



WATER-RIGHT DOCKET

Lake Roosevelt National Recreation Area

Docket No: 14

SPECIAL USE PERMIT-SPRING.

Preliminary Docket Information

00-00-0000: water docket information

WATER DOCKET INFORMATION

A R E A COULEE DAM

DOCKET NO. 14

APPLICATION NO.

PERMIT NO.

CERTIFICATE NO.

TITLE OF DOCKET Spring - NE 28-35-37
Special Use Permit

PRIORITY

REMARKS: Issued to E.M. Bailey of Kettle Falls, Washington

W.F. No. 36-OS-7-67

30437

CERTIFICATE RECORD No. 21 Pat. No. 10378

STATE OF WASHINGTON, COUNTY OF Stevens

CERTIFICATE OF SURFACE WATER RIGHT

(In accordance with the provisions of Chapter 127, Laws of Washington for 1967 and amendments thereto, and regulations of the Department of Water Resources thereunder.)

This is to certify that **E. M. BAILEY**of **Kettle Falls** State of **Washington** has made

proof to the satisfaction of the Department of Water Resources of Washington of an unnamed spring, tributary of

of the waters of **Franklin D. Roosevelt Lake** a tributary of
and **Franklin D. Roosevelt Lake (Columbia River)**with point or points of diversion within the (Spring) fractional NE $\frac{1}{4}$ of Sec. 28,(W.D. Roosevelt Lake) fractional SE $\frac{1}{4}$ of Sec. 21; All in

Sec. 35 Twp 35 N. R. 37 E. W. M., under and subject to provisions contained in

appropriation Perma No. 14259 Issued by the Department of Water Resources, and

that said right to the use of said waters has been perfected in accordance with the laws of Washington,

and is hereby confirmed by the Department of Water Resources of Washington and entered of

record in Volume 21 at Page 10378, on the 10th day of July 1968.

that the priority date of the right hereby confirmed is March 4, 1966 that the

amount of water under the right hereby confirmed, for the following purposes is limited to an amount

actually beneficially used and shall not exceed 0.01 cubic foot per second, 2 acre-feet per
year, continuously each year for domestic supply; and 0.10 cubic foot per second, 28
acre-feet per year, from May 15 to September 15 for irrigation of 7 acres.A description of the lands under such right to which the water right is appurtenant and the
place where such water is put to beneficial use, is as follows:Those portions of the NW $\frac{1}{4}$ of Sec. 27 and the NE $\frac{1}{4}$ of Sec. 28, T. 35 N.,
R. 37 E. W. M., easterly of right-of-way of Primary State Highway No. 2, 1/2 mile.

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The right to the use of the water aforesaid hereby confirmed is restricted to the purposes and uses provided in Section 224, Chapter 127, Laws of 1967.

This certificate of surface water right is specifically subject to relinquishment for non-use of water provided in Section 224, Chapter 233, Laws of 1967.

WITNESS the seal and signature of the Assistant Director, Division of Water Management, Department of Water Resources, this 10th day of July 1968.

John H. Laidler
Assistant Director
Division of Water Management
Department of Water Resources

Permit No. 14259

Certificate of Surface Water Right

Recorded in the Department of Water
Resources, Olympia, Washington, in Book
No. 21 of Water Right
Certificates, on Page 10378, on
the 10th day of July
1968

STATE OF WASHINGTON, 1
County of 33

I certify that the within was received
and duly recorded by me in Volume
of Book of Water Right Certificates, Page
on the day of

19
STATE PRINTING PLANT, OLYMPIA, WASH.

JUL 8 1968

DEPARTMENT OF CONSERVATION
Division of Water Resources

Permit to Appropriate Public Waters of the State of Washington

Book No. 36 of Permits, on Page 14259 Under Application No. 19491

E. M. BAILEY

of Kettle Falls, Washington

is hereby granted a permit to appropriate the following described public waters of the State of Washington, subject to existing rights and to the following limitations and provisions: Permittee shall construct and maintain at his own expense a weir, or other suitable device, for measuring any water granted herein for irrigation purposes and such appropriation shall be subject to a reasonable rotation system if ordered by the State Supervisor of Water Resources. Diversion intake shall be tightly screened at all times with wire having a mesh opening not greater than 0.125 (1/8) inch.

Priority date of this permit is March 4, 1966

Source of the proposed appropriation is Lake and Franklin D. Roosevelt Lake (Columbia River) unnamed spring, tributary of Franklin D. Roosevelt/

tributary of

The quantity of water appropriated shall be limited to the amount which can be beneficially applied and not to exceed 0.11 cubic feet per second, or its equivalent in case of rotation, to be used for the following purposes: Irrigation and domestic supply

as more definitely set out below.

The approximate point of diversion is located No. 1 - 550 feet west and 125 feet south;
No. 2 - 225 feet west and 350 feet south both from northeast corner of Sec. 28

being within fractional NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 28, Twp. 35 N., Rge. 37 E., W. M., county of Stevens

The use, or uses, to which water is to be applied:

For DOMESTIC SUPPLY AND MISCELLANEOUS USES: 2 acre-feet per year
0.01 cubic feet per second/during entire
year for domestic supply to be used
within see below Sec. , Twp. N., Rge. W. M.,

For IRRIGATION: 0.10 cubic feet per second, 40 acre-feet per year, during
irrigation season
each year, for irrigation of 10 acres, described as follows:

Those portions of the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 27 and the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 28, T. 35 N., R. 37 E.W.M., lying and being east of right of way for Primary State Highway No. 25 (22).

FOR POWER: cubic feet per second continuously each year. Total power to be developed theoretical horse power. Total fall to be utilized feet.
Nature of works by means of which power is to be developed
Works to be located in Sec., Twp. N., Rge. W. M.
Water to be returned to
Point of return Sec., Twp. N., Rge. W. M.
Use to which power is to be applied
FOR MUNICIPAL SUPPLY: cubic feet per second during entire year to supply

DESCRIPTION OF DIVERSION WORK

1 h.p. pump and pressure tank from spring in use for domestic supply to 1 home
Height of dam ft.; Length on top ft.; Length on bottom ft.
Material to be used and character of construction
Description of headgate

CANAL SYSTEM

AT HEADGATE: Width on top (at water line) ft.; Width on bottom ft.;
Depth of water ft.; Grade ft. fall per one thousand feet.
AT MILES FROM HEADGATE: Width on top (at water line) ft.; Width on bottom ft.; Depth of water ft.; Grade feet per one thousand feet.

(Please read carefully provisions below)

Construction work shall begin on or before Started
and shall thereafter be prosecuted with reasonable diligence and completed on or before June 1, 1967
and complete application of water to proposed uses shall be made on or before June 1, 1968

Given under my hand and the seal of this office at Olympia, Washington, this 20th day of May, 1966

M. A. Walker
State Superintendent of Water Resources

Form 10-114
(Rev. Oct. 1958)UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

This permit consists

of 6 pages

SPECIAL USE PERMIT

Coulee Dam National Recreation Area

(Area)

PERMIT NO. 4:606:2114	EXPIRES 12/31/75
PREVIOUS PERMIT NO. 14-10-0434-672	

E. M. Bailey, of Kettle Falls, Washington is hereby authorized during the period from January 1, 1966, to December 31, 1975, to use the following-described land in the above-named area:
NE $\frac{1}{4}$ of Section 28, and the NW $\frac{1}{4}$ of Section 27, T35N, R37E, WM as shown on attached Exhibit "A".

for the purpose of maintaining a pipeline across government land to obtain water from a spring for domestic use.

subject to the conditions on the reverse hereof and attached pages and to the payment to the Government of the United States of the sum of Five Dollars (\$ 5.00), in advance annually (Monthly, semiannually, etc.), or as follows:

payment to be made to the Superintendent by Express or Postal Money Order, Certified Check, or Draft payable to the National Park Service, or Cash.

Issued at Coulee Dam, Washington, this 10th day of January, 19 66
(City)

Homer W. Robinson
Homer W. Robinson

Superintendent

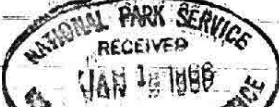
The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied, therein.

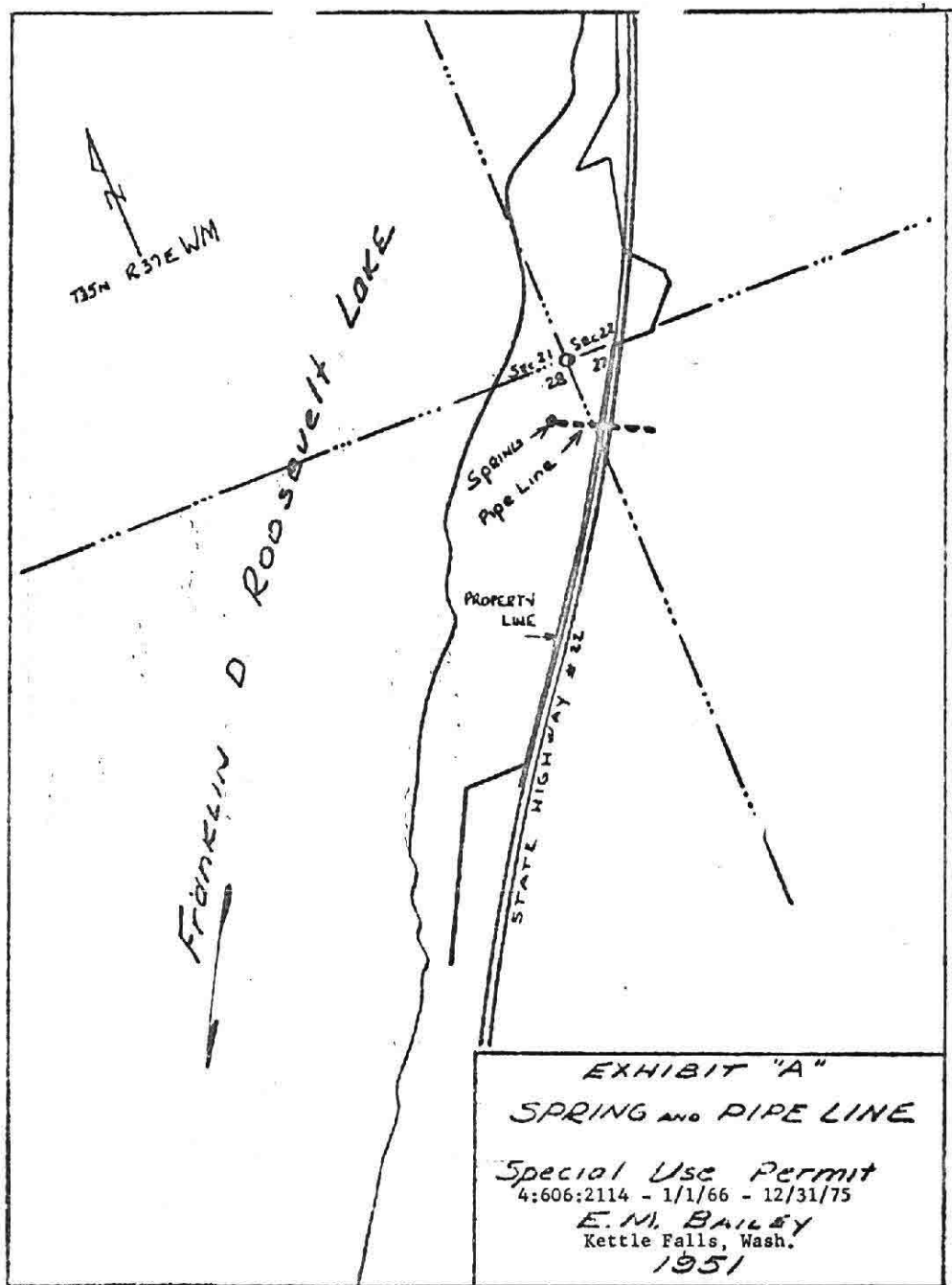
TWO WITNESSES TO SIGNATURES		* PERMITTEE (SIGNATURE)	
NAME <u>R. H. Nichols</u>	NAME <u>E. M. Bailey</u>	NAME <u>E. M. Bailey</u>	NAME <u>E. M. Bailey</u>
ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>
NAME <u>E. R. Duncan</u>	NAME <u>E. R. Duncan</u>	NAME <u>E. R. Duncan</u>	NAME <u>E. R. Duncan</u>
ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>	ADDRESS <u>Kettle Falls, Wn.</u>
APPROVED: (If approval is required by higher authority)			
NAME <u>E. M. Bailey</u>	TITLE <u>Permittee</u>	DATE <u>Jan 10 1966</u>	

*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 deeds, etc., should sign, with title, the sufficiency of such signature being attested by the Secretary, with corporate seal, in lieu of witnesses.

Distribution: Fee Permit: Field Finance Office. No Fee Permit: To Superintendent's File.

PAGE 1

	CONDITIONS OF THIS PERMIT
1. Regulations.—The permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with the regulations of the Secretary of the Interior, or other authorized officer of the Government, governing the area.	7. Removal of structures and improvements.—Upon the expiration of this permit by limitation of time or its termination for any reason prior to its expiration date, the permittee, if all charges due the Government hereunder have been paid, shall remove within such reasonable period as is determined by the Superintendent, but not to exceed 90 days unless otherwise stipulated in this permit, all structures and improvements placed on the premises by him, and shall restore the site to its former condition under the direction of the Superintendent. If the permittee fails to remove all such structures and improvements within the aforesaid period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and the restoration of the site.
2. Definition.—The term "Director, National Park Service" as used herein shall include the appropriate Regional Director or Superintendent as the representative of the Director.	
3. Rights of the Director.—Use by the permittee of the land covered hereby is subject to the right of the Director, National Park Service, to establish trails, roads, 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. If it is necessary to exercise such right, every effort will be made by the National Park Service to refrain from unduly interfering or preventing use of the land by the permittee for the purpose intended under this permit.	8. Water Rights.—The United States reserves the rights to perfect title to all rights for water which may be developed or used in connection with this permit and shall furnish water to the permittee, when available, at reasonable rates to be approved by the Director, National Park Service. Should such water service be unavailable or inadequate, the permittee may, with prior approval of the Director, provide the same at his own expense, subject to such special requirements as may be prescribed.
4. Nondiscrimination.—If use of the land covered by the permit will involve the employment by the permittee of a person or persons, the permittee agrees to observe the following nondiscrimination provisions in connection with the use to which the lands covered by this permit may be devoted:	9. Disposal of refuse.—The permittee shall dispose of brush and other refuse as required by the Superintendent.
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; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.	10. Timber cutting.—No timber may be cut or destroyed without first obtaining a permit therefor from the Director, National Park Service.
The contractor further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. (Executive Order 10557; September 3, 1954.)	11. Fire prevention and suppression.—The permittee and his employees shall take all reasonable precautions to prevent forest, brush, grass, and structural fires and also shall assist the Superintendent in extinguishing such fires in the vicinity of any tract which may be used hereunder.
5. Damages.—The permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the permittee is authorized to make of the land described in this permit.	12. Soil erosion.—The permittee shall take adequate measures, as directed and approved by the Superintendent to restrict and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.
6. Construction.—No building or other structure shall be erected under this permit except upon prior approval of plans and specifications by the Director, National Park Service, and the premises and all appurtenances thereto shall be kept in a safe, sanitary, and slightly condition.	13. Benefit.—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: <i>Provided, however,</i> That nothing herein contained shall be construed to extend to any incorporated company, if the permit be for the benefit of such corporation.
	14. Assignment.—This permit may not be transferred or assigned without the consent of the Director, National Park Service, in writing.
	15. Revocation.—This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Director, National Park Service.



ATTACHMENT A

CONTINUATION OF CONDITIONS OF THIS PERMIT (Form 10-114)

United States Department of the Interior
National Park Service

The following provisions constitute Condition 4 in accordance with Executive Order No. 11246 of September 24, 1965.

Nondiscrimination. If use of the land covered by the permit will involve the employment by the permittee of a person or persons, the permittee agrees as follows:

- (1) The Permittee will not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, or national origin. The Permittee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, ancestry or national origin. Such action 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. The Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Superintendent setting forth the provisions of this nondiscrimination clause.
- (2) The Permittee will, in all solicitations or advertisements for employees placed by or on behalf of the Permittee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
- (3) The Permittee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Superintendent, advising the labor union or workers' representative of the Permittee's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Permittee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Permittee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Superintendent and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Permittee's noncompliance with the nondiscrimination clauses of this permit or with any of such rules, regulations, or orders, this permit may be cancelled, terminated or suspended in whole or in part and the Permittee may be declared ineligible for further Government contracts or permits in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Permittee will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Permittee will take such action with respect to any subcontract or purchase order as the Superintendent may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the Permittee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Superintendent, the Permittee may request the United States to enter into such litigation to protect the interests of the United States.

PERMIT NO: 4:606:2114

AREA: Coulee Dam National Recreation Area

PERMITTEE: E. M. Bailey

Rev. 12/28/65

SPECIAL CONDITIONS, Continued

16. This permit does not grant any property rights nor necessarily does it grant the permittee exclusive use or possession of the lands above described. Use by the permittee of the premises covered hereby is subject to the right of the Department of the Interior through the National Park Service and the Bureau of Reclamation to establish roads, trails, flumes, power lines, boat docks, log landings, and any and all other improvements over, upon, and through said premises and further, to permit third parties to use said premises for duly approved purposes not inconsistent with permittee's use. Further, the United States reserves the right to its officers and agents to go upon said premises or upon any property of the permittee at any time in connection with any official governmental duties such officers or agents may be required to perform in behalf of the Government.

17. The permittee shall comply with all the laws, ordinances and regulations of the state, county, and municipality wherein the said demised premises are located with regard to construction, sanitation, licenses or permits to do business, sale of alcoholic beverages and all other matters, except when in conflict with any of the special conditions herein.

18. The permittee shall cause no unreasonable interference with navigation by the exercise of the privileges hereby granted.

19. The Federal Government assumes no responsibility whatever for any injury, loss, or damage that may result from landslides or slippage of the shorelands, or any other injury, loss, or damage that may result from the exercise of privileges conferred by this permit, and the permittee will hold the Federal Government, its assigns, officers, agents, and employees harmless from any and all claims arising therefrom.

20. The water level of Roosevelt Lake is subject to change and fluctuation from natural causes and from the operation of the Grand Coulee Dam and appurtenances to a maximum extent of eighty (80) or more feet. The permittee hereby releases the United States and its agents from all claims on account of, and assumes the risk of any and all damage that may be suffered by reason of the fluctuation or change in the water level in said lake.

21. The permittee shall be liable for any and all damages to the property of the United States by reason of the exercise of the rights and privileges conferred by this permit. The permittee shall also assume all liability imposed by law for damage to any third party or parties by reason of the exercise of rights and privileges conferred by this permit.

22. Any floating structure such as a boat dock, ramp, or log boom, utilized by the permittee shall be securely fastened to the shore in a manner satisfactory to the officer of the United States in charge of Coulee Dam National Recreation Area. No property of the permittee of any kind whatsoever, shall be allowed to float unattended on the lake. Any property so found may be tied up or removed from the lake by the National Park Service at the expense of the permittee.

Permittee: E. M. Bailey
Permit No.: 4:606:2114

SPECIAL CONDITIONS, continued

23. All structures built under the terms of this permit must be of a temporary nature subject to removal upon termination of the permit. All structures of a permanent nature are prohibited except by prior written permission of the Superintendent.

24. Permittee shall make no use of the land other than that specified on page 1 herein, except as this permit may hereafter be amended in writing.

Permittee: E. M. Bailley
Permit No. 4:606:2114

Page ~~XXXX~~ 6

Other Supporting Information

CHAVEZ

WITUCKI

LS4

LNWESC - CODA
(WR Docket #14)

November 20, 1969

Memorandum

To: Chief, Division of Water Resources, WASO

From: Chief, Water Resources Section, Office of Land Acquisition
and Water Resources, SSC

Subject: Federal Water Right Docket No. 14, Un-named Spring, NE $\frac{1}{4}$ NE $\frac{1}{4}$,
Section 28, T. 35 N., R. 36 E., W.M., Coulee Dam

In reply to your September 19, 1969, memorandum concerning the above subject, Mr. David Chavez of this office contacted the Field Solicitor's Office in Ephrata, Washington, by telephone to determine what course of action would be most appropriate in this water right matter. Field Solicitor Lemargie was not in so he consulted with the Solicitor's Assistant, Mr. William Dunlop; they reviewed the situation and determined the following: Mr. E. M. Bailey was issued a special use permit, No. 4-606-2114 by the United States Government for the purpose of maintaining a pipeline across Government land to obtain water from an un-named spring for domestic use. It was requested of Bailey that he make application with the Washington State authorities for the water right in the name of the United States Government. We may assume that Bailey attempted to obtain the water right certificate in the name of the United States Government; however, Washington State water law prescribes that the water right shall be issued in the name of the party upon whose land the water is being used. It is Mr. Dunlop's opinion that the interests of the Government may best be served by leaving the certificate in Bailey's name, based on the following criteria:

1. In accordance with Field Solicitor Lemargie's opinion, dated April 5, 1960, the right to the use of the spring is owned exclusively by the United States Government, and Bailey's access to and use of the spring

are by special use permit which is revocable. The State certificate issued to Bailey does not allude to any exclusive water rights; rather, it is based on the premise of beneficial use. By revocation of the special use permit and subsequent loss of access to the spring, Bailey's water right certificate would lapse as a result of disuse;

2. Also, it would be technically rather difficult to have the water right certificate amended to reflect United States Government ownership;

3. As the National Park Service is not now using and has no present projected use of this water source, if the water right was perfected in the name of the United States Government, the Government would be responsible for maintaining the status of the certificate by beneficial use.

In order to fully clarify Mr. Bailey's position in this matter, it is recommended that upon re-issuance of the special use permit it be clearly defined in the text of the permit that the right to the use of the spring is exclusively owned by the United States Government; that such access to and use of the spring may be at any time revoked as the United States Government may deem necessary; and that use of the water shall not exceed in quantity or purpose that which is defined in the special use permit.

Following the conversation with Mr. Dunlop, we contacted the park and spoke with Chief Ranger C. P. Woodbury to confirm the above information and advise the park as to our determinations concerning this matter.

The special use permit presently issued to Bailey does not expire until December 31, 1975. This office recommends that the National Park Service withdraw that permit and issue one that specifies and defines the United States Government's position as indicated above. Assuming you have no objections, we will proceed with this course of action.

(SGD) GERARD S. WITUCKI

cc:
Regional Director, Western
District Director, Northwest
Superintendent, Coulee Dam



IN REPLY REFER TO:
L54-MW

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240
September 19, 1969

RECEIVED	
WATER	
9/23/1969	
ACT. INFO.	INITIALS DATE
W. T. H. G.	
CHAVEZ, D.	MC 11/7
FILE	
REMARKS	

Memorandum

To: Supervisory Hydrologist, Division of Water Resources, SSC

From: Chief, Division of Water Resources

Subject: Federal Water Right Docket 14, Unnamed Spring NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 28,
T. 35 N., R. 37 E., W.M., Coulee Dam

The following is to confirm the understanding arrived at regarding the subject spring:

1. The subject docket is not to be eliminated.
2. The certificate of water right to the spring, issued to Mr. E. M. Bailey, enclosed with your June 28 memorandum should be filed in Docket No. 14.
3. Field Solicitor Lemargie's opinion, dated April 5, 1960, enclosed in Docket No. 14, concludes that the right to the use of the spring is owned exclusively by the United States. Mr. Bailey's use of the spring is granted by Special Use Permit No. 4:606:2114. Accordingly, you should contact the Field Solicitor to determine if action should be taken to amend the certificate to reflect United States ownership of the spring. If amendment action is recommended, the Superintendent should advise Mr. Bailey. Please keep us informed on this matter.


Manuel Morris

cc:
District Director, Northwest District (2)
Chief, DC-SSC

620-7-31-69

J.R. Copey

Ed Reed

M.H.
G.C.
7/11

L54

LWSSC - CODA

July 28, 1969

(WR dockets 3, 7, 9,
14 and 15)

Memorandum

To: Chief, Division of Water Resources, WASO
Attention: Supervisory Hydraulic Engineer

From: Supervisory Hydrologist, Division of Water Resources, SSC

Subject: Water right dockets, Coulee Dam

This memorandum is to complete the docket updating with reference to the memorandum from Mr. Reed of May 8, 1969, and our memoranda of June 6 and 16.

1. Enclosed for your docket number 9, part II wells, is a copy of certificate of ground water right number 6194-A for the new well.
2. Enclosed for your docket number 7, part II wells, are copy of permit number 7755 and certificate of ground water right number 6039-A for the well.
3. Enclosed for your docket number 15 is a copy of the certificate of ground water right number 6213-A.
4. Enclosed for your docket number 14 are copies of permit number 14259, certificate of surface right number 10378, map of area detailing the two sources of Mr. Bailey's water, and a copy of a section of the Washington State water right law. As the water in this docket is used on the same land and is in the same name as that of alien water right docket number 3, they probably should be combined. We are recommending eliminating docket number 14 and placing its contents in alien water right docket number 3 in order that both of Mr. Bailey's water permits will be together. We suggest that you and the park do the same. This would make two parts for this docket; part I for lake surface right and part II for the spring right.

File
in 14/14

Also called Dave Watts -
he said an amended
certificate should be
requested. Vii

Called Wituki & Roberts
on 9/5 on 9/8 and advised
they will write ~~memos~~ ^{belong}
that spring States
them to United that certificate should
not be in our
name not
Bailey's

We have transferred the noted material to dockets 3 and 1 from docket 4 as was suggested in Mr. Reed's memorandum of May 8 and recommend that the park do the same.

(SGD) GERARD S. WITUCKI

Enclosure

cc:
Regional Director, Western
Dist. Dir., Northwest District (2)

UNITED STATES GOVERNMENT

2-Way Memo

Subject: Water Rights Docket #14, a spring in NE¹/₄NE¹/₄,
Section 27, T. 35 N., R. 37 E. W.M.

Coulee Dam, Washington

To: Manuel Morris
Supervisory Hydraulic Engineer

DATE OF MESSAGE April 12, 1966
DATE OF REPLY
INSTRUCTIONS Use routing symbols whenever possible. SENDER: Forward original and one copy. Conserve space. RECEIVER: Reply below the message, keep one copy, return one copy.

5027-101

FOLD

USE BRIEF, INFORMAL LANGUAGE

FOLD

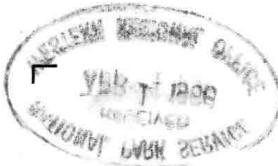
As suggested by you some time ago, we have asked Mr. E. B. Bailey the present user of this spring, to apply for a State Water Right, Permit in the name of the U. S. Government. We have received no answer from Mr. Bailey but will follow up in due time.

Homer Robinson
Homer Robinson

Director ask Bill Smith 4/14/66

COPY TO	DATE
FOR YOUR ☒ INFORMATION ☐ ACTION	
WESTERN REGIONAL OFFICE INITIALS <i>HR</i>	

From:



1. TO BE RETAINED BY ADDRESSEE

OPTIONAL FORM 27
OCTOBER 1962
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

2-Way Memo

DATE OF MESSAGE April 12, 1966
DATE OF COPY
INSTRUCTIONS Use routing symbols whenever possible. SENDER: Forward original and one copy. Conserve space. RECEIVER: Reply below the message, keep one copy, return one copy.

Water Rights Pocket #14, a spring in Nevada,
Section 21, T. 32 N., R. 37 E., W. 4 M.
Coele Park, Washington

Supervisory Hydraulic Engineer
Mannet Morris

Subject

To: 

As suggested by you some time ago, we have asked Mr. E. D. Bailey
the present user of this spring, to apply for a State Water Right
Permit in the name of the U. S. Government. We have received no
answer from Mr. Bailey but will follow up in due time.


Homer Robinson

COPIES TO
FOR FILE
REPLY TO



From:

OPTIONAL FORM NO. 10
OCTOBER 1963
GSA GEN. REG. NO. 27

TO BE RECORDED BY ADDRESSEE

SAN FRANCISCO PLANNING AND SERVICE CENTER
Office of Land and Water Rights
450 Golden Gate Avenue, Box 36064
San Francisco, California 94102
April 8, 1966

HDS
Springer
Morris

LS4 CODA
WRDocket #14

To: Superintendent, Coulee Dam
From: Supervisory Hydraulic Engineer
Subject: Water Rights Docket #14, a spring in NE1/4, Section 28,
Township 35 North, Range 37 East, W.M.

This docket file is being assembled and distributed in order to document the history and use of the subject spring--which is unnamed, to the best of our knowledge.

We again suggest that a State Water Right Permit be applied for in the name of the U.S. Government.

Manuel Morris

Enclosures

cc:
Director, Attention Branch of Water Resources with encl.
Chief, D&C, SSC

HSpringer:pm

F/O 3/1-66

January 27, 1966

LSA - GSW

Memorandum

To: Superintendent, Coulee Dam
From: Hydraulic Engineer
Subject: Special Use Permit 4:606:2114, E. B. Bailey

We are in receipt of your two-way memorandum of January 14 and the copy of Field Solicitor Lemargie's letter of April 5, 1960, which indicates Federal ownership of the spring mentioned in Bailey's Special Use Permit. For the sake of comity and to preclude future possible claims, we believe that the Permittee should apply for and obtain a State Water Right Permit in the name of the U. S. Government. Although in Washington, water can be used for domestic purposes without a permit, we feel it would still be advantageous to have this use made a matter of State record.

If you have any further thoughts on this subject, we would appreciate hearing them.

Manuel Morris

cc:
Director

X

UNITED STATES GOVERNMENT

2-Way Memo

Subject: **Special Use Permit 4:606:2114**
E. B. Bailey

From: **Superintendent, Coulee Dam**

DATE OF MESSAGE
January 14, 1966

DATE OF REPLY

INSTRUCTIONS

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5027-101

—FOLD—

USE BRIEF, INFORMAL LANGUAGE

—FOLD—

Exhibit "A" to subject permit appears to indicate that spring is on Government land. If this is true, request you advise as to the status of the water rights on this spring. In any event, please clarify the situation for us.

Manuel Morris
Manuel Morris
 Hydraulic Engineer

You are correct, Manuel, the spring is on Government land. The attached material gives a good history of the spring and an opinion from the field solicitor regarding Government ownership and control. We have no knowledge of any water right in connection with the spring, apparently the State Code which permits use of water for domestic use without a water right is the reason no application was made. This has been our assumption with regard to Bailey. His use of water from the spring is for domestic purposes only therefore no water right is required.

Homer Robinson
Homer Robinson

enclosure



Manuel Morris, Hydraulic Engineer

To:



2. TO BE RETURNED TO ORIGINATOR

OPTIONAL FORM 27
 OCTOBER 1962
 GSA. GEN. REG. NO. 27

DATE OF MESSAGE January 14, 1966
DATE OF REPLY
INSTRUCTIONS Use routing symbols whenever possible. SENDER: Forward original and one copy. RECEIVER: Reply below the message. Keep one copy, return one copy.

UNITED STATES GOVERNMENT

2-24-66 Memo

Subject: Special Use Permit Application
R. A. Bailey

Superintendent, Converse Dam

From:

TO: DIRECTOR, NATIONAL PARK SERVICE
FROM: SUPERINTENDENT, CONVERSE DAM
SUBJECT: SPECIAL USE PERMIT APPLICATION
R. A. BAILEY

Exhibit "A" to subject permit appears to indicate that spring is on Government land. If this is true, request you advise as to the status of the water rights on this spring. In any event, please clarify the situation for us.

Manuel Morris
Hydraulic Engineer

You are correct, Manuel, the spring is on Government land. The attached material gives a good history of the spring and an opinion from the field solicitor regarding Government ownership and control. We have no knowledge of any water right in connection with the spring, apparently the State Code which permits use of water for domestic use without a water right is the reason no application was made. This has been our assumption with regard to Bailey. His use of water from the spring is for domestic purposes only therefore no water right is required.

Robert Robinson

enclosure



Manuel Morris

To:

OPTIONAL FORM 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

TO BE RETURNED TO ORIGINATOR



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Portland Region
Ephrata Field Office
Ephrata, Washington

C. D. N. R. A.	
Initial	Date
Superintendent	4/17
Chief Ranger	
Assistant Ranger	
April 15, 1960	
Applying	4-21
File	

Homer W. Robinson, Superintendent
Coulee Dam National Recreation Area
National Park Service
Coulee Dam, Washington

Re: Bailey-Newell controversy/as to right to use water from
a spring in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 28, Township 35 North,
Range 37 East, W.M.

Dear Mr. Robinson:

I have been requested by Mr. John T. Raftis, attorney for Roy E. Newell of Colville, Washington, to make an initial administrative determination as to the right to use the waters from the spring above described. Mr. E. M. Bailey, I understand, is presently using the water from this spring under a permit from the National Park Service, and Newell claims the water right as an appurtenance to his land. Various title documents have been submitted by Mr. Raftis to this office, and a copy of this opinion is being sent to him.

To aid in the facility of following this opinion, I have attached a rough sketch of Section 28 showing the various ownerships involved. As I understand the problem, I.W. Stover and others, prior to 1910, owned the entire NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. The SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 28 was apparently Government land and occupied by a Mrs. Catherine Redding as a homestead entryman. By deed of December 15, 1910 (recorded 3/19/19), Stover conveyed to Catherine Redding 3.24 acres of land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 together with an easement and right to water in the spring located near the northeast corner of Section 28. This deed conveyed as follows:

"Beginning at a point two hundred two and three tenths (202.3) feet West of the Northeast corner of the Southeast quarter of the Northeast quarter of Section twenty-eight (28) Township thirty-five (35) North, Range thirty-seven (37) East of the Willamette Meridian, thence running West seven hundred ninety-five and four tenths (795.4) feet; thence North twenty-five degrees and fifty-seven

minutes East (N25°57'E) two hundred fourteen and nine tenths (214.9) feet; thence North forty degrees and no minutes East (N40°00'E) one hundred ninety-seven (197) feet; thence South fifty-nine degrees and eleven minutes East (S59°-11'E) six hundred sixty-six and six tenths (666.6) feet to point of beginning said tract containing three and twenty-four one hundredths (3.24) acres:

"
"Also a perpetual water right to all water that can be carried through a pipe one inch in diameter, . . . together with a right of way . . . for a pipe line over . . . the NE¼ of the NE¼ of Section 28 . . . said water to be taken from a spring . . . located in the NE¼ NE¼ of said section 28, about 15 rods from the northeast corner thereof, and about 6 rods from the east line thereof; . . . "

Mrs. Redding in 1924 by Government patent then acquired title to the SE¼ NE¼ and the N¼ SE of Section 28. Mr. Roy E. Newell, who now owns the NE¼ SE¼ of Section 28, claims the water right to the spring as a remote grantee of Catherine Redding. From the documents submitted to me by Mr. Raftis and other title information available to this office, it appears that Redding in 1945 conveyed the SE¼ NE¼ and the NE¼ SE¼ of Section 28 to C. F. Hallet who on December 15, 1945 conveyed to A. C. Irwin. On December 21, 1949, Irwin conveyed, among other things, the SE¼ NE¼ to the United States, and on May 29, 1958 Irwin conveyed, among other things, the NE¼ SE¼ to Roy E. Newell. In Newell's chain of title from Redding, he was conveyed water rights "appurtenant to or used in connection with the above described land."

The original estate of 3.24 acres in the NE¼ NE¼ of Section 28 (deed of December 15, 1910 above), is not in Newell's chain of title. This estate was adjacent to the SE¼ NE¼ and NE¼ SE¼ and was a portion of the Redding holding when the patent was received in 1924. The 3.24 acre tract was foreclosed in 1932, however, as part of the NE¼ NE¼ of Section 28 by Stevens County for delinquent taxes. This tract was then conveyed by the county to A. A. Sites on May 17, 1935 (see records of Stevens County - 98 Deeds p. 124), who subsequently conveyed to E. M. Bailey who on May 3, 1949 conveyed the NE¼ NE¼ of Section 28 to the United States.

The United States by purchase, therefore, owns the spring itself and the original 3.24 acre tract, which was severed from the balance of the Redding holdings by tax foreclosure in 1932. The United States, therefore, now owning the original dominant estate (3.24 acre tract) and the original servient estate (land in NE¼ NE¼) created by the

deed of 1910, has the full right to control who may use the water from the spring.

There is a possible exception to this position on which I will briefly comment, although there has been no factual background submitted to substantiate the exception.

It is a general rule of law that when a landowner has two or more adjoining tracts of land, and employs one portion so that the other portions receive a benefit therefrom, on severance of the tracts, the law under certain conditions will imply an easement in favor of the remaining tracts over the tract conveyed.

At the time Catherine Redding owned the entire property no easement on the 3.24 acre tract for the benefit of the balance of her property was created, as a landowner cannot have an easement over his own property (3 Tiffany 3rd Ed., p. 255). If, however, water from the spring was carried over the 3.24 acre tract by pipe or ditch to the balance of the property, this would create a quasi-easement; the 3.24 acre tract being the quasi-servient tract (see 28 C.J.S., Section 31).

On severance of these tracts by the owner, the rule is that the law under certain conditions will imply an easement over the original quasi-servient estate in favor of the quasi-dominant tracts. This implied easement arises by operation of law if necessary to the reasonable enjoyment of the quasi-dominant estate (28 C.J.S., Sec. 31, supra). There would be an implied easement whether the severance was by voluntary alienation or judicial proceedings, such as mortgage foreclosure or eminent domain (C.J.S., Vol. 19, p. 915, 925).

The general requirements for an easement by implication by implied grant are as follows:

- (1) Unity of title and subsequent separation.
- (2) Apparent and continuous user of the quasi-easement at time of severance.
- (3) Easement must be reasonably necessary to the proper enjoyment of the quasi-dominant estate.

In the instant case, the 3.24 acre tract was severed first, thus a situation of implied reservation to the grantor. Washington has

adopted the majority rule that implied easement may be reserved - (Adams v. Cullen, 268 P.(2d) 431, 44 Wash.(2d) 302). However, the degree of necessity (element #3) in the case of an implied reservation is considerably higher and approaches the requirement of strict necessity.

Applying these principles to the Newell-Bailey dispute - Mr. Newell would have to show that, at the time of severance (1932), water was being conveyed from the 3.24 acre tract to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28; that this was apparent and readily discernible to an observer; and that the continued use of this water was highly necessary for the reasonable enjoyment of the balance of the property. The burden is on the one attempting to prove the necessary elements to show implied easement (Rogers v. Cation, 113 P.(2d) 702, 9 Wash.(2d) 369). Lacking such a proof, which would be difficult to show, I can only conclude that the right to the use of the spring is owned exclusively by the United States and Mr. Bailey is the lawful licensee.

I note in passing there may be other obstacles to Mr. Newell's contentions. In 1949, when the Federal Government purchased the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 from A. C. Irwin (Newell's predecessor), another severance occurred. Thus, to imply an easement over this property for the benefit of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, the identical requirements above stated must be shown. In addition, it would be necessary in any event to show that Mrs. Redding actually had a water right before 1917, that is, she had taken the water from the spring and put it to a beneficial use.

Sincerely yours,

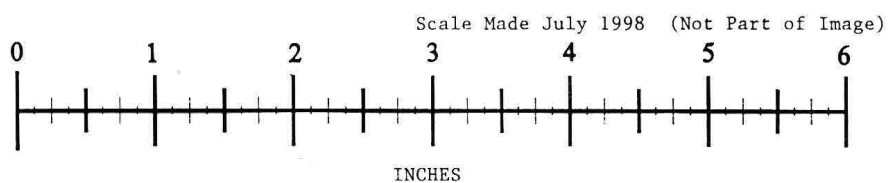
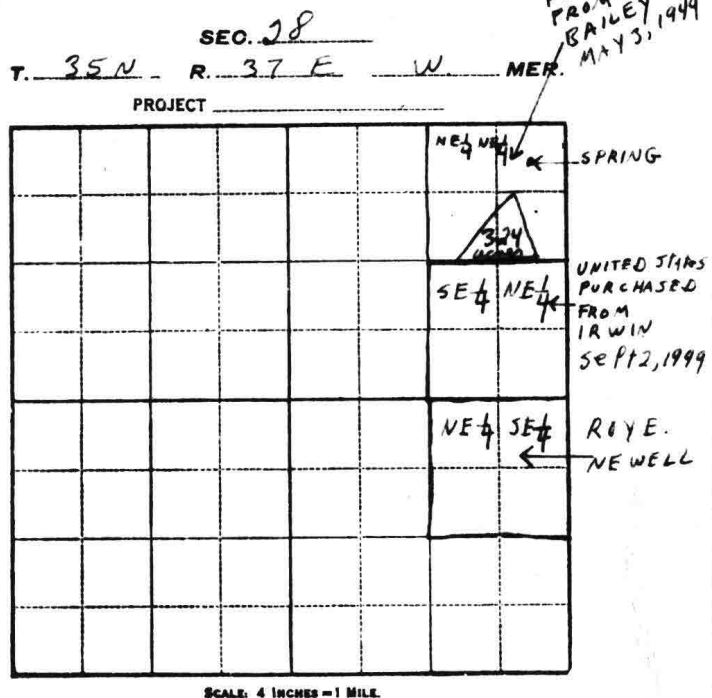

Paul Lemargie
Field Solicitor

Attachment

Copy to: Raftis and Raftis
Attorneys at Law
Dorman Building
Colville, Washington

7-179
(July 1935)

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION



State of Washington

Surface and Ground Water Codes - 1957

90.44.050 Permit to withdraw. No withdrawal of public ground waters shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the supervisor and a permit has been granted by him, except, that any withdrawal of public ground waters for stock watering purposes, or for watering of a lawn, or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses, or for an industrial purpose, in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued hereunder: Provided, that the supervisor from time to time may require the person or agency making such small withdrawal to furnish information as to the means for and the quantity of the withdrawal; Provided further, that at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as herein provided in the case of withdrawals in excess of five thousand gallons a day.

UNITED STATES GOVERNMENT

2-Way Memo

Subject: **Special Use Permit 4:606:2114**
E. B. Bailey

To:
→

Superintendent, Coulee Dam

DATE OF MESSAGE
January 14, 1966
DATE OF REPLY
INSTRUCTIONS
Use routing symbols whenever possible.
SENDER:
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Conserve space.
RECEIVER:
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5027-101

—FOLD—

USE BRIEF, INFORMAL LANGUAGE

—FOLD—

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Manuel Morris
Hydraulic Engineer

Manuel Morris, Hydraulic Engineer

From:

OPTIONAL FORM 27
OCTOBER 1962
GSA. GEN. REG. NO. 27

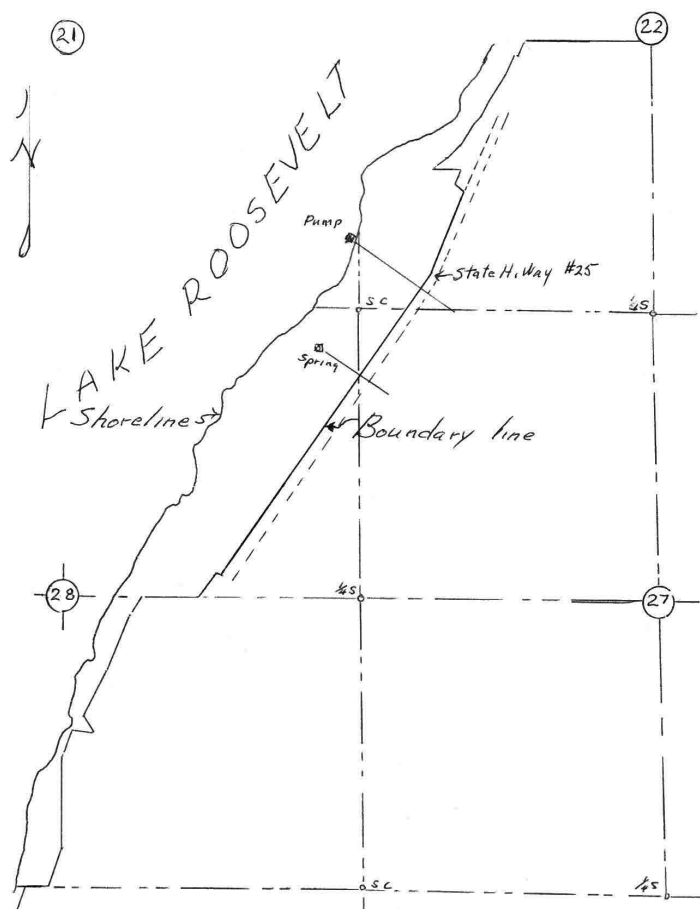
3. TO BE RETAINED BY ORIGINATOR

Maps and Miscellaneous Information

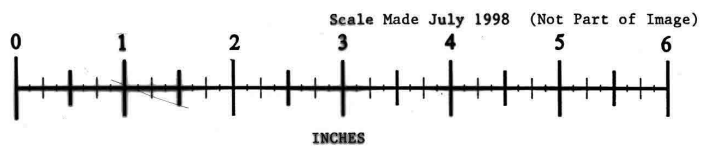
E M Bailey

The map shows the location
of the spring and pump.

The water from both these
sources is used on private
land



Scale
1000' = 1"



Docket Information

Number of Documents in Docket 32

Documents Dated from 4/5/1960 to 9/19/1969

Docket Compiled: 4/26/2011