



Docket No: 2

State Water Rights Documentation

04-15-1960: letter: documents requested; april 15, 1960

APR 15 1960

Attention: Mr. W. Wiso

DEAR SIR:

Enclosed are the documents requested by your letter of April 6, 1960. There is one certified copy of each and four uncertified copies. They are:

1. The Notice of Intention to Make Formal Application to Appropriate Water filed by the National Park Service on January 4, 1932.
2. The Application for Permit, No. 1976, filed by the National Park Service on January 4, 1932.

Sincerely yours,

(SIGNED)

Thomas J. Allen
Regional Director

Enclosure

Copy to: Director (2) w/o enclosures
WDC (2) w/o enclosures ✓
Supt., Carlsbad Caverns w/o enclosures

[illegible]

C O P Y

BEFORE THE HONORABLE STATE ENGINEER
OF THE STATE OF NEW MEXICO.

IN THE MATTER OF THE APPLICATION)
 OF THOMAS BOLES, SUPERINTENDENT OF)
 THE CARLSBAD CAVERNS NATIONAL PARK,) No. 1976
 TO APPROPRIATE WATER FROM RATTLE)
 SNAKE SPRINGS.)

PROTEST OF IDA MAY WARD HARRISON

Comes the undersigned Ida May Ward Harrison and respectfully enters this her protest against the granting to Applicant Thomas Boles, Superintendent of the Carlsbad Caverns National Park, acting for and in behalf of the U.S. Department of the Interior National Park Service, to appropriate water from Rattle Snake Springs situated in Eddy County, New Mexico by means of a pumping plant as described in the Notice issued by the State Engineer, which said Application requests that said Applicant be given a permit to appropriate one half cubic foot of water per second from said Rattle Snake Springs between January 1st and December 31st of each year, and for grounds for such protest, states:

1. That said Application is made by "Thomas Boles, Superintendent of the Carlsbad Caverns National Park, acting for and in behalf of the U.S. Department of the Interior National Park Service" and is thus not made in behalf of any person, association or corporation, but is made in behalf of the Government of the United States and is therefore, not such an application for a permit for the appropriation of water as the Honorable State Engineer has jurisdiction to grant, the jurisdiction of the Honorable State Engineer being specifically limited to the granting of applications made by "any person, association or corporation" under the provision of Section 151-129, New Mexico Statutes Annotated, 1929 compilation. Without tending to waive or waiving the jurisdictional allegation hereinabove set out and alleged, your protestant would further show:

"a) That for many years, to-wit, since the year 1880, one Henry Harrison, the deceased husband of the undersigned Protestant who is now the owner of said water right, was the owner of the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of Section 23 and the N $\frac{1}{2}$ of N $\frac{1}{2}$ of Section 26, Township 25 South, Range 24 East, N.M.P.M. and of the land upon which what is known as Rattle Snake Springs in Eddy County, New Mexico heads, and since 1880 the said Henry Harrison and his successor in interest in and to said property, to-wit, your Protestant herein, has used and appropriated water from said Spring, to-wit 5.35 second feet for the purpose of supplying water for irrigating the lands above described and for the purpose of watering stock therewith and diverting the water from said Spring by means of headgates, ditches, etc. as fully appears upon the plat of said irrigation system known as the Henry Harrison Ditch System from Rattle Snake Springs, which map was duly examined and accepted for filing in the office of the State Engineer of the State of New Mexico on the 24th day of June, 1921, and that the said Henry Harrison on the 22nd day of June, 1921 duly made and filed his Declaration of Owner of Water Right, which Declaration was duly recorded on the 14th day of November, 1921 at 11 o'clock A.M. in the office of the County Clerk of Eddy County, New Mexico and recorded in Book 9, Miscellaneous Records, page 12 and was duly filed in the office of the State Engineer of the State of New Mexico on the 24th day of June, 1921 and given No. 0432, a copy of which said Declaration

-2-

of Water Right, together with the certificate of the State Engineer is hereto attached, marked Exhibit "A" and made a part hereof.

2. Your protestant further states that she is informed and believes and therefore alleges that for many years and prior to the year 1907 and at all times since said date, all of the remainder of said water of said Rattle Snake Springs, including the return flow into the Rattle Snake Springs watershed from the irrigation of lands belonging to the protestant herein and her predecessors in interest, has been appropriated and used for beneficial purposes, to-wit, for irrigation purposes and for stock by W. E. Washington on what is known as the Washington Ranch property in Eddy County, New Mexico, and that the entire flow of said Rattle Snake Springs is no more than sufficient to irrigate the lands which are now being irrigated with it by your Protestant and the said W. E. Washington, and that all of the flow of said Spring of every kind or character is now actually being diverted and used to beneficial use for agricultural, domestic and stock raising purposes.

3. Your Protestant would further show the court that the lands of your Protestant herein being irrigated from the said Rattle Snake Springs as well as those of the said W. E. Washington, hereinabove set out, are lands which are near the source of the waters of the said Rattle Snake Springs, the said Rattle Snake Springs being directly upon the lands owned by your Protestant herein, and that to permit said water to be diverted by the Applicant as is proposed, would be detrimental to the persons who own land along the shed and stream system of said Rattle Snake Springs and would prevent the benefits of the use of said waters from being distributed among the inhabitants and landowners along such stream system, and the granting of said permit would be in direct violation of the rights of said prior appropriators and prior users of water along the head waters of said stream system, which rights are recognized by Section 151-155 of the 1929 Code.

4. Your Protestant would further show the court that under the Application filed herein the Applicant intends to secure water from Rattle Snake Springs and, by means of a pumping plant, pump the same to a reservoir to be situated in the NW $\frac{1}{4}$ of Section 21, Township 24 South, Range 25 East and to use all of said water for domestic, public and irrigation purposes. That in truth and in fact said water is being secured for the purpose of supplying water to what is known as the Carlsbad Cavern situated in Eddy County, New Mexico for the purpose of operating the machinery in and around said Cavern and for the purpose of using the same as drinking water for persons who reside in the Carlsbad Cavern National Park and Protestant is informed and believes is not to be used for irrigation purposes to any extensive degree, and the conveyance of such water to said point would convey the water out of the water shed of the said Rattle Snake Springs and none of said water would return or flow back into said Spring on the water shed of said Springs, but would all be utilized at said Carlsbad Caverns National Park, and that the use of such water and such manner would result in depriving the Protestant herein and the lower users or appropriators of water to such an extent that they would be unable to secure water in amounts sufficient to fulfill their reasonable requirements for water and would seriously injure and impair their property rights.

WHEREFORE, Protestant prays:

-3-

1. That said Application of the Applicant be dismissed for want of jurisdiction and in the alternative,

2. That in the event the State Engineer determines he has jurisdiction in this matter, that said Application be denied upon the ground that there is no unappropriated water available from said Rattle Snake Springs for the purposes set forth in the Application filed herein.

Ida May Ward Harrison (signed)
Protestant.

STATE OF NEW MEXICO)
COUNTY OF EDDY) SS

I, Ida May Ward Harrison, Protestant above named, of lawful age, being first duly sworn upon oath state:

That I have read the above and foregoing Protest and know the contents thereof and that the same are true except such matters as were stated upon information and belief, and as to those matters, I am informed and believe them to be true.

Ida May Ward Harrison (signed)
Subscribed and sworn to before me this 12th day of May, 1932.

Caswell S. Neal,
Notary Public

My Commission Expires:
4/8/32
(seal)

STATE OF NEW MEXICO)
COUNTY OF EDDY)

SS

AFFIDAVIT.

W. B. Grammer of lawful age, being first duly sworn, states:

I am familiar with what is known as Rattle Snakes Spring in Eddy County, New Mexico and have been for 25 years. I am familiar with the flow from said Spring and with the water right owned thereon by the surviving heirs at law of Henry Harrison and the use of the water therefrom upon what is known as the Washington Ranch in Eddy County, New Mexico.

That all of the water of said Spring is now and has for a number of years been put to beneficial use by diverting water from said Spring on to land owned by the heirs at law of Henry Harrison and by W. E. Washington on what is known as the Washington Ranch, and has been used and is being used for agricultural and stock raising purposes.

That there is no water unappropriated in said Spring which is not already appropriated and used for beneficial use on said Harrison property and Washington property.

That I understand application has been made to the State Engineer by Thomas Boles, Superintendent of Carlsbad Cavern National Park Service, acting for and in behalf of the U.S. Department of the Interior, for a permit to appropriate, and by means of a pumping plant to convey said water to a reservoir site for use on what is known as the Carlsbad Cavern National Park.

That the diversion of said water as requested in said permit will seriously injure and impair and damage the present existing water rights and appropriations of water from the Rattle Snake Spring and the granting of said application will, in my opinion, seriously injure and impair the vested property rights in said water of the prior appropriators and users thereof above described.

W.B. Grammer

Subscribed and sworn to before me this 12th day of May, 1932.

Caswell S. Neal,
Notary Public.

My Commission Expires: 4/8/35
(seal)

STATE OF NEW MEXICO)
County of Eddy) SS

AFFIDAVIT.

Cyril Pyskin of lawful age, being first duly sworn, states:

I am familiar with what is known as Rattle Snakes Spring in Eddy County, New Mexico and have been for 10 years. I am familiar with the flow from said Spring and with the water right owned thereon by the surviving heirs at law of Henry Harrison and the use of the water therefrom upon what is known as the Washington Ranch in Eddy County, New Mexico.

That all of the water of said Spring is now and has for a number of years been put to beneficial use by diverting water from said Spring on to land owned by the heirs at law of Henry Harrison and by W. E. Washington on what is known as the Washington Ranch, and has been used and is being used for agricultural and stock raising purposes.

That there is no water unappropriated in said Spring which is not already appropriated and used for beneficial use on said Harrison property and Washington property.

That I understand application has been made to the State Engineer by Thomas Boles, Superintendent of Carlsbad Cavern National Park Service, acting for and in behalf of the U.S. Department of the Interior for a permit to appropriate, and by means of a pumping plant to convey said water to a reservoir site for use on what is known as the Carlsbad Cavern National Park.

That the diversion of said water as requested in said permit will seriously injure and impair and damage the present existing water rights and appropriations of water from the Rattle Snake Spring and the granting of said application will, in my opinion, seriously injure and impair the vested property rights in said water of the prior appropriators and users thereof above described.

Cyril Pyskin

Subscribed and sworn to before me this 12th day of May, 1932.

Caswell S. Neal,
Notary Public.

My Commission Expires: 4/8/35
(Seal)

PUBLISHER'S AFFIDAVIT

Before me, the undersigned, personally appeared

W. J. Harpole

to me well known who after being duly sworn deposes and says that he is the Manager of the DAILY CARLSBAD CURRENT-ARGUS, a city newspaper published at Carlsbad and that the attached

notice

NOTICE STATE ENGINEER'S OFFICE

Number of Application 1976
Santa Fe, N. M., March 14th, 1932
Notice is hereby given that on the 6th day of January, 1932 in accordance with Section 28, Chapter 49, Irrigation Laws of 1907 Thomas Holes, Supt. of the Carlsbad Caverns National Park, acting for and in behalf of the U. S. Dept. of Interior, National Park Service of Carlsbad County of Eddy, State of New Mexico, made formal application to the State Engineer of New Mexico for a permit to appropriate the Public Waters of the State of New Mexico. Such appropriation is to be made from Rattlesnake Springs by means of a pumping plant at a point whence the SW corner of Section 23, T. 25 S. R. 24 E., N. M. P. M. bears S. 65° 18' W. 1780 feet distant being in the SW 1/4 of Section 23, T. 25 S. R. 24 E. and one-half (0.5) cu. ft. per sec. is to be conveyed to a reservoir, situate in the NW 1/4 of Section 31, T. 24 S. Range 25 E. by means of a four inch pipe line and there used for domestic, public and irrigation purposes between the dates of January 1st and December 31st of each year.
Any person, firm, association or corporation owning that the granting of the above application would be truly detrimental to their rights in the water of said stream system shall file a complete statement of their objections substantiated by affidavits with the State Engineer and serve a copy on applicant on or before the 15th day of May, 1932. The date set for the Engineer to take this application up for final consideration unless protested. In case of protested applications all parties will be given a reasonable length of time in which to submit their evidence in detail or arrange a date convenient for a hearing or appoint a referee satisfactory to all to take testimony. Appearance is not necessary unless advised officially by letter from the State Engineer.

GEO. M. NEEL,
State Engineer.
3-30-46

was published in said newspaper proper and not in a supplement thereto in

English and Two consecutive issues, the first publication

being dated March 30th and the last publication being dated April 6th

W. J. Harpole

Manager of the Daily Carlsbad Current-Argus

Publisher's Costs \$ 7.54 Paid by National Park Service

SUBSCRIBED and sworn to before me this 13th day of April

1932

My Commission Expires October 24, 1934 Franklin Johnson Notary Public

C O P Y

January 4 1932:

Mr. George M. Neel.,
State Engineer,
Santa Fe, New Mexico.

Dear Sir:-

In addition to the letter sent you on December 30th,
I inclose the following forms which have been repared by our Chief
Engineer: Notice of Intention to make Formal Application:
Application for Permit: both covering the use of unappropriated
waters from Rattlesnake Springs in Section 23, T-25-S; R-24-E.
N.M.P.M. located about five miles souht of Carlsbad Cavern.

Yours very truly,

Thomas Boles, Superintendent.

Inclosures:

C O P Y

December 30 1931:

Mr. George M. Neal.,
State Engineer.,
Santa Fe, New Mexico.

Dear Sir:--

You are hereby notified that the United States of America intends to utilize all of the unappropriated waters of Rattlesnake Springs, and its tributaries, a tributary of Black River, to be diverted from said spring at a location not yet determined, in Section 23: Township 25 South, Range 24 East, New Mexico Meridian, in the County of Eddy, State of New Mexico, for domestic purposes in Carlsbad Caverns National Park.

I inclose check for \$10.00 to cover the customary filing fee; which check you will please return in case there is no charge for filings made by the United States of America.

Respectfully.,

THOMAS BOLES, Superintendent.

\$10 inclosed:

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
FIELD HEADQUARTERS
SAN FRANCISCO, CALIF.

December 4, 1931.

Mr. George M. Neel,
State Engineer,
Santa Fe, New Mexico.

Dear Mr. Neel:

I have your two letters of November 24 and December 1, and I thank you very much for the assistance you are giving us in the matter of water supply for Carlsbad Caverns National Park.

In reading your letter of November 24 I had great hopes in the report of Mr. Yates. However, it appears that Mr. Yates did not make a field investigation at this time -- simply reporting on his 1923 investigation.

Would it not be better for Mr. Yates to make a recheck in the field of the present flow of the spring and the amount of land being irrigated both by the Harrisons and the Washingtons, and the water necessary for such irrigation? This will serve as a check upon their previous official requests for water. Also it would be of value if a recheck could be made showing that the water disappears below the Washington ranch, and a further statement indicating that the water as examined both at the spring and below the Washington property is not of the same analysis as the water at Blue Springs.

It seems to me, since the Park Service is an interested party, that a report by the Reclamation Service or your service if you should have a man in that vicinity, would carry much more weight than one made by ourselves.

Your suggestion that the Park Service file to cover water needed appears to me a most pertinent one, and very valuable to the Park Service. Our needs would require only a small proportion of the water. Will you please mail me the necessary blanks and instructions, and we shall immediately comply with all requirements. This filing, I believe, could take place immediately, or right after Mr. Yates completes his field studies. If I am in error in this, please advise.

We have an engineer in Carlsbad at the present time who can make any necessary measurements, but it seems best at this time to have Mr. Yates make them since he is entirely disinterested. Superintendent Boles or this office would of course be glad to make the necessary filings.

Again thanking you for your advice and assistance, I am

Very sincerely yours,

F. A. Kittredge,
Chief Engineer.

CC: Director
Supt. Boles
I. S. Stinson-Carlsbad.

C O P Y

STATE OF NEW MEXICO

OFFICE OF
STATE ENGINEER

SANTA FE

December 1st, 1931.

Mr. F. A. Kittredge, Chief Engineer
National Park Service
409 Underwood Building
San Francisco, California

Dear Mr. Kittredge:

I am enclosing to you a copy of a letter which I have just received from Mr. Yates regarding the capacity and the amount of irrigation from the Rattlesnake Springs in Eddy County in this state.

This information is not very comprehensive and I still believe it would be advisable for you to have someone look into the matter of surplus waters from this Spring. I do not know how much water you feel will be necessary for your needs but it seems to me that it is entirely possible that there would be a sufficient supply available here.

If I can be of further service in this matter kindly advise me.

Very truly yours,

Signed: Geo. M. Neel,
State Engineer.

C O P Y

Carlsbad, New Mexico,
November 27, 1931.

Mr. Geo. M. Neel
State Engineer
Santa Fe, New Mexico

Dear Mr. Neel:

Reference is made to your letter of November 24th and our brief reply of November 25 regarding the water supply of Rattlesnake Springs on Black River at the Harrison Ranch.

We find that our data on this spring is rather meager and consists of only one measurement made in November, 1923 and also a measurement made of the flow of water at the head of the Washington Ranch diversion. The field notes of these measurements are as follows:

Rattlesnake Springs, November 12, 1923, Discharge 4.72 Second Feet.

Rattlesnake Springs located on the Harrison Ranch on Black River.

Measurement made by Teeter and Yates of the flow of Rattlesnake Springs in the north or east diversion ditch about 200 feet below the Springs. A small amount of water was flowing through south or west ditch that was not measured. On account of not having wading boots, the measurement was made in a poor section and therefore cannot be considered better than fair in accuracy. One-half gallon sample of this water collected to be sent to Willus T. Lee, U. S. Geological Survey, Washington, D. C.

Black River at Washington Ranch, November 12, 1923, Discharge 3.26 Second Feet.

Measurement made by Teeter and Yates at the Diversion Dam on Black River on the Upper Washington Ranch. From general conditions observed in immediate vicinity of the Diversion Dam which shows considerable gypsum deposits just below the point of diversion, conclusions are drawn that a part of the water is passing

through the under strata in the bed of the stream and was not included in this measurement. Measurement was made in a rather poor section and is probably in error as much as ten per cent. One half gallon sample of this water was collected to be sent to Willis T. Lee, U. S. Geological Survey, Washington, D. C.

We are not familiar with the acreage irrigated on the Harrison Ranch but believe it would be approximately the same as at the time of the filing the declaration on June 24, 1921. We believe that it is probable that all irrigable land available under the Harrison Ranch ditches was probably irrigated when this declaration was made; however it is possible that there might be some increase in acreage.

All the water from Rattlesnake Springs and also from the springs on Black River that irrigate the Washington Ranch sink into the river bed a very short distance below the diversions. In theory it may be assumed that this water probably returns again at Blue Springs but insofar as we know there is no proof that this water does return into Black River at Blue Springs and the analysis of water of these Springs is not the same as that of Blue Springs. It has been reported that there has been some depletion in the flow of springs in this territory within the last few years; however we have no proof by measurements of such depletion and do know that there is practically no depletion of Blue Springs.

Yours very truly,

Signed - J. R. Yates
U. S. Bureau of Reclamation.

C O P Y

STATE OF NEW MEXICO

OFFICE OF
STATE ENGINEER

SANTA FE

November 24, 1931

Mr. F. A. Kittredge, Chief Engineer
National Park Service
San Francisco, California

Dear Mr. Kittredge:

I have your letter of November 20th in reference to a possible water supply from Rattlesnake Springs for use in connection with the Carlsbad Caverns.

I have this day addressed a letter to Mr. Yates, Engineer for the Carlsbad Project, who is quite familiar with conditions in that vicinity, asking him the capacity of these springs and what uses are being made of the waters of the springs and also what becomes of any surplus which there may be. It is quite evident that if the springs furnish more water than is now being put to beneficial use and that surplus is either dissipated or flows into the Pecos River unused that there are probably unappropriated waters which could be filed on for the purposes sought by you.

Of course, if there is a surplus over that used by Harrison and also by Washington, and it flows into some stream and goes to make a supply which is now appropriated it would be doubtful as to the availability of surplus waters. When I have received a reply from Mr. Yates I will be very glad indeed to further advise you on this point. If, however, he is unable to give any information, it might be that a representative of this office at some time when in that vicinity could look the situation over and ascertain if there are waters from these springs now unused or probably better still, you might have one of your representatives at Carlsbad look into the matter and if it appears there are surplus waters, make a filing to cover same. I do not know just how much water you will require but it seems that your man could quite easily determine whether or not there is a sufficient supply available for your needs. I will be very glad indeed to render you any assistance possible in this connection.

Very truly yours,

Signed: Geo. M. Neel,
State Engineer.

C O P Y

November 20, 1931.

Mr. George M. Neel,
State Engineer,
Santa Fe, New Mexico.

Dear Mr. Neel:

Thanks very much for your letter of November 14 referring to the Harrison Springs in Eddy County, New Mexico.

The present owners believe that they have full ownership to the 5.32 second feet, and also are under the impression that it is of tremendous value. It is probable that until they are willing to sell for a reasonable price, the Government will not be able to take any steps towards its purchase.

One point is brought to mind, however, by your letter. If the Court decides that the Harrison property is entitled to water for irrigating only 65.75 acres of land or perhaps 1 second foot of water, and if the parties below the Harrisons have likewise established ownerships through actual acreage irrigated to say, 100 acres, and thus have established right to perhaps $1\frac{1}{2}$ second feet, then what becomes of the remainder of the 5.35 second feet? In other words, if all of the lands under irrigation for the past four years consume $2\frac{1}{2}$ second feet, there is a remainder of nearly 3 second feet.

The point arises whether it will be possible for the Government to purchase from the Harrison property, say, 1 second foot, or a portion thereof, and still leave the Harrison property with sufficient to irrigate their 65 acres.

These are points which have come to mind, and I shall be very glad to have your advice.

With appreciation, I am

Very truly yours,

F. A. Kittredge,
Chief Engineer.

Other Supporting Information



UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

IN REPLY REFER TO:

EXHIBIT 1

C E R T I F I C A T E

Pursuant to the provisions of the act of August 24, 1912, as amended (5 U. S. C. Sec. 488) I HEREBY CERTIFY that the annexed copies of:

1. Notice (letter of December 30, 1931, to State Engineer of Intent to utilize unappropriated waters of Rattlesnake Springs;
2. Letter of January 4, 1932, to State Engineer transmitting notice and application (not available) on standard forms;
3. Publisher's affidavit with copy of published notice of Application 1976;
4. Map of Harrison Ditch System (part of Declaration 0432);
5. "Exhibit A" (copy of Declaration 0432 filed in support of protest of Application 1976); and
6. Protest of Application 1976 by Ida May Harrison

relating to the attempt by the United States to appropriate unappropriated waters of Rattlesnake Springs, Black River drainage, Eddy County, New Mexico, in 1931, which was abandoned because of protest of Ida May Harrison constitute full, true and literal exemplifications of the same as they appear in the official records of the National Park Service in Carlsbad Caverns National Park Water Right Dockets 1 and 2.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the National Park Service to be affixed this *20th* day of March, A. D. 1959.

(SGD.) JACKSON E. PRICE

Assistant Director
National Park Service
U. S. Department of the Interior

Docket Compiled: 2/10/2011