, National Park Service and Superintendent of Death Valley National Monument, shall be liable for damages to the permittee(s) water system or other structures and equipment unless permittee(s) has complied with the provisions of condition No. 14.

16. No structures, dumps, or other surface uses shall be located where they wil llead to possible pollution of sources of water, interfere with traffic on established highways, or interfere with the proper enjoyment of established administrative, residential and public campground areas.

17. Permittee(s) shall exercise this privilege subject to the supervision of the Superintendent and shall comply with the regulations of the Secretary of the Interior governing the administration of the Monument.

18. Use by the permittee(s) of the land surface covered hereby is subject to the right of the Director, National Park Service to establish trails, roads, public campgrounds, and other improvements and betterments over upon or through said premises, and further to the use by travelers and others of such roads and trails as well as of those already existing.

19. All buildings or other structures shall be erected under this permit only at sites indicated in attached drawing, and the premises and all appurtenances thereto shall be kept in a safe, sanitary, and sightly condition.

20. Permittee(s) shall dispose of brush and other refuse as required by the Superintendent.

21. Permittee(s) shall pay the United States for any damage resulting from this use.

22. Permittee(s) and his (their) employees shall take all reasonable precautions to prevent forest fires and also shall assist the Superintendent to extinguish forest fires in the vicinity of any tract which may be used hereunder and in the preservation of good order within the metes and bounds of the area.

23. No timber may be cut or destroyed without first obtaining permit therefor from the Director, National Park Service in writing.

24. Permittee(s) shall take adequate measures, as directed and approved by the Superintendent, to arrest and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

25. This permit may not be transferred or assigned without the consent of the Director, National Park Service in writing, but nothing herein shall deny the right of transfer or assignment, as appurtenances to the mining claim or millsite on approval of and proper recording with the Director National Park Service.

26. This permit may be terminated upon breach of any of the conditions herein, at the discretion of the Director of the National Park Service, on equitable reimbursement of the permittee(s) for his (their) investments, or modified as mutually agreed to by the permittee(s) and the Director, National Park Service.

27. The term "Director, National Park Service" as representative of the Secretary of the Interior, as used herein shall include the appropriate Regional Director, National Park Service, and Superintendent of Death Valley National Monument as the representatives of the Director.

28. Neither members of, nor delegates to Congress or resident commissioners, shall be admitted to any share or part of this permit or derive either directly or indirectly, any pecuniary benefit to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company, if the permit be for the general benefit of such corporation.

29. All uranium, thorium, and all other material determined pursuant to section 5(b)(1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material contained in whatever concentration, in deposit in the lands covered by this permit are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby.

30. The permittee will make provisions for the use of water by wildlife.

71929 Interior - Duplicating Section, Washington, D. C. 472

4

Other Supporting Information

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oakridge Drive, Suite 250
Fort Collins, Colorado 80525

February 3, 1993

L54(479)
PINN/Water Rights
DEVA/Water Rights

Deva 26

Mr. John Wright
Associate WRC Engineer
Permit and License Unit
State of California
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Re: License 9374 (Application A008969) Chalone Creek
License 6559A (Application A013852A) Burns Creek
License 6110 (Application A015381) Lower Emigrant
License 7854 (Application A010119) Unnamed Source
License 2430 (Application A005073) Lower Spring
License 4621 (Application A009510) Main Cow Creek
License 4897 (Application A012076) Wildrose Spring
License 7578 (Application A019538) Mesquite Spring
License 7577 (Application A019482) Ranger Spring
License 6740 (Application A018433) Goldbelt Spring
License 10580 (Application A008423) Unnamed Spring
License 10845 (Application A016096) Tarantula Springs
License 6343 (Application A008183) Saratoga Spring
License 10780 (Application A021646) Unnamed Stream
License 10781 (Application A015539) Covered Spring

Dear Mr. Wright:

Enclosed are completed Reports of Licensee forms for water right licenses in Pinnacles National Monument and Death Valley National Monument.

As Denise Newberry of my staff discussed with you earlier this year, the National Park Service (NPS) is updating its files and the State's records of its water rights in California park units. The NPS requests orders correcting the purpose of use for the following water licenses, as indicated below:

License 4621 (Application A009510) Main Cow Creek - add wildlife preservation

License 10580 (Application A008423) Unnamed Spring - add wildlife preservation

License 6110 (Application A015381) Lower Emigrant - add wildlife preservation

License 7854 (Application A010119) Unnamed Source - add wildlife preservation

License 2430 (Application A005073) Lower Spring - add wildlife preservation, delete domestic

License 6559A (Application A013852A) Burns Creek - add wildlife preservation, delete domestic

If you have questions regarding these Reports of Licensee, please contact Denise at (303) 225-3525.

Sincerely,

Owen R. Williams
Chief, Water Rights Branch

Enclosures

cc: WR - Kolipinski (w/o enclosures)
DEVA - Superintendent
PINN - Superintendent
479 - Johns (w/o enclosures), Water Rights Dockets

STATE OF CALIFORNIA
PETE WILSON, *Governor*

STATE WATER RESOURCES CONTROL BOARD
THE PAUL R. BONDERSON BUILDING
901 P STREET
SACRAMENTO, CA 95814

Mailing Address
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000

916/657-2046

FAX: 916/657-2388

In Reply Refer
To:341:JHW:5073

AUGUST 25 1992

Denise Newberry
United States Department of the Interior
National Park Service
Water Resources Division
301 South Howes Street, Room 353
Ft. Collins, CO 80521

Dear Ms. Newberry:

LICENSES 2430, 4621, 4897, 6110, 6343, 6559A, 6740, 7577, 7578, 7854, 10580, 10780, 10781, AND 10845 (APPLICATIONS 5073, 9510, 10276, 15381, 8183, 13852A, 18433, 19842, 19538, 10119, 8423, 21646, 15539, AND 16096) VARIOUS SOURCES IN INYO AND SAN BERNADINO COUNTIES

In regard to your letter dated June 30, 1992, please find enclosed blank copies of the Licensee Reports for the above licenses.

Please note that addresses on several of the Reports of Licensee are different. Please indicate how the addresses for the above licenses should be shown when you return the completed Reports of Licensee.

If you require further assistance in this matter, please write or telephone me at the above number.

Sincerely,

Jon H. Wright

Jon H. Wright
Associate WRC Engineer
Permit and License Unit

Enclosures

Jeffrey C. Hughes JCH
Dan McGlothlin JCH
Owen Williams JR

August 16, 1991

L(54)479
DEVA/Water Rights
REDW/Water Rights

Mr. Jim H. Pankratz
Chief, Petition Unit
State of California
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95810

Re: License 6343 (Application 8183) Saratoga Springs in San Bernardino County
License 5141 (Application 12222) Unnamed Stream in Del Norte County
License 3442 (Application 12228) Unnamed Stream in Del Norte County
License 5125 (Application 14931) Smith River in Del Norte County
License 6740 (Application 18433) Goldbelt Spring in Inyo County
License 7577 (Application 19482) Ranger Spring in Inyo County

Dear Mr. Pankratz:

The National Park Service (NPS) responds to your letter of May 29, 1991, by agreeing to process License numbers 6343, 5141, 3442, 5125, and 6740 as ORDERS CORRECTING THE PURPOSE OF USE AND AMENDING THE LICENSE (Orders) rather than as PETITIONS FOR CHANGE IN PURPOSE OF USE as originally requested (For License number 7577 we also concur with processing the changes as Orders, as indicated in our July 11, 1991, letter). An August 15, 1991, telephone conversation between Jeff Hughes of my staff and Bert Parkinson clarified our concerns in this matter.

Upon further review of our water right files and after discussions with Park personnel, we have determined that the Purpose of Use for License 5141 (Application 12222) should be corrected as Recreation, Fish and Wildlife, in place of Domestic, Fish and Wildlife; and License 6740 (Application 18433) should be corrected as Recreational, Fish and Wildlife, in place of Domestic, Recreational, Fish and Wildlife uses. Please inform us as to the proper course for the NPS in regard to these changes.

If you have any questions, please contact either me or Dan McGlothlin at (303) 493-1441.

Sincerely,

Jeffrey Albright

Owen R. Williams
Chief, Water Rights Branch

bcc: SOL (San Francisco) - Kohn
WR - Kolipinski
DEVA - Superintendent
REDW - Superintendent
479 - Ponce, McGlothlin, Johns, Hansen, Hughes

(1) Send Ltr to Chron with items
(2) Keep Copy

STATE OF CALIFORNIA
Pete Wilson, Governor

STATE WATER RESOURCES CONTROL BOARD
THE PAUL R. BONDERSON BUILDING
901 P STREET
SACRAMENTO, CA 95814

(916) 324-5715

Mailing Address:
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000

In Reply Refer
To:342:BHP:8183

MAY 29 1991

JUN 1991
RECEIVED
WRD - FT COLLINS

Redwood National Park
c/o National Park Service, Western Region
450 Golden Gate Avenue, Box 36063
San Francisco, CA 94102

Dear Mr. John D. Cherry:

LICENSE 6343 (APPLICATION 8183) SARATOGA SPRINGS IN SAN BERNARDINO COUNTY
LICENSE 5141 (APPLICATION 12222) UNNAMED STREAM IN DEL NORTE COUNTY
LICENSE 3442 (APPLICATION 12228) UNNAMED STREAM IN DEL NORTE COUNTY
LICENSE 5125 (APPLICATION 14931) SMITH RIVER IN DEL NORTE COUNTY
LICENSE 6740 (APPLICATION 18433) GOLDBELT SPRING IN INYO COUNTY
LICENSE 7577 (APPLICATION 19482) RANGER SPRING IN INYO COUNTY

Thank you for your letter of June 29, 1988, regarding the water rights set forth above. On further review of this matter it has been determined to handle the changes as corrections, which do not require a $100 petition fee. Enclosed are Orders correcting your water right licenses to describe the projects as they are. It is suggested that you retain the Orders with your copies of the licenses.

In some of the Orders domestic and/or irrigation uses have been deleted, therefore, I suggest that you review the Orders carefully. If you believe that the Orders are not consistent with the projects as they exist please inform the State Board within 30 days.

Please note that the State Board's continuing authority condition has been amended to reflect the current common law public trust doctrine as contained in Title 23, California Code of Regulations, Section 780(a).

If you have any questions, please write or call Bert Parkinson at (916) 324-5686.

Sincerely,

Jim H. Pankratz, Chief
Petition Unit

Enclosures

cc: County Recorder of San Bernardino
172 West Third Street, 2nd Floor
San Bernardino, CA 92415

County Recorder of Inyo
P.O. Drawer F
Independence, CA 93526

County Recorder of Del Norte
County Court House, Room 15
Crescent City, CA 95531

U.S. Death Valley National Monument
Death Valley, CA

DEVA WR#26 Patricia M. Larso.

Ocean Wat... Ofc

Stanley L. Ponce

June 6, 1988

L34 (479)
DEVA Water Rights (Dockets #17, 26 and 27)
REDW Water Rights (Dockets #3, 8 and 12)

Memorandum

To: Associate Regional Director
Resources Management and Planning
Western Region

From: Chief, Water Resources Division

Subject: Transmittal of Petitions for Change in Purpose of Use

Attached are completed Petitions for Change in Purpose of Use forms for water right licenses in Death Valley National Monument and Redwoods National Park. We would appreciate your assistance in transmitting the petitions to the State Water Resources Control Board. We've included for your consideration a draft letter of transmittal.

When staff of the Water Rights Branch prepared the Reports of Licensee for these areas this year, several discrepancies in use of water became obvious. After discussions with park management, petitions were prepared to change the beneficial use of six water right licenses. Copies of the petitions are included for your files.

Payment will be handled through the Rocky Mountain Region's finance office and will be sent to the State Water Resources Control Board in the form of a U.S. Government purchase order under separate cover.

Please contact Ms. Pat Larson or me at (303) 221-5341 if you have questions regarding these petitions or their transmittal.

Stanley L. Ponce

Stanley L. Ponce

Attachments

cc: (w/ attachments)
Superintendent, DEVA
Superintendent, REDW
Kolipinski, WRO

FNP:PLarson:pml:6/3/88:221-5341:#120

Werrell 3/21

Witucki

L54 (WR-RNW)
DEVA/WR #26

March 21, 1983

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, California 95825

Re: #342:RJM:18433

Gentlemen:

This furthers our letter of April 28, 1981 (ref: License #6740, Goldbelt Springs) to you as well as furthers conversations between J. Gary-Fuson of your staff and W. Werrell of this Office. We are requesting that the use of this water source be changed from "Mining and Domestic" to "Wildlife Preservation" in order that this water be most appropriately used in keeping with National Park Service objectives; thus allowing the full natural flow of the spring to be used for the animals and plants, and to reestablish the natural ground water regime of the area. Examples of the beneficial use of the water is for the watering of the big horn sheep and maintaining a population of a rare plant which has recently been discovered at the site. To accomplish this, we will maintain the mine adit (diversionary works) in its present form.

Sincerely,

(Sgd) Gerard S. Witucki

Gerard S. Witucki
Chief, Division of Water Resources

cc:
Superintendent, Death Valley
WASO (497) Div. of Water Resources

(WR)RNW:Werrell:Witucki:ms:3/21/83

04-28-1981: gerard witucki reference #342:rjm:18433;regarding change of use. ; april 28, 1981

United States Department of the Interior

NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

RECEIVED
NATIONAL PARK SERVICE
WASHINGTON OFFICE
MAY 1 8 38 AM '81

L54
DEVA/WR #26
(WR)RW

April 28, 1981

Death Valley

LINDA - File in Death Valley Federal Water Right Docket # 26

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325
Attention: Rick Miner

Reference: # 342:RJM:18433

Gentlemen:

This responds to your letter of February 25, 1981 and serves as a continuance of our letter of January 14, 1981 and the desire to change the use regarding our water license permit for the Goldbelt Spring source in Death Valley National Monument. We are requesting that the use of this water source be changed from "Mining and Domestic" to "Wildlife Preservation" in order that this water be most appropriately used in keeping with National Park Service objectives -- thus allowing the full natural flow of the spring to be used for the animals and plants, and to reestablish the natural ground water regime of the area. Examples of the beneficial use of the water is for the watering of big horn sheep and maintaining a population of a rare plant which has recently been discovered at the site.

Thank you for your assistance in this matter.

Sincerely yours,

William Wirth for

Gerard S. Witucki
Chief, Division of
Water Resources

cc:
Supt., DEVA
WASO (497)
Attn: Vic Berte'

NATIONAL PARK SERVICE
Western Regional Office

WR–8
(3/75)

MESSAGE RECORD

Subject:

Date 4/27

Routed for: ☒ Information ☐ Central File ☐ Action

☐ Incoming Call

☒ Outgoing Call

To: _____

Name and Title Rick Miner

Representing SWRCB Telephone No. _____

Address _____

NPS Personnel in on Call Wm

Conversation: Rick says he is still holding action on the Goldbelt Spring. He says the board is reluctant allow change of use without diversion and benefit. I told him of others in DENA that have been changed. He says write em what we have planned (I had told him we were not using diversion and did not plan one, but that rare vegetation was nearby).

Follow-up Action to be Taken:

Write letter

Follow-up Action Taken:

NATIONAL PARK SERVICE
Western Regional Office

WR–8
(3/75)

MESSAGE RECORD

Subject: Goldbelt Spring DEVA

Date April 24, 81

Routed for: ☒ ~~Information~~ ☐ Central File ☐ Action

☐ Incoming Call

☐ Outgoing Call

To: _____

Name and Title Pete Sanchez

Representing _____ Telephone No. _____

Address _____

NPS Personnel in on Call Mrm

Conversation: Called Pete to ask again about the physical situation at the spring site. There is no diversion, there is no use by people, and neither are planned in the future.

The only present use or activity by man is that the site is used to trap burrows.

Pete says that there is, with the last week or, a report of some rare plant in the area. He has not been out there to see about it yet.

~~Follow-up Action to be Taken:~~

Follow-up Action Taken:

None.

VIC

RECEIVED
NATIONAL PARK SERVICE
WASHINGTON OFFICE
JAN 16 7 57 AM '81

HERSHEY
WERRELL
WITUCKI

L54
DEVA/WR #26
(WR)RW

January 14, 1981

~~Berte'~~
LINDA
Please file in
Death Valley Water Right
Docket # 26

State of California - Resource Agency
State Water Resources Control Board
Division of Water Rights
77 Cadillac Drive
Sacramento, CA 95325

Reference: Application #18433
License #6740

Gentlement

Enclosed is a petition for a change of use regarding our water permit for the Goldbelt Spring source in Death Valley National Monument. We request that the use for this water source be changed from "Mining and Domestic" to "Wildlife Preserwation".

Payment in the amount of $10.00 will be forwarded to your office by the United States Treasury Department under sppamte cover for the filing fee of the application.

Thank you for your assistance in this matter.

Sincerely yours,
(Sgd) Gerard S. WITUCKI

Gerard S. Witucki, Chief
Division of Water Resources

Enclosure

cc:
Superintendent, Death Valley w/encl.
WASO (492) Atten: Vic Berte' w/encl.
(WR)AWP, Accounts Payable w/encl. and S.F. 1034

EIVED
MAY 29 1963
Death Valley Nat'l Mon.

EDMUND G. BROWN
GOVERNOR OF CALIFORNIA

HUGO FISHER
ADMINISTRATOR
RESOURCES AGENCY

THE RESOURCES AGENCY OF CALIFORNIA

KENT SILVERTHORNE, CHAIRMAN
RALPH J. McGILL, MEMBER
W. A. ALEXANDER, MEMBER

State Water Rights Board

1401 21st STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

LELAND K. HILL
EXECUTIVE OFFICER

✓	Supt.	Jra
✓	Ch. Rgr.	
	Nat.	
	Engr.	
✓	Adm. Asst.	APS
	Proc. & Prop. Mngt. Asst.	
	WQQC	
	Sec.	

MAY 28 1963

U. S. Death Valley National Monument
Death Valley
California

Subject: Application 18433, Permit 12100, License 6740

Gentlemen:

Enclosed is a copy of the license which constitutes final confirmation of the right initiated by the filing of the above-numbered application.

A copy of the license has been recorded in the office of the County Recorder of Inyo County.

Very truly yours,

L. K. Hill

L. K. Hill
Executive Officer

Enc.
Cert.

Docket 26 RS

FORM 23A

Application 18433, Permit 12100

This is to inform you that Mr Bowman, an engineer of this office, will make an inspection of the construction work and use of water under the above numbered application and permit to appropriate from Goldbelt Spring trib. Marble Canyon.

It is important that you be present at the time of the inspection or have a representative present who is familiar with the project and who can supply all necessary information relative to your use of water.

Mr. will be at Panamint Springs on the 27 th day of March 19 62 to make the inspection.

RECEIVED
8:00 AM
MAR 27 1962
Death Valley Nat'l Mon

Very truly yours,

STATE WATER RIGHTS BOARD

Docket 26 RS

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Death Valley National Monument
Death Valley, California

IN REPLY REFER TO:
L54

November 29, 1960

RECEIVED
NPS REGION FOUR OFFICE
DEC 1 '60

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
INTERP.		
RANGER ACT		

Memorandum

Spaulding
L55 12/5

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Annual Progress Report, Water Right Application 18433, Goldbelt Spring, Docket 26, Death Valley National Monument

Enclosed is Application 18433 with the completed permit on the fourth page as returned by the State. Please return after reproduction.

The use of Goldbelt Spring in 1960 was about the same as in 1959. The mining activity remained the same in 1960; however, little activity occurs after October.

Granville B. Liles
Granville B. Liles
Superintendent

In duplicate

Attachment

27

Edmund G. Brown
Governor

3/18
Fleming fraction

KENT SILVERTHORNE, CHAIRMAN
V. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

STATE OF CALIFORNIA
State Water Rights Board

1401 21st STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

L. K. HILL
EXECUTIVE OFFICER

MAR 11 1960

Application 18433

Fred W. Binnewies, Superintendent
Death Valley National Monument
Death Valley, California

Dear Mr. Binnewies:

Endorsed on the reverse side of the above-numbered application you will find the permit which has been issued in approval thereof. As prescribed by law the permit fixes a definite time schedule within which to begin construction, complete construction, and make full beneficial use. Extensions of time can be allowed only upon a showing of good cause and you will observe the permit prescribes that unless development proceeds promptly and is prosecuted diligently to completion the permit may be revoked.

Annual reports of progress will be required upon forms which will be provided for that purpose, and if and when use is reported full and complete an inspection of the project will be made by an engineer of this office. Following the inspection a license will be issued to confirm the right to the amount of water found at the time of inspection to have been beneficially used in accordance with the terms and conditions of the permit. After issuance of license there can be no further increase in the use under this right.

The form for your first progress report will be mailed to you on or about October 1, 1960.

Very truly yours,

L. K. Hill

L. K. Hill
Executive Officer

Enc.
Cert.

Docket 26 RS

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

Receipt No 11576

Date March 11, 1960 ($)

Received Check ($ 5.00)

☐ Cash ☐ Money Order ☐ Check *(Receipt contingent upon collection)*

Fred W. Binnewies, Superintendent
Death Valley National Monument
Death Valley, California

Re APPLICATION NO. 18433

☐ Deposit ☐ Balance ☒ Full

Recordation Fee	$	Application No.	$
Verification—Fee	$	Permit Fee	$ 5.00
Expense	$	Permit Extension Fee	$
	$	Petition Fee	$
☐ Uncleared Collections		Additional Fee on Charges	$
☐ Application		Certification Fee	$
☐ Proof of Claim		Copying—Comparing	$
☐ Adjudication Apportionment		Proof of Claim Fee	$
☐ Verification Advance		Adjudication Apportionment	$
☐ Other		Refund—Verification	$
		Other	$

STATE WATER RIGHTS BOARD

LESLIE C. JOPSON, *Chief Engineer*

By Robert Barnow
Title

FORM 300
47188 11-56 20M QUIN © SPO

Docket 26 RS

File YOSE Docket 26

Rec'd 2/8/60

Wosky
X Spaulding
JS 3/7

Edmund G. Brown
Governor

STATE OF CALIFORNIA
State Water Rights Board

KENT SILVERTHORNE, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

1401 21ST STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

L. K. HILL
EXECUTIVE OFFICER

February 5, 1960

Application 18433

U. S. Department of the Interior
National Park Service
180 New Montgomery Street
San Francisco 5, California

Attention: Mr. John B. Wosky
Regional Chief of Operations

Gentlemen:

Enclosed herewith is your voucher signed as instructed to cover permit fee, in connection with Application 18433, Permit 12100, to appropriate from Goldbelt Spring in Death Valley National Monument in Inyo County.

Further action in the matter will await receipt of the necessary fees.

Very truly yours,

L. K. Hill
L. K. Hill
Executive Officer

Enc.

25

L54

~~Spaulding~~ LSS

~~Manbey~~ DF

McClellan

Wosky

(Trotman)

FILE COPY

February 1, 1960 (Later)

Mr. L. K. Hill
Executive Officer
State Water Rights Board
P. O. Box 1592
Sacramento 7, California

Re: Application 18433
Goldbelt Spring
Death Valley National Monument

Dear Mr. Hill:

Attached are a purchase order and a voucher to cover the permit fee for the subject water right.

Please sign the voucher and return it to this office for payment.

Sincerely yours,

(SGD) JOHN B. WOSKY
John B. Wosky
Regional Chief of Operations

Attachments

Copy to: Superintendent, Death Valley
Director (2)

LSSpaulding:hat

2L

01-19-1960: subject: water right application 18433; letter attached to voucher. ; january 19, 1960

File DEVA Docket 26

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

L 54

January 19, 1960

RECEIVED
NPS REGION FOUR OFFICE
JAN 22 '60

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
RANGER ACT		

Memorandum

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Water Right Application 18433

Attached is a letter from the State Water Rights Board stating that the above numbered application has been approved and that a $5.00 fee is required. Will you please prepare the necessary voucher for this amount and forward it to the Board.

~~X Spaulding~~ L55 1/28

see ltr to Mr. L.C. Hill Sacto, 2/1/60

Fred W. Binnewies
Superintendent

Attachment

In duplicate

23

File DEVA
Docket 26

Edmund G. Brown
Governor

STATE OF CALIFORNIA

State Water Rights Board

KENT SILVERTHORNE, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

1401 21ST STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

L. K. HILL
EXECUTIVE OFFICER

JAN 8 1960

Application 18433

Fred W. Binnewies, Superintendent
Death Valley National Monument
Death Valley, California

Dear Mr. Binnewies:

The above-numbered application has been approved and in accordance with Chapter 254, Statutes of 1955, a minimum fee of $5.00 will be required.

The water code requires that the fee must be received in this office within 30 days after service of notice of issuance of permit, personally or by registered mail. This letter is being sent by regular mail and is not intended as notice of issuance of permit within the purview of the water code, but is to informally advise you of the approval in order to prevent the running of the 30 day period of time.

Kindly send such vouchers or other forms as may be appropriate and the permit will be forwarded upon receipt of the check for the necessary fee.

Very truly yours,

L. K. Hill

L. K. Hill
Executive Officer



Edmund G. Brown
Governor

STATE OF CALIFORNIA

State Water Rights Board

1401 21st STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

KENT SILVERTHORNE, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

L. K. HILL
EXECUTIVE OFFIC

September 28, 1959

Application 18433

COPY

Hon. Charles Brown
Senator, 28th District
Shoshone, California

Dear Senator Brown:

This is in response to your request made of members of the Board's staff at Bishop on September 15, 1959, to review the above-numbered application protested by Roy Hunter.

Application 18433 by Death Valley National Monument is for a permit to appropriate 650 gallons per day from Goldbelt Spring, year-round, for domestic and mining purposes. A review of the file reveals that Roy Hunter submitted a protest against approval of the application which was subsequently dismissed by our letter of July 24, 1959. A copy of this letter is enclosed for your information. Inasmuch as Roy Hunter was the only record protestant there appears to be no bar to approval of the application and issuance of a permit thereon.

In view of your request, action will be withheld on the application for 30 days pending your further comment on this matter. If there is any other information you desire or if we can be of further assistance in this matter, please feel free to call upon us.

Very truly yours,

/s/ L. K. Hill

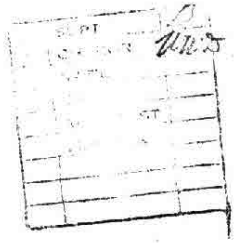
Enc.

L. K. Hill
Executive Officer

cc: U. S. Death Valley National Monument
Death Valley, California

Docket 26 LS

L54



Edmund G. Brown
Governor

STATE OF CALIFORNIA

State Water Rights Board

KENT SILVERTHORNE, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

L. K. HILL
EXECUTIVE OFFICER

1401 21ST STREET
P. O. BOX 1552
SACRAMENTO 7, CALIFORNIA

September 11, 1959

Application 18433

Mr. Fred W. Binnewies, Superintendent
Death Valley National Monument
Death Valley, California

Dear Mr. Binnewies:

The State Water Rights Board is prepared to proceed with consideration of issuance of permit on your above-numbered water rignt application subject to the following special condition:

"Permittee shall not construct or maintain fences or other works which may prevent access to water from the source hereunder by the public or wildlife".

Unless we are advised to the contrary within 10 days, it will be assumed that you have no objection to the special condition, and we will proceed accordingly.

Very truly yours,

L. K. Hill

L. K. Hill
Executive Officer

Docket 26 LS

File Docket 26 DEVA

IN REPLY REFER TO:
L54-OBL

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

July 24, 1959

Memorandum

To: Regional Director, Region Four

From: Chief, Water Resources Section

see memo to Supt Death Valley 8/17/59

Subject: Permit for Water Use incidental to Mining in Death Valley

We have received our copy of subject permit for use of waters of Goldbelt Spring with a request for an additional supply of the forms.

We find that the Duplicating Section has destroyed the stencils since there was no request for duplication within two years. New stencils will have to be cut.

Since the form is only used at Death Valley, we suggest that you make the new stencils and supply Mr Binnewies' request. It is also suggested that you see that the stencils are not destroyed as we seem to have permitted them to be. A copy of the form is attached. The cost should be charged to your Work Order 5-WR-60.

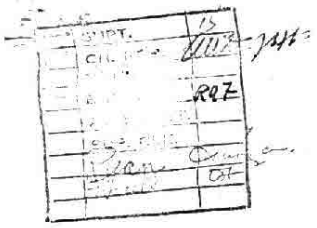
We are filing the permit to the Sierra Talc Company in our Docket 26. I do not believe the docket needs dividers at this time.

A. van V. Dunn
Chief, Water Resources Section

Attachment

Copy to: Superintendent, Death Valley
Chief, WODC (2)

21



Edmund G. Brown
Governor

STATE OF CALIFORNIA

State Water Rights Board

HENRY HOLSINGER, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

1401 21ST STREET
P. O. BOX 1382
SACRAMENTO 7, CALIFORNIA

L. K. HILL
EXECUTIVE OFFICER

July 24, 1959

Application 18433

COPY

Mr. Roy Hunter
Box 26
Olancha, California

Dear Mr. Hunter:

This is in response to your letter of January 18, 1959, following a further consideration of your legal position as a protestant to the above application.

As you are aware, the area in question was declared a national monument by Presidential Proclamation of February 11, 1933. It has also been correctly pointed out to you by Mr. Binnewies's letter of June 1, 1959, a copy of which was apparently mailed to you, that upon establishment of such a monument jurisdiction of the lands came under the National Park Service subject to rules laid down by the Secretary of the Interior. The Secretary of the Interior has authority to enter into leases and grant the privilege of grazing livestock when, in his judgment, such use is not detrimental to the primary purpose for which the park is created (Title 16, Ch. 1, Sec. 3, U.S.C.A.). Apparently you have no lease or grazing rights granted to you by the Federal Government.

Your correspondence mentions that you did not receive compensation which you believe was due you for range rights and water rights established by you and your predecessors prior to the establishment of the monument. This is a conflict between you and the Federal Government over which this Board has no jurisdiction and which would not be an issue in any hearing held upon the above application. It is suggested

Docket 26 LS

that you obtain the advice of an attorney engaged in private practice if you wish to pursue this aspect of your problem further.

The question that concerns the Board at the present time is your right to protest at all to an application to appropriate water from a spring located on land to which, according to information so far received by this office, you apparently have no record title, lease, easement, servitude, or even right of entry. Your claims in this respect are disputed and can only be determined by a court of competent jurisdiction--not by this Board. Under Rule 719 of the Board, a protest to be valid must show that the granting of the permit to the applicant would cause an injury to some legal right of the protestant, which, so far, you have not shown. Further, we draw your attention to Board Rule 722, which reads as follows:

> "A protest will be dismissed as insufficient if it fails to comply in a substantial manner with requirements contained in Section 719, fails to state a valid ground of protest, or is based upon issues which do not come within the jurisdiction of the department to consider."

For the foregoing reasons, your protest is fatally defective and is dismissed under the above-cited rules.

Your attention is directed to the fact that permits to appropriate water are subject to prior vested rights. The granting of a permit to the Federal Government in this matter would not preclude you from a later judicial determination that you have such a prior vested right and are entitled to compensation therefor.

Very truly yours,

/s/ L. K. Hill
L. K. Hill
Executive Officer

MJS:GMC:jp
cc: Mr. Fred W. Binnewies
Superintendent
Death Valley National Monument
Death Valley, California

Docket 2615

File DEVA Docket 26

IN REPLY REFER TO:

L54-OBL

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

RECEIVED
NPS REGION FOUR OFFICE
JUL -6 '59

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
✓ Wirth		
LEGAL		
X Spaulding		
✓ Lands		

July 1, 1959

Memorandum

To: Regional Director, Region Four

From: Chief, Water Resources Section — Acad Copy

Subject: Water Right Application 18433, Goldbelt Spring, Docket 26, Death Valley

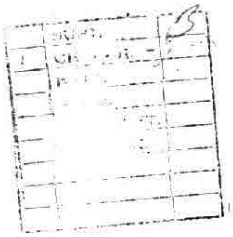
I am temporarily filing all attachments with the memorandum of June 4 from Mr. Wosky in our assembly of Docket 26; and so noting in pencil on the carbon copy of Mr. Wosky's memorandum, which I am filing in my letter file. Some of the attachments may be transferred from the docket to letter file at a later date, but the docket should retain records that there was a protest, and how it was eliminated.

Mr. Binnewies seems to have offered an excellent reply to the protest. However, I hope that the Field Solicitor has been brought into the picture, to determine whether Mr. Hunter had any valid existing rights when the Monument was established. If Mr. Hunter's lack of authority for grazing is not enough, we should determine the spring flow, and whether it is sufficient to serve both needs. We should also determine whether Mr. Hunter's father made any county water right filing for the spring before December 19, 1914.

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Death Valley
Chief, WODC (2)

20



Edmund G. Brown
Goodwin J. Knight
Governor

STATE OF CALIFORNIA

State Water Rights Board

1401 21ST STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

HENRY HOLSINGER, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

L. K. HILL
EXECUTIVE OFFICER

June 15, 1959

Application 18433

COPY

Mr. Roy Hunter
Box 26
Olancha, California

Dear Mr. Hunter:

On June 5 we received a letter from Fred W. Binnewies, Superintendent, Death Valley National Monument, in which he alleges that Goldbelt Spring is located on property included in the area of Death Valley Monument and that the rules and regulations of the National Park Service prohibits the grazing of livestock except in special cases under a Special Use permit.

He indicates that no such permit has been issued to you or your predecessor and therefore any livestock that have been watering at Goldbelt Spring have been in trespass. He further states that to the best of his knowledge no livestock, other than an occasional stray, has been watering at the spring for many years.

If the allegations as set forth by Mr. Binnewies are true and no information to the contrary is received from you within 30 days of the above date, your protest will be dismissed on the grounds that you have no lawful basis for protest against Application 18433.

Very truly yours,

/s/ L. K. Hill

Executive Officer

cc: Mr. Fred W. Binnewies, Superintendent
Death Valley National Monument
Death Valley, California

Docket 26 LS

File DEVA Doct. 86

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

IN REPLY REFER TO:

RECEIVED
NPS REGION FOUR OFFICE
JUN -2'59

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
✓ OPERATIONS		
✓ ADMIN.		
RECREATION		
INTERP.		
✓ LEGAL		

June 1, 1959

Memorandum

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Protest of Water Right Application 18433, Goldbelt Spring

On May 29, we received a copy of a letter from Roy Hunter, Olancha, California, from the State Water Rights Board in which Mr. Hunter protests our application 18433 to appropriate water from Goldbelt Spring. Attached are copies of Mr. Hunter's letter and the reply of the Water Rights Board.

We have prepared a reply to the protest and are enclosing the original, with copies, for your review. If found to be satisfactory will you please forward it direct to the Water Rights Board before June 11, 1959.

Fred W. Binnewies
Fred W. Binnewies
Superintendent

In duplicate

Attachments

18

File DEVA Doct. 86

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

IN REPLY REFER TO:

RECEIVED
NPS REGION FOUR OFFICE
JUN -2'59

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
✓ OPERATIONS		
✓ ADMIN.		
RECREATION		
INTERP.		
✓ LEGAL		

June 1, 1959

Memorandum

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Protest of Water Right Application 18433, Goldbelt Spring

On May 29, we received a copy of a letter from Roy Hunter, Olancha, California, from the State Water Rights Board in which Mr. Hunter protests our application 18433 to appropriate water from Goldbelt Spring. Attached are copies of Mr. Hunter's letter and the reply of the Water Rights Board.

We have prepared a reply to the protest and are enclosing the original, with copies, for your review. If found to be satisfactory will you please forward it direct to the Water Rights Board before June 11, 1959.

Fred W. Binnewies
Fred W. Binnewies
Superintendent

In duplicate

Attachments

18

Site DEVA Docket 66

Death Valley National Monument
Death Valley, California

June 1, 1959

Mr. L. K. Hill
Executive Officer
State Water Rights Board
P. O. Box 1592
Sacramento 7, California

Dear Mr. Hill:

On May 29, 1959, we received your letter of May 21 stating that a protest had been received to our application 18433 to appropriate water from Goldbelt Spring. A copy of the letter from the protestant, Mr. Roy Hunter, was attached.

Mr. Hunter is protesting our application on the basis of prior use for livestock watering. He claims that the spring was developed around 1903 by his father for use in the livestock business. Subsequently Roy Hunter purchased the business and range rights from his father and the water has been used continually for livestock since the development of the spring.

Death Valley National Monument was established by Presidential Proclamation on February 11, 1933, and included the area around Goldbelt Spring. The rules and regulations of the National Park Service prohibit the grazing of livestock except in special cases under a Special Use permit. No such permit has been issued to Roy Hunter or his father and therefore any livestock that have been watering at Goldbelt Spring have been in trespass. To the best of our knowledge, no livestock, other than an occasional stray, has been watering at the spring for many years.

In view of the fact that livestock cannot legally be watered at Goldbelt Spring, it is respectfully requested that Mr. Hunter's protest be denied.

Sincerely,

Fred W. Binnewies
Superintendent

Copy to Roy Hunter
Region Four

17

05-26-1959: letter to roy hunter regarding protest. ; may 26, 1959

File DEVA Docket 26

Edmund G. Brown
[redacted]
Governor

STATE OF CALIFORNIA
State Water Rights Board

HENRY HOLSINGER, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

1401 21st STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

L. K. HILL
EXECUTIVE OFFICER

May 26, 1959

Application 18433

COPY

Mr. Roy Hunter
Box 26
Olancha, California

Dear Mr. Hunter:

Your protest against Application 18433 of U. S. Death Valley National Monument has been received. Since you did not indicate that a copy thereof had been served upon the applicant, in accordance with Section 719 of our rules, a typewritten copy of the protest has been prepared and forwarded to the applicant.

If a hearing is found necessary, you will be given sufficient advance notice of the time and place.

Very truly yours,

/s/ L. K. Hill

L. K. Hill
Executive Officer

cc: U. S. Death Valley
National Monument
Death Valley, California

15

Copy aCopy

STATE OF CALIFORNIA

State Water Rights Board

Sacramento 7, Calif.

May 21, 1959

Application 18433

U. S. Death Valley National Monument
Death Valley
California

Gentlemen:

A protest against the approval of your above-numbered application has recently been received and the protestant states therein that a copy of the protest has been served upon you. Pursuant to our rules and regulations which are set forth in the enclosed leaflet, an answer to this and any other protest against the application should be submitted to the State Water Rights Board and a copy thereof served upon the protestant on or before June 11, 1959.

If it appears that it may be possible to reach an agreement with the protestant that will result in the withdrawal of the protest and thus avoid the delay and expense incident to a hearing which may otherwise be required, the Board, upon your request, will extend the period for answering the protest for any reasonable time as may be suggested to allow negotiations toward such an agreement.

Very truly yours,

/Sgd./L. K. Hill
L. K. Hill
Executive Officer

Enc.
48b.

File Deva Docket 26

COPY

Original stamped in
May 20 9:16 AM '59

Roy Hunter
Box 26
Olancha, Calif.

Jan 18, 1959

State Water Rights Board
1401 21st Street
Box 1592
Sacramento, California

Dear Sirs:

The Death Valley Monument has filed an application (18433) for water from Gold Belt Springs, the amount of 600 gal. a day.

I am protesting this application because of prior use. This spring was developed by my father around 1903 for use in the livestock business. I then purchased his livestock business and range rights.

It has a water trough and a pipeline which are essential in the livestock operation. This water has been used for livestock continually since the development of the spring.

Yours truly,

/s/ Roy Hunter

COPY

Docket 26

IN REPLY REFER TO:
L54-OBL

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

RECEIVED
NPS REGION FOUR OFFICE
APR 30 '59

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
[illegible]		5/7
RECREATION		
INTERP.		
LEGAL		
~~BFM~~		4/30

April 27, 1959

Memorandum

To: Regional Director, Region Four

From: Chief, Water Resources Section

Subject: Goldbelt Spring Water System, Application 18433, Docket 26, Death Valley

Sumner
see memo to Supt Death Valley 5/7/59

We are sending you the two best copies we have received of the notice of the subject application in case further duplication is needed. One copy, or a photostat, should be forwarded to WODC. I assume that several copies were sent to the Superintendent with instructions for posting or publication. ← done

A copy of the notice should be filed in the docket assembly in each office, using those which are attached for you and WODC, if the Superintendent received sufficient copies. Each office should also add the application number on the tab of the folder, and on the copy of the application in the folder. Your copy of the notice seems suitable for duplication if necessary. ← done

Referring to our docket assembly, I note that there is still no water use permit for the miner. In line with more recent correspondence, I assume that the permit will prescribe some water for wildlife, either out of the appropriated 650 gpd, or from a residual flow. Water allocations should be reconsidered, and a definition of the source of water for wildlife should be agreed upon with the State Water Rights Board. see memo of to Dir.

A. van V. Dunn
Chief, Water Resources Section

Attachments 2

Copy to: Superintendent, Death Valley
Chief, WODC

3



Edmund G. Brown
Governor

STATE OF CALIFORNIA

State Water Rights Board

1401 21st STREET
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

HENRY HOLSINGER, CHAIRMAN
W. P. ROWE, MEMBER
RALPH J. McGILL, MEMBER

L. K. HILL
EXECUTIVE OFFICER

January 30, 1959

Application 18433

Death Valley National Monument
Death Valley
California

Attention: Mr. Fred W. Binnewies
Superintendent

Gentlemen:

Returned herewith is your above-numbered water right application for clarification of several items.

In Paragraph 1, we are assuming that Salt Creek is tributary to Marble Canyon. Since the U.S.G.S. 15-minute quadrangle sheet Marble Canyon (1951) does not show a Salt Creek, please show Salt Creek on your supporting map.

In Paragraph 3, we have deleted recreation as a use inasmuch as our rules and regulations define recreation use as fishing, boating and swimming.

In Paragraph 4, we have changed the distance from the U.S.G.S. bench mark 38D to conform with your supporting map. Your supporting map distance would seem to be in agreement with the Marble Canyon quad sheet. Your supporting map shows the point of diversion to be in the SE¼ of SW¼, as we have indicated on the application.

In Paragraph 5, we have inserted the 40-acre subdivision that your supporting map indicates as the termination point of the conduit.

Docket 26 LS

Paragraph 11 has been amended to agree with your supporting map. We assume that the Ubehebe mine is the place of use shown on your supporting map. Please show the mine location on your supporting map. The Marble Canyon quad shows a Ubehebe Tale Mine some three miles distant with natural drainage toward Sand Flat and not to Marble Canyon as indicated in Paragraph 16.

Upon clarification of the above items please return your application and supporting map to this office for further action.

Very truly yours,

L. K. Hill

L. K. Hill
Executive Officer

Enc.

Docket 26 LS

12-16-1958: check receipt for filing fee;$10.00 ; december 16, 1958

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD
P. O. BOX 1592
SACRAMENTO 7, CALIFORNIA

Receipt No. 6219

Date December 16, 1958 ($ 10.00)

Received ($ 10.00)

☐ Cash ☐ Money Order ☒ Check *(Receipt contingent upon collection)*

U. S. Death Valley National Monument
Death Valley, California

Re FILING FEE

☐ Deposit ☐ Balance ☒ Full

Recordation Fee	$	Application No. 18433	$ 10.00
Verification—Fee	$	Permit Fee	$
Expense	$	Permit Extension Fee	$
	$	Petition Fee	$
☐ Uncleared Collections		Additional Fee on Charges	$
☐ Application		Certification Fee	$
☐ Proof of Claim		Copying—Comparing	$
☐ Adjudication Apportionment		Proof of Claim Fee	$
☐ Verification Advance		Adjudication Apportionment	$
☐ Other		Refund—Verification	$
		Other	$

STATE WATER RIGHTS BOARD

LESLIE C. JOPSON, *Chief Engineer*

By Jeanne Brennan
Title

FORM 300
47168 11-56 20M QUIN ⓑ SPO

Docket 26 LS

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

RECEIVED
NPS REGION FOUR OFFICE
DEC12 '58

December 9, 1958

	SURNAME	DAT
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
INTERP.		
LEGAL		

Memorandum

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Water Right Application, Goldbelt Spring, Docket 26

We are returning Purchase Order No. 34-452 covering the filing fee for the Application to Appropriate Unappropriated Water of Goldbelt Spring for cancellation since the miner who has requested the water use permit is paying the fee. This is the practice that we have followed in the past with other water right applications and it is assumed that there has been no change.

Fred W. Binnewies
Superintendent

Attachment

In duplicate

11-14-1958: letter enclosed with map, application, purchase order and voucher for filing fee requesting signatures ; november 14,

L54

Spaulding LSS
(later) Wentworth
McCarthen
Manbey BFM
(later) Johnston

November 14, 1958

Memorandum

To: Superintendent, Death Valley

From: ACTING Regional Chief of Operations, Region Four

Subject: Water Right Application, Goldbelt Spring, Docket 26

FILE COPY

Attached are the original and a copy of the final draft of an application and supporting map to appropriate water of Goldbelt Spring. The original should be signed by you and submitted to the State Water Rights Board.

Corrections to the application form have been made in accordance with Mr. Dunn's memorandum of September 16 and yours of October 1. The draft of the application typed by you shows the point of diversion to be located 400 feet, S50°W from benchmark 38D, while your memorandum says the monument is 700 feet north of the spring. We have shown the former tie on the final application and map. If the latter tie is right, the form and map should be corrected by you.

The copy of the application and map is to be filed in your Docket 26. A second copy of the map is attached, to be included with the original to the State. The additional copy of the application and map is for presentation to the miner at the time a water use permit is issued.

Also enclosed are a purchase order and voucher for $10.00 to be submitted with the application to cover the filing fee. The State should be requested to sign and return the voucher for payment.

We are distributing copies of the application and map for dockets in the Washington Office, WODC and this office.

B. F. Manbey
Acting Regional Chief of Operations

Attachments

Copy to: Director (w/attach.)
Chief, WODC "

LSSpaulding/eb

METHOD OF PURCHASE: Form Approved. Budget Bureau No. 48-R101

Indicate Method by Number:
1. Federal Supply Schedule.
2. Bureau of Federal Supply Stock.
3. Excess Property Transfer.
4. Advertising (R. S. § 3709).
5. Other Exemption from R. S. § 3709.
6. Miscellaneous.

(See Bureau of Federal Supply Circular No. 869) 6

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

PURCHASE ORDER

THIS NUMBER MUST APPEAR ON ALL PACKAGES AND PAPERS RELATING TO THIS ORDER.

ORDER NO. 34-452

DATE November 13, 1958

☐ SMALL BUSINESS ☐ OTHER BUSINESS

POINT OF ISSUE: 180 New Montgomery Street
San Francisco 5, California

REQUISITION NO.

APPROPRIATION SYMBOL AND TITLE: 14X1035 Construction, NPS

ACCOUNT: 128.2 RO

TO: SELLER
State Water Rights Board
State of California
P.O. Box 1592
Sacramento, California

CONSIGNEE AND DESTINATION: SHIP TO
National Park Service
Region Four Office
180 New Montgomery Street
San Francisco 5, California

INVITATION NO.	CONTRACT NO.	TIME FOR DELIVERY	DISCOUNT TERMS
	O.M.		

F. O. B. POINT	SHIP VIA	GOV'T B/L NO.

ITEM NO.	ARTICLES AND SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Work Order 4-WR-59				
1.	Filing fee for application to appropriate water of Goldbelt Spring in Death Valley National Monument	1	Fee		10.00

INVOICING INSTRUCTIONS:
1. Itemize fully on your invoice forms and refer to this purchase order number.
2. Mail invoice in duplicate to the "point of issue."

PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICE.

TOTAL 10.00

SIGNATURE: Le Roy E. Marcroft

NAME AND TITLE: Le Roy E. Marcroft
Procurement Officer

NONDISCRIMINATION IN EMPLOYMENT CLAUSE: In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

FORM 10-131
(REV. 2/57)

ORIGINAL

(1)

Standard Form No. 1034—Revised
Form prescribed by
Comptroller General, U. S.
September 7, 1950
(Gen. Reg. No. 51, Supp. No. 11)

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

D. O. Vou. No. .....

Bu. Vou. No. .....

U. S. Dept. of Interior, National Park Service - Region Four Office
(Department, bureau, or establishment)

Voucher prepared at 180 New Montgomery Street San Francisco 5, California November 13, 1958
(Give place and date)

PAID BY

(For use of Paying Office)

THE UNITED STATES, Dr., *Payee's Account No.* .....

To State Water Rights Board, State of California
(Payee)

P. O. Box 1592 (Address) Sacramento, (City) California (State)

No. and Date of Order	Date of Delivery or Service	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary) Discount Terms	QUANTITY	UNIT PRICE Cost	UNIT PRICE Per	AMOUNT Dollars	AMOUNT Cts.
34-452 Nov.13,1958		Work Order 4-WR-59 Filing fee for application to appropriate water of Goldbelt Spring in Death Valley National Monument	1			10	00
PAYMENT: Complete ☐ Partial ☐ Final ☐		Use continuation sheet(s) if necessary					
Shipped from	to	Weight	Government B/L No.		Total	10	00

I certify that the above bill is correct and just and that payment therefor has not been received.

(Sign original only)

Date ..... *Payee .....
(This certificate not required when a like certificate is made by payee on attached bill or bills)

Per ..... Title .....

(Payee must NOT use this space)

Differences .....

Account verified: correct for .....

(Signature or initials) .....

Contract No. Date Req. No. Date Invoice Rec'd.

Pursuant to authority vested in me, I certify that this account is correct and proper for payment.

†Approved for $ .....

By ..... SIGN ORIGINAL ONLY

Title .....

† .....
(Authorized Certifying Officer)

Title .....

Date .....

THE REVERSE OF THIS FORM MUST BE EXECUTED WHEN PURCHASES ARE MADE OR SERVICES SECURED WITHOUT WRITTEN AGREEMENT IN ANY FORM

ACCOUNTING CLASSIFICATION (For completion by Administrative Office)

Appropriation, limitation, or project symbol	Appropriation title	Limit'n. or Proj't. Amount	Appropriation Amount

Allotment symbol	Amount	Obligations liquidated	COST ACCOUNT Symbol	COST ACCOUNT Amount	OBJECTIVE CLASSIFICATION Symbol	OBJECTIVE CLASSIFICATION Amount

Paid by { Check No. ..... dated ....., 19....., for $..... } on Treasurer of the United States in favor of payee named above.

Cash, $....., on ....., 19..... Payee .....
(Sign original only)

Per .....

Title .....

* When a voucher is signed or receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

† If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign on the line below "Approved for $.....", and over his official title.

16—22000-3

METHOD OF OR ABSENCE OF ADVERTISING

METHOD OF ADVERTISING

1. Advertising in newspapers Yes ☐ No ☐
2. (*a*) Advertising by circular letters sent to ..... dealers.
   (*b*) And by notices posted in public places Yes ☐ No ☐.

   (If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made below.)

ABSENCE OF ADVERTISING

3. Without advertising, under an exigency of the service which existed prior to the order and would not admit of the delay incident to advertising.
4. Without advertising in accordance with .....
5. Without advertising, it being impracticable to secure competition because of .....

.....

.....

.....

.....

(Here state in detail the nature of the exigency or circumstances under which the securing of competition was impracticable under 3 and 4)

NOTE.—The above form "Method of or Absence of Advertising" is to be used when purchases are made or services secured under proper authority without written agreement in any form. In case of a written agreement (formal contract, proposal, and acceptance, or less formal agreement) Standard Form No. 1036—Revised should be used for abstracting the method of or absence of advertising and award of contract. (See General Regulations No. 51, as amended.)

16—22900-2 ☆ U. S. GOVERNMENT PRINTING OFFICE : 1950—O-75806

METHOD OF PURCHASE: Form Approved. Budget Bureau No. 48-R101

Indicate Method by Number:
1. Federal Supply Schedule.
2. Bureau of Federal Supply Stock.
3. Excess Property Transfer.
4. Advertising (R. S. § 3709).
5. Other Exemption from R. S. § 3709.
6. Miscellaneous.
(See Bureau of Federal Supply Circular No. 869) 6

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

PURCHASE ORDER

THIS NUMBER MUST APPEAR ON ALL PACKAGES AND PAPERS RELATING TO THIS ORDER.

ORDER NO. 34-452

DATE November 13, 1958

☐ SMALL BUSINESS ☐ OTHER BUSINESS

POINT OF ISSUE 180 New Montgomery Street
San Francisco 5, California

REQUISITION NO.

APPROPRIATION SYMBOL AND TITLE 14X1035 Construction, NPS

ACCOUNT 128.2 RO

TO:

SELLER
State Water Rights Board
State of California
P.O. Box 1592
Sacramento, California

CONSIGNEE AND DESTINATION

SHIP TO
National Park Service
Region Four Office
180 New Montgomery Street
San Francisco 5, California

INVITATION NO.	CONTRACT NO.	TIME FOR DELIVERY	DISCOUNT TERMS
	O.M.		

F.O.B. POINT	SHIP VIA	GOV'T B/L NO.

ITEM NO.	ARTICLES AND SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Work Order 4-WR-59				
1.	Filing fee for application to appropriate water of Goldbelt Spring in Death Valley National Monument	1	Fee		10.00
				TOTAL	10.00

Receipt on _____ (DATE) is hereby acknowledged of your Purchase Order, of which this is a copy.

_____ (NAME OR SIGNATURE OF VENDOR)

By _____ (SIGNATURE)

Title _____

SIGNATURE

NAME AND TITLE (Sgd.) Le Roy E. Marcroft
Procurement Officer

IMPORTANT.—Vendor must sign and mail this acknowledgment to "Point of Issue" immediately upon receipt of the original purchase order.

Delivery will be made on or about _____, 19____

FORM 10-131
(REV. 2/57)

ACKNOWLEDGMENT COPY

(2)

Standard Form No. 1034a Revised
Form prescribed by
Comptroller General, U. S.
September 7, 1950
(Gen. Reg. No. 51, Supp. No. 11)

IC VOUCHER FOR PURCHASES A SERVICES OTHER THAN PERSONAL

D. O. Vou. No. .....

Bu. Vou. No. .....

U. S. Dept. of Interior, National Park Service - Region Four Office
(Department, bureau, or establishment)

Voucher prepared at 180 New Montgomery Street, San Francisco 5, California (Give place and date) November 13, 1958

PAID BY

(For use of Paying Office)

THE UNITED STATES, Dr., *Payee's Account No.* .....

To State Water Rights Board, State of California
(Payee)

P. O. Box 1592 (Address) Sacramento, (City) California (State)

No. and Date of Order	Date of Delivery or Service	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary) Discount Terms	QUANTITY	UNIT PRICE Cost	UNIT PRICE Per	AMOUNT Dollars	AMOUNT Cts.
34-452 Nov.13,1958		Work Order 4-WR-59 Filing fee for application to appropriate water of Goldbelt Spring in Death Valley National Monument	1			10	00
PAYMENT: Complete ☐ Partial ☐ Final ☐		Use continuation sheet(s) if necessary			Total	10	00

Shipped from ..... to ..... Weight ..... Government B/L No. .....

(Payee must NOT use this space)

Differences .....

Account verified; correct for .....
(Signature or initials)

Contract No. ..... Date ..... Req. No. ..... Date ..... Invoice Rec'd. .....

MEMORANDUM

ACCOUNTING CLASSIFICATION (For completion by Administrative Office)

Appropriation, limitation, or project symbol	Appropriation title	Limit'n. or Proj't. Amount	Appropriation Amount

Allotment symbol	Amount	Obligations liquidated	COST ACCOUNT Symbol	COST ACCOUNT Amount	OBJECTIVE CLASSIFICATION Symbol	OBJECTIVE CLASSIFICATION Amount

Paid by | Check No. ..... dated ....., 19 ..., for $ ..... } on Treasurer of the United States in favor of payee named above.
Cash, $ ..... , on ....., 19 ...

16—22900a 2

METHOD OF OR ABSENCE OF ADVERTISING

METHOD OF ADVERTISING

1. Advertising in newspapers Yes ☐ No ☐
2. (*a*) Advertising by circular letters sent to ..... dealers.
   (*b*) And by notices posted in public places Yes ☐ No ☐.

   (If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made below.)

ABSENCE OF ADVERTISING

3. Without advertising, under an exigency of the service which existed prior to the order and would not admit of the delay incident to advertising.
4. Without advertising in accordance with .....
5. Without advertising, it being impracticable to secure competition because of .....

.....

.....

.....

.....

(Here state in detail the nature of the exigency or circumstances under which the securing of competition was impracticable under 3 and 4)

NOTE.—The above form "Method of or Absence of Advertising" is to be used when purchases are made or services secured under proper authority without written agreement in any form. In case of a written agreement (formal contract, proposal, and acceptance, or less formal agreement) Standard Form No. 1036—Revised should be used for abstracting the method of or absence of advertising and award of contract. (See General Regulations No. 51, as amended.)

☆ U. S. GOVERNMENT PRINTING OFFICE : 1950 O—75805

16—22900a-2

file DEVA Docket 26 Left Side

IN REPLY REFER TO:

L 54

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

October 1, 1958

RECEIVED
NPS REGION FOUR OFFICE
OCT -6 '58

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
[illegible]		
LEGAL		

Whitworth

Memorandum

To: Regional Director, Region Four

From: Superintendent, Death Valley

Subject: Water Right Application, Goldbelt Spring, Docket 26

This refers to Mr. Johnston's memorandum of September 23 concerning corrections on the water right application for Goldbelt Spring. Attached for your information is a copy of the application on which we have noted corrections in accordance with Mr. Dunn's memorandum of September 17.

See memo of 11/4 to Supt. Death Valley

A copy of the mining claim notice is not in our files since the claim was established prior to the time that the special regulations were amended to require furnishing this office with copies. We will attempt to secure a photostat copy the next time someone goes to the county seat at Independence.

Bench mark 38 D is a USGS marker installed in 1948. It is 700 feet north of spring and 24 feet east of center of road.

Fred W. Binnewies
Superintendent

In duplicate

Attachment

5

L-54
Z-1-1, T26

Spaulding LSS
Manbey
Whitworth
Johnston FTJ

September 23, 1958

Memorandum

To: Superintendent, Death Valley

From: Regional Chief of Operations, Region Four

Subject: Water Right Application, Goldbelt Spring,
Docket 26, Death Valley

We received from Mr. Dunn, attached to his memorandum of September 16, a draft, supporting maps and docket folder of the subject application. We note that you have been sent copies of the same material.

Following Mr. Dunn's suggestion, the final draft will be prepared in this office.

We would appreciate receiving your clarification of a few items:

1. Benchmark 38 D should be identified as a USGS or USC & GS Monument. The list of level monuments in the Park Engineer's file should supply this without necessitating a field check.

2. A copy of the mining claim notice in a form suitable for photostatic reproduction would be helpful in supplying answers to Mr. Dunn's second suggestion.

3. If you are able to clarify "cooling of engines, underground drilling" of statement 16, please do so. Otherwise, we change the statement to "cooling of mining equipment."

(SGD) FRED T. JOHNSTON

Fred T. Johnston
Regional Chief of Operations

LSSpaulding:hat

File left side Docket 26

IN REPLY REFER TO:
L54-L

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

RECEIVED
NPS REGION FOUR OFFICE
SEP 22 '58

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
INTERP.		
LEGAL		

September 16, 1958

Memorandum

To: Regional Director, Region Four

From: Chief, Water Resources Section

Subject: Water Right Application, Goldbelt Spring, Docket 26, Death Valley

~~Spaulding~~ L54 9/22
✓ Whitworth

I am retaining one copy and sending you and Mr. Binnewies each one copy of the application and supporting map which the latter sent to us with memorandum of March 26. Also attached is a print of NM-DV-6992 which we have compiled from USGS quadrangles. I have made certain corrections. Also being distributed is the folder for Docket 26 for this water right.

See memo of 9/23 to Supt.

Mr. Spaulding should take over the preparation of applications as rapidly as possible, in accordance with the delegated authority. Such applications should, of course, have our approval before they are filed. In this case, no further approval will be needed if the following suggestions are followed:

1. The map should show the tie to the Bench mark, and at least a scaled latitude and departure from the Bench mark to an established corner on a USGS Quadrangle. Attached Drawing 6992 shows that the spring is probably in extreme south of Sec. 29, as project northerly two townships from Sec. 31, T 17 S, R 42 E; or northern part of Sec. 31 projected east 1½ ranges from Sec. 34, T 15 S, R 40 E. Consideration should be given to which projection should be adopted.

2. The same drawing shows the Quackenbush Mine about a mile north of the spring and Bench mark; the Ubehebe Talc Mine about the distance which Mr. Binnewies has shown to north, but also a mile or so to west of the spring; and by note, that the Ubehebe Mine (no "Talc") many miles further to the north. The mine should be identified by proper identity. I believe that the miner should be consulted, and that a copy of the county filing of the mining claim should also be provided for each docket assembly. That filing may

3

also give some clue to projected sections, which the miner used, but the U. S. should not accept them if in error.

3. I also recommend larger lettering, with arrows to the points or lines. The name of the one preparing the application should then be shown on proper line in upper left corner. Only one original drawing need be made, and photostats should then be obtained for the other copies.

4. I have revised the wording of the name of the claimant, to be the U.S., by the Superintendent.

5. The source should be indicated as tributary to the main stream.

6. Statements 2, 16 and 17 should be consistent as to the quantity of water. If the claim is to 400 gpd in statement 2, the justification for that use should be shown in statements 16 and 17. If there are only 8 people in the camp, they will use between 35 gpd/c and 60 gpd/c, depending on the type of camp facilities, but 350 gallons is not an identifiable product. The rest of the water should be justified for public visitors, irrigation, and the mining use in statement 16.

7. As I mentioned to Mr. Spaulding in May, the statement 16 "cooling of engines, underground drilling water" is not clear. I do not see where it matters that something is underground. The statement should indicate that 150 gallons per day are used to cool jackhammers, or other specific mining equipment.

8. I have added a statement below statement 21 which should appear on all applications.

The original and five copies of application are needed to provide four for dockets, one for the miner, and original for the State Water Rights Board. Each should be accompanied by map, and the State needs an extra print of the map.

A. van V. Dunn
Chief, Water Resources Section

Attachments 4

Copy to: Superintendent, Death Valley, with 4 attachments
Chief, WODC, with Docket 26 folder

3

L 54

RECEIVED
NPS REGION FOUR OFFICE
MAR 31 '58

March 26, 1958

	SURNAME	DATE
REG. DIR.		
ASST. R.D.		
OPERATIONS		
ADMIN.		
RECREATION		
NUMBER 2	DFm	3/31
LEGAL		

x Spaulding 4/1 4/8 no action needed

Memorandum

To: The Director

From: Superintendent, Death Valley

Subject: Water Right Application, Goldbelt Spring

Attached are three copies of Water Right Application for 500 gallons per day from Goldbelt Spring for Mr. Dunn's review.

Mr. Spaulding reviewed the application during his recent visit here and did not recommend any changes other than to add "projected" in front of the word "Section" in Item 4. So far as can be determined no other water rights have been filed on this spring. If the application is found to be satisfactory please return sufficient copies for submission to the State Water Rights Board.

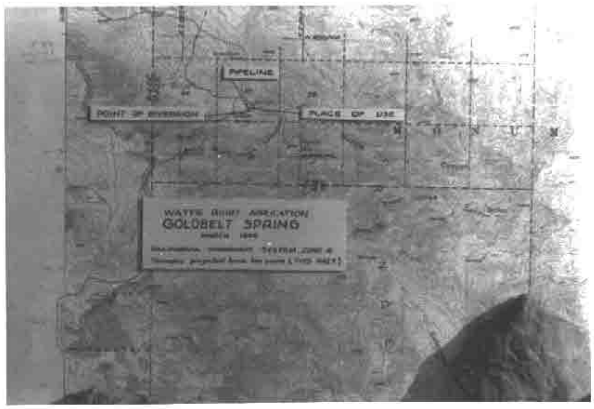
We will also prepare the water use permit to accompany the application.

Fred W. Binnewies
Superintendent

Attachments 3

Copy to Region Four Office ✓





Trial photos by Spaulding - March 26 1958

Maps and Miscellaneous Information

Application
Permit
License

STATE OF CALIFORNIA— STATE WATER RIGHTS BOARD

Draft returned with Bonnevies memo of October 1, 1958

Applicant United States, Bureau

Sec. 29 Township 15 S Range 22 E, MD Meridian

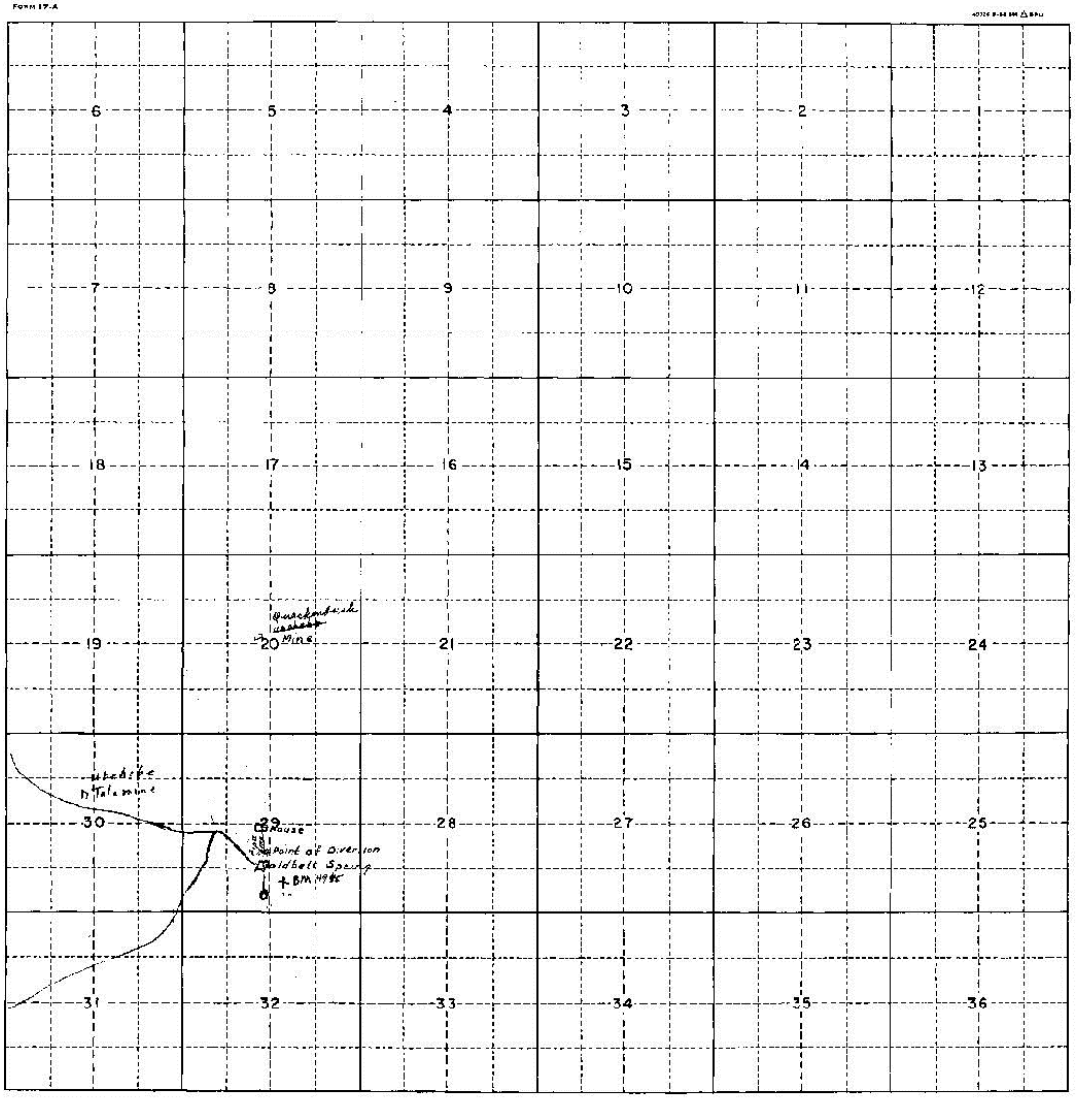
Mapped by Robert Lee

County Fresno

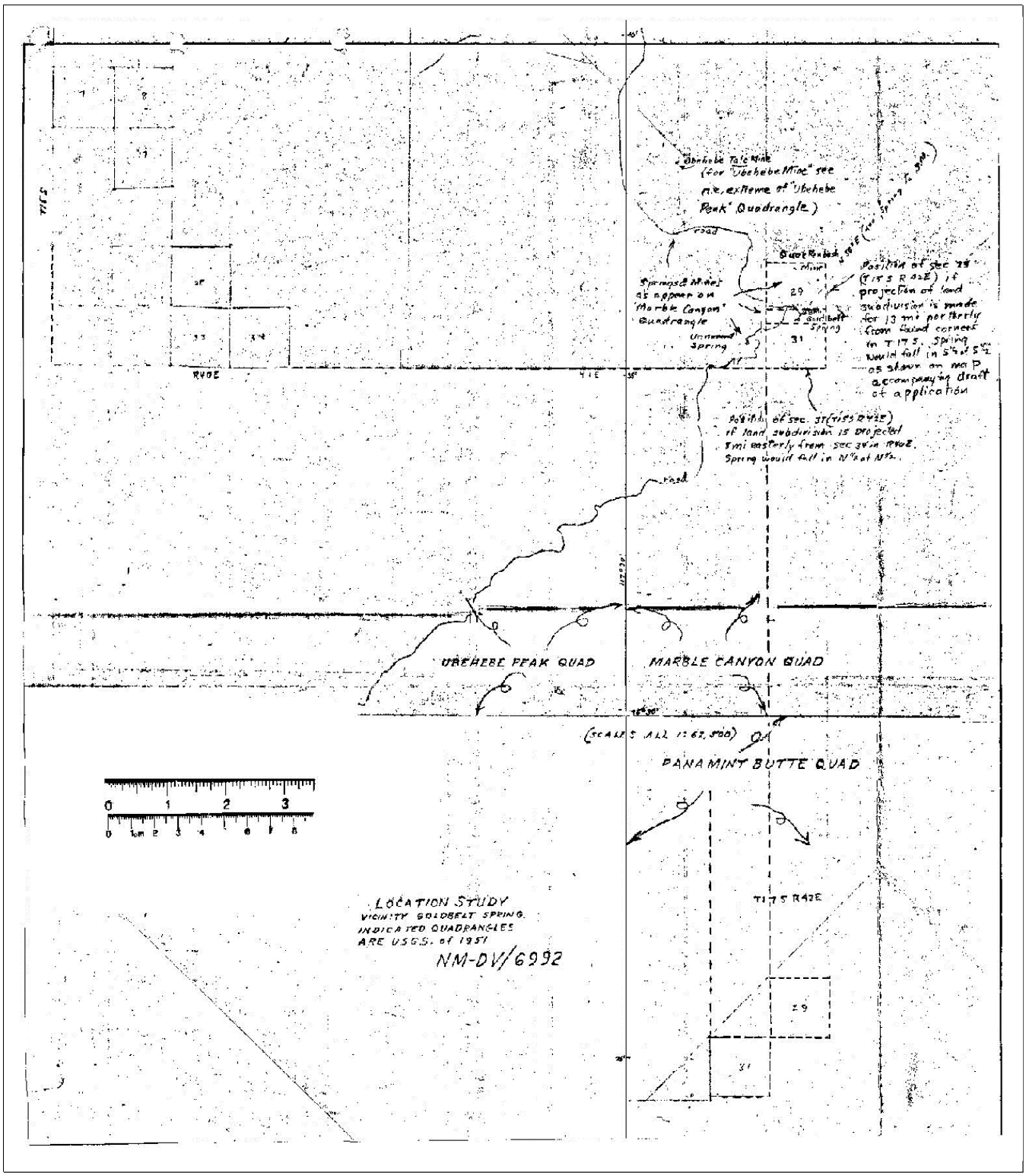
final draft prepared 11/13/58

NOTE.—Maps are to be drawn on this plat only when total amount of water to be diverted does not exceed three cubic feet per second for direct diversion or does not involve storage in a reservoir having a capacity in excess of 200 acre-feet. For amounts less or reservoirs smaller than those above stated the average applicant can prepare a very satisfactory map without the aid of a surveyor by observing instructions on the reverse side of this plat.

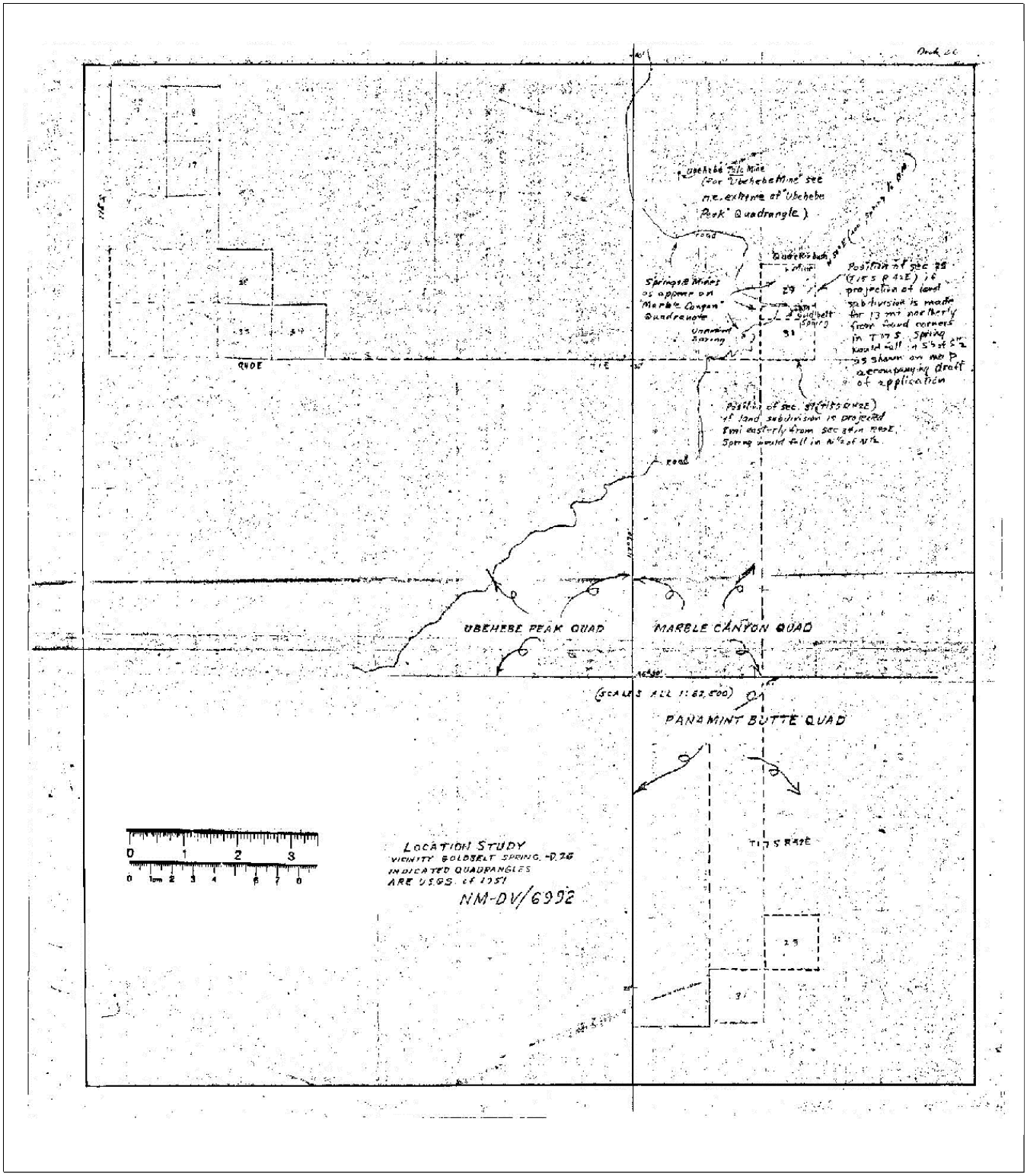
Form 17-A



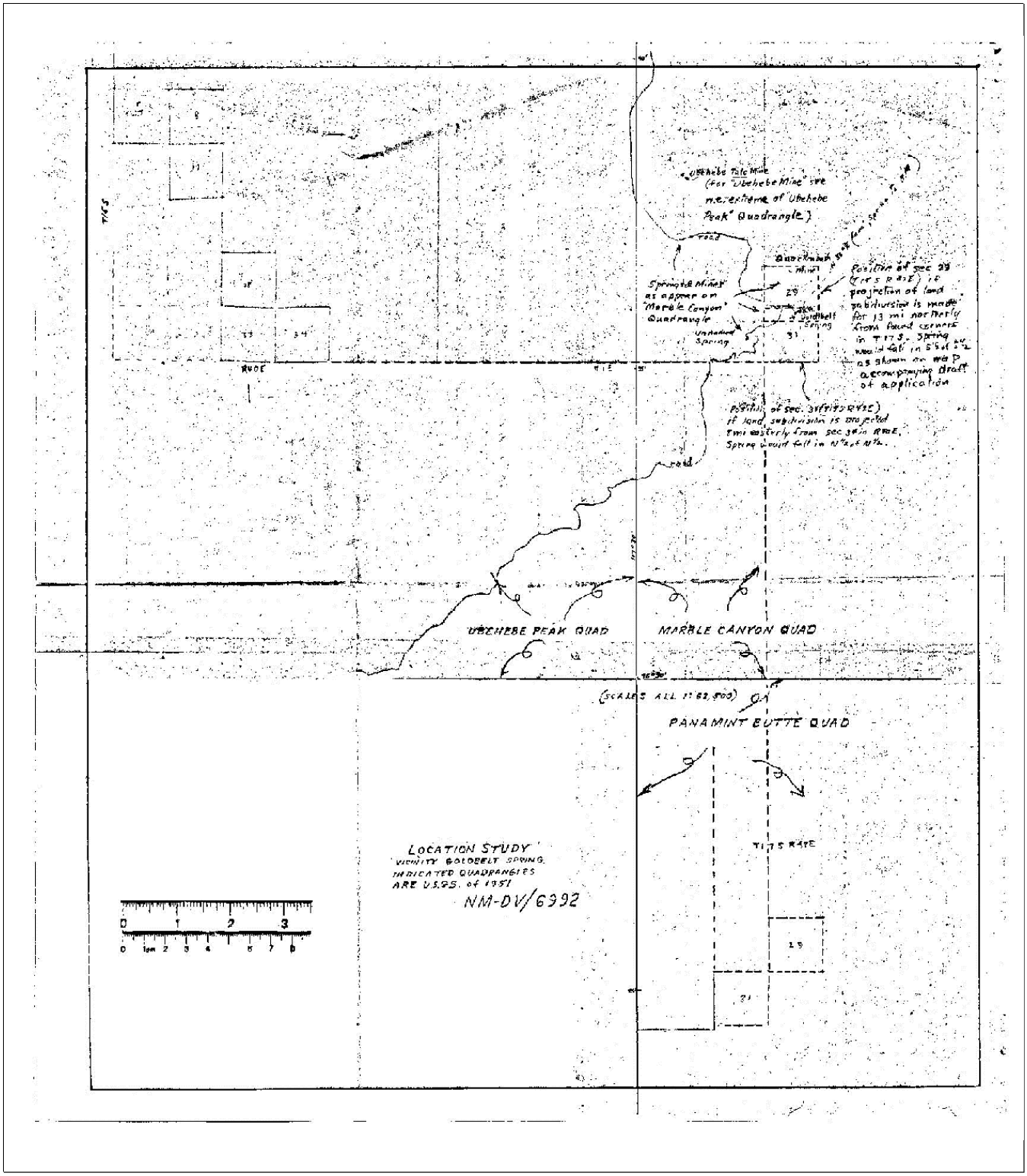
00-00-0000: location study map - vicinity of goldbelt spring



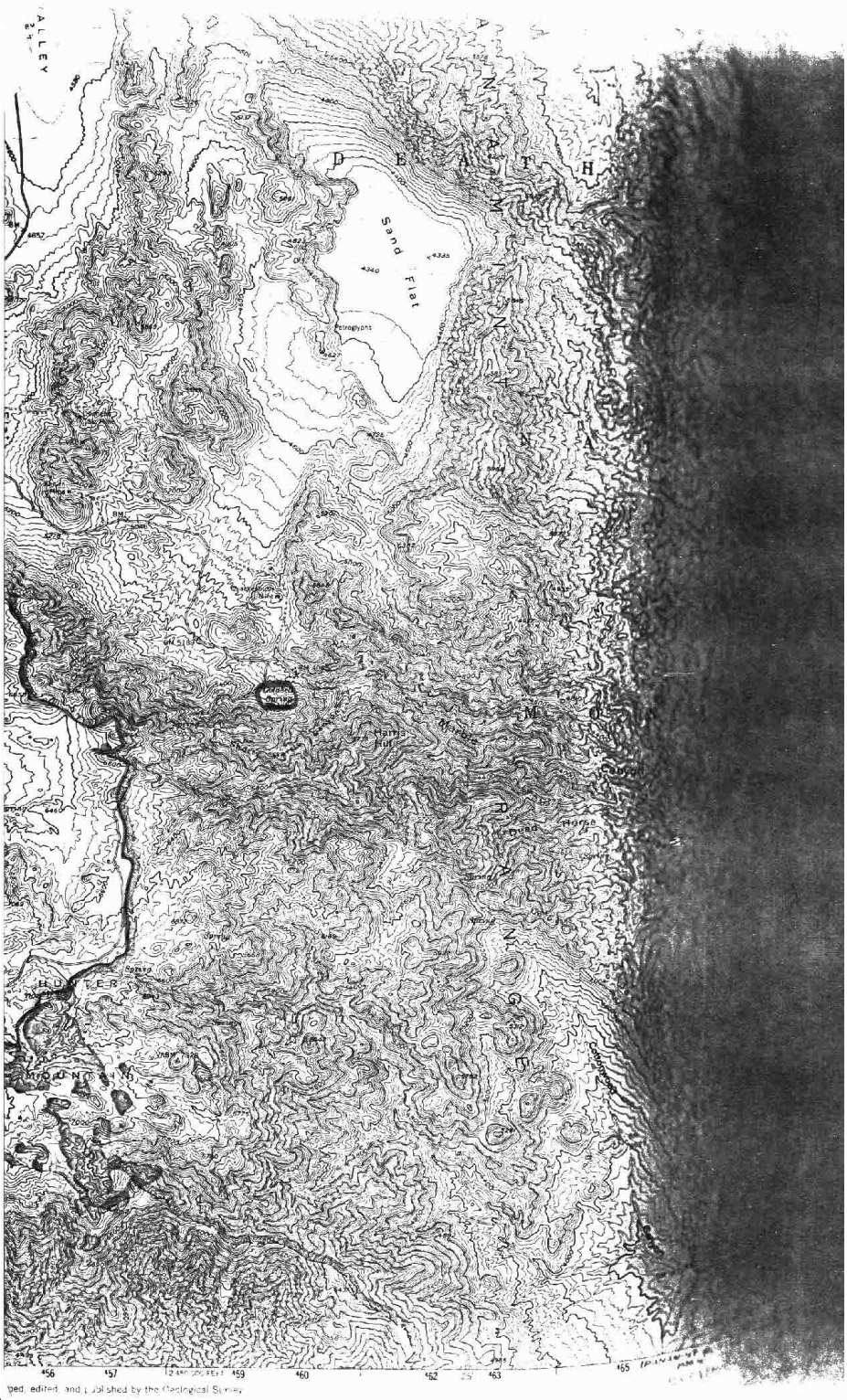
00-00-0000: location study map - vicinity of goldbelt spring



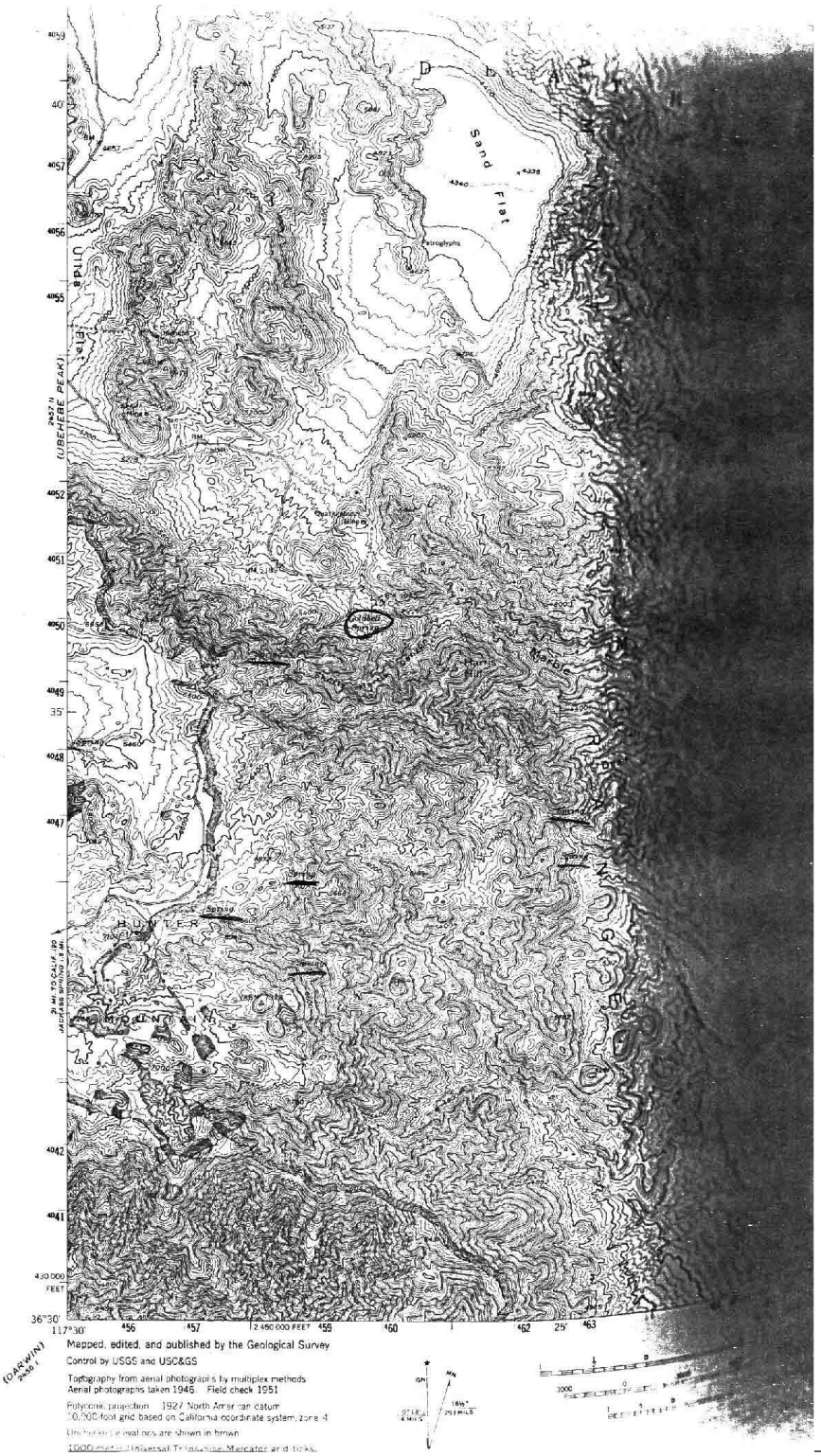
00-00-0000: location study map - vicinity of goldbelt spring



00-00-0000: map of goldspring.



00-00-0000: map of goldspring.



Docket Information

Number of Documents in Docket 187

Documents Dated from 3/26/1958 to 7/3/2012

Docket Compiled: 7/12/2012