



WATER-RIGHT DOCKET

Organ Pipe Cactus National Monument

Docket No: 1

ALAMO WASH (ALAMO WELL)

Preliminary Docket Information

10-11-1974: water right/source docket information: application no. a-3068

WATER RESOURCES/WATER RIGHTS		DATE: October 11, 1974	
<u>WATER RIGHT/SOURCE DOCKET INFORMATION</u>			
REGION	Western	AREA	Organ Pipe Cactus National Monument
SITE	Alamo Well + Spring		
STATE	Arizona	COUNTY	Pima
DOCKET NO	WR #1		
LOCATION	T 16S, R 4W SEC 6 SE 1/4, NW 1/4, NE 1/4		
REGIONAL BASIN	Gila River	LOCAL BASIN	San Cristobal
ACQUIRED BY			
APPLICATION	A-3068	PERMIT	CERTIFICATE
ACTION DUE	100 gpd for Domestic;	PRIORITY	June 20, 1950
QUANTITY	550,000 gpy for Stockwatering	RESERVATION	April 13, 1937
STATUS	In Active	USE	Well
REMARKS	See "Review of Grazing Privileges in Organ Pipe"		
	Also See AWR #8 for Alamo Wash under the Gray Partnership (now included in this docket)		
	C-16-04 ok abd		

NARRATIVE:

On January 23, 1886, L.H. Gormley and R.R. Richardson claimed five acres of land around Alamo Spring for a millsite for the Alamo Mine. On January 1, 1890, five acres were again located by Richardson and Gormley, this time including the water from Alamo Spring for stockwatering purposes. On Dec. 21, 1917, in Water Supply Paper No. 499 by Kirk Bryan, the well was said to be 42 feet in depth and water was standing at 40 feet. A Mrs. Birdie Del Miller and her husband later purchased the mining claim and well for \$750 in 1914. Mrs. Miller reported that due to inadequate water from the original well, they hired a hard-rock miner to dig the Alamo Well (4' X 4' X 18') which is now in use. On April 22, 1935, Mrs. Miller filed a mining claim (Phoenix 073601) which was rejected. The Alamo Well was pumped by a windmill and when inspected by Mr. Cutter of the BLM in the early fifties, was producing 3500 gpd--no spring was found on the surface. Mr. A. van V. Dunn, Chief of Water Resources, filed Deed No. 3 for the Alamo Well Stating that "this well is on Federal land to which Mrs. Miller has no right of access."

On October 3, 1950, Mr. Dunn stated:
"This well is located on Federal land and is reported to intercept only the ground waters of the state. All use has been far under 100 gpm and the well yield is also probably less than that amount. Accordingly, the well is not subject to appropriation, and title is vested in the United States by virtue of land ownership."

However, on June 20, 1950, Mrs. Miller had filed Application No. A-3068 for water from the Alamo Spring and Wash. On August 2, 1950, she assigned her interest to the Alamo Spring and Wash and her rights under Water Right Application No. A-3068 to the Gray Partners. The result being that both the National Park Service (as shown in WR #1 docket for the Alamo Spring) and Mrs. Miller and her assigns were treating the Alamo Well as their property. In a letter of September 14, 1950, the Park Service filed a protest to the application. The Service stated that Mrs. Miller had at one time filed a mining claim and built structures on the claimed land but had failed to obtain the claim. Since this land containing the Alamo Well was within the Monument and Mrs. Miller had no land title to the subject tract, the Park Service had notified Mrs. Miller on March 17, 1950 that she would have to remove her improvements on Monument land within five years as she was in trespass.

The basis of the Park Services protest was summarized as follows:
(1) The applicant filed the claim subsequent to being notified to remove her evidence of trespass; and

Compiled by M. Ackerman

(Continued)

Approved by W. Werrell

Page 1 of 2

(2) The application relates to ground water which is not subject to appropriation under state ground water law in effect.

The question arose in a memo of December 22, 1950 by the Regional Director, as to whether the Alamo Spring, being in fact a well, could be considered as having been withdrawn under Public Water Reserve No. 107 established by Executive Order of April 17, 1926. As stated in a memo of December 27, 1950 by the Regional Administrator, Region V, that the order contemplated the withdrawal of land containing natural springs or water holes, not requiring artificial development, on vacant, unappropriated, unreserved public land containing such springs and land within a quarter mile of the spring. Since Alamo Well was artificially developed by a dug well and a windmill, it did not fall under the purview of Executive Order of April 17, 1926.

On October 1, 1957, the State Land Commissioner rejected Application No. A-3068 on the basis that the applicant had attempted to appropriate percolating water. On October 29, 1957, the attorney for the applicants filed an appeal. However, on January 18, 1960, the Superior Court for the County of Pima ordered the case be dismissed for lack of prosecution.

Due to the death of the last Grey brother in 1976, this well is no longer being used. This non-pumpage of the well will contribute to an increase of the seasonal springflow in the wash. Any subsequent use of Alamo Spring will be covered by this docket.

Tim Kern
June 1978

SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR
RESERVED AND APPROPRIATED WATER RIGHTS IN THE LOWER GILA RIVER GENERAL
ADJUDICATION.

I. Name and address of Applicant:

United States of America
c/o National Park Service
Western Regional Office
P.O. Box 36063
450 Golden Gate Avenue
San Francisco, CA 94102

II. The United States of America hereby claims water rights in those portions of the National Monuments described below which are encompassed by this adjudication. (Exhibits ORPI #1 and CAGR #1). The United States claims reserved rights under the legislation which designates or enlarges the areas known as Organ Pipe Cactus National Monument and Casa Grande National Monument. The United States further claims additional water rights under state law for whatever purposes might have been added by the designation of portions of Organ Pipe Cactus National Monument as wilderness areas.

A. Organ Pipe Cactus National Monument.

1. Purpose. To preserve objects of historic and scientific interest; to secure the benefits of an enduring resource of wilderness; and to provide for administration of and visitation to the monument (Exhibits ORPI #2, #3, #4, #5, and #6).

2. Sources. All surface and ground water sources including rivers, perennial and intermittent streams, springs, seeps, lakes, pools, tinajas, confined and unconfined aquifers and other natural sources of water on and under lands reserved from the public domain.

3. Locations of Current Diversions and Uses on Reserved Land.

a. Legal description of the current point(s) of diversion.

- 1) Acuna Well - (Registration No. 55-629118) NE 1/4 SE 1/4 SW 1/4, Section 1, T16S, R7W G&SRB&M.
- 2) Daniell's Replacement Well - (Registration No. 55-629121) SW 1/4 NE 1/4 NE 1/4, Section 35, T14S, R7W G&SRB&M.
- 3) Henry Gray Well - (Registration No. 55-629122) SE 1/4 NE 1/4 NE 1/4, Section 35, T14S, R7W G&SRB&M.

- 4) Alamo Well - (Registration No. 55-629154) SE 1/4 NW 1/4 NE 1/4, Section 6, T16S, R4W G&SRB&M.
 - b. Legal description of the current place(s) of use. The legal descriptions listed in II.A.3.a. represent the places of use for the listed points of diversion.
 - c. Current purpose(s) of use. The current purposes of use are those identified in II.A.1. above.
 - d. Water requirements. See II.A.5. below.
4. Dates of Priority. (See Exhibit ORPI #1.) April 13, 1937, for lands reserved by Presidential Proclamation No. 2232 (Exhibit ORPI #2); and November 10, 1978, with respect to the additional purposes specified for the portions of the Monument described by the Act of that date (Exhibit ORPI #6).
5. Amount of Water Claimed.
- a. Rivers, perennial and intermittent streams, springs, seeps, lakes, pools, tinajas, and ground water (non-consumptive). The United States of America claims, except as provided in subparagraphs b. and c. below, the right to that minimum amount of surface and ground water occurring on and under those portions of Organ Pipe Cactus National Monument reserved from the public domain necessary to fulfill the purposes described in II.A.1. above as follows. The government will (a) at the time of proof present evidence relating to the minimum amount of water necessary to fulfill such purposes, or (b) in the event recognized under state law, seek a decree of an unquantified reserved right, permitting a general right to enjoin other users of a junior priority that may adversely affect or injure the purposes of the reservation, or to enjoin users as otherwise permitted under state law.
 - b. Quantifiable present and future administrative uses (consumptive). The United States of America claims the right to divert and use 45 acre-feet per annum from surface and ground water sources for picnic areas, visitor centers, concessions and other visitor-use areas; park administration facilities, shop, maintenance and storage facilities, ranger stations, entrance stations, visitor contact stations, employee residences, and attendant facilities; lawns surrounding park buildings and structures and other public-use areas to offset heavy human impact; construction of roads and trails; revegetation activities; and waste water treatment facilities.

- c. Non-quantifiable present and future administrative uses (consumptive). The United States of America claims the right to use non-quantifiable amounts of water for controlling and suppressing wildfire and structural fires.

B. Casa Grande National Monument.

1. Purpose. To protect Casa Grande ruin; to protect, preserve, and care for the ruins of the ancient buildings and other prehistoric objects of interest; and provide for the administration of and visitation to the monument (Exhibits CAGR #2, #3, #4, #5, #6, and #7).

2. Sources. All surface and ground water sources including intermittent streams, pools, confined and unconfined aquifers and other natural sources of water on lands reserved from the public domain.

3. Locations of Current Diversions and Uses on Reserved Land.

- a. Legal description of the current point(s) of diversion.

Casa Grande Ruins Water Supply Well - (Registration No. 55-629148) NW 1/4 NE 1/4 SW 1/4, Section 16, T5S, R8W G&SRB&M.

- b. Legal description of the current place(s) of use. The legal descriptions listed in II.B.3.a. represent the places of use for the listed points of diversion.

- c. Current purpose(s) of use. The current purposes of use are those identified in II.B.1. above.

- d. Water requirements. See II.B.5. below.

4. Dates of Priority. (See Exhibit CAGR #1.) June 22, 1892, for lands reserved by the Executive Order of that date (Exhibit CAGR #3); December 10, 1909, for lands reserved by the Presidential Proclamation of that date (Exhibit CAGR #7); and August 3, 1918, for lands reserved by the Presidential Proclamation of that date (Exhibit CAGR #4).

5. Amount of Water Claimed.

- a. Surface and ground water (non-consumptive). The United States of America claims, except as provided in subparagraphs b. and c. below, the right to that minimum amount of surface and ground water occurring on and under lands reserved from the public domain which is necessary to fulfill the purposes described in II.B.1. above. The United States' claim for water is in the alternative as follows. The government will (a) at the time of proof present evidence relating to the minimum amount of water necessary to fulfill such purposes, or (b) in the event

recognized under state law, seek a decree of an unquantified reserved right, permitting a general right to enjoin other users of a junior priority that may adversely affect or injure the purposes of the reservation, or to enjoin users as otherwise permitted under the state law.

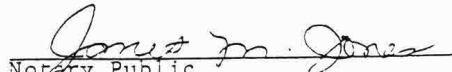
- b. Quantifiable present and future administrative uses (consumptive). The United States of America claims the right to divert and use 221 acre-feet per annum from surface and ground water sources for picnic areas, visitor centers, concessions and other visitor-use areas; park administration facilities, shop, maintenance and storage facilities, ranger stations, entrance stations, visitor contact stations, employee residences, and attendant facilities; lawns surrounding park buildings and structures and other public-use areas to offset heavy human impact; interpretive exhibits; construction of roads and trails; revegetation activities; and waste water treatment facilities.
- c. Non-quantifiable present and future administrative uses (consumptive). The United States of America claims the right to use non-quantifiable amounts of water for controlling and suppressing wildfire and structural fires.

III. Notarized Statement:

I, Patrick Barry, on behalf of the United States of America, National Park Service, the claimant named in this claim, do hereby certify under penalty of perjury, that I have read the information contained and statements made herein and to the best of my knowledge and belief they are true, correct and complete.


PATRICK BARRY
Attorney, Department of Justice

Subscribed and sworn to before me this 2nd day of November, 1987.


Notary Public

My Commission Expires:

11-12-87

IV. The United States of America claims water rights under Arizona State law for beneficial purposes in Organ Pipe Cactus National Monument as follows (see certificate attached):

Pozo Nuevo Well (Registration No. 55-629152)

EXHIBIT LIST

Exhibit ORPI #1	-	General Index Map.
Exhibit ORPI #2	-	Presidential Proclamation No. 2232, April 13, 1937.
Exhibit ORPI #3	-	Act of June 8, 1906.
Exhibit ORPI #4	-	Act of August 25, 1916.
Exhibit ORPI #5	-	Act of September 3, 1964.
Exhibit ORPI #6	-	Act of November 10, 1978.
Exhibit CAGR #1	-	General Index Map.
Exhibit CAGR #2	-	Act of March 2, 1889.
Exhibit CAGR #3	-	Executive Order of June 22, 1892.
Exhibit CAGR #4	-	Presidential Proclamation No. 1470, August 3, 1918.
Exhibit CAGR #5	-	Act of June 8, 1906.
Exhibit CAGR #6	-	Act of August 25, 1916.
Exhibit CAGR #7	-	Presidential Proclamation of December 10, 1909.



DEPARTMENT OF WATER RESOURCES
99 EAST VIRGINIA AVENUE
PHOENIX, ARIZONA 85004

REGISTRATION OF EXISTING WELLS

INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING
PRINT OR TYPE - FILE IN DUPLICATE

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

REGISTRATION FEE (CHECK ONE)	
EXEMPT WELL (NO CHARGE)	☒
NON-EXEMPT WELL - \$10.00	☐

FOR OFFICE USE ONLY	
REGISTRATION NO. 55-	629154
FILE NO.	816-4)6 262
FILED	6-9-82 AT 1:30
(DATE)	(TIME)
INA	
ANA	

- Name of Registrant:
National Park Service, Western Region, Division of Water Resources
450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102
(Address) (City) (State) (Zip)
- File and/or Control Number under previous groundwater law:
(File Number) (Control Number) 35-
- The well is located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, of Township 16 S N/S, Range 4 W E/W, G & SRB & M, in the County of Pima.
 - If in a subdivision: Name of subdivision _____, Lot No. _____, Address _____.
- The principal use(s) of water (Examples: irrigation - stockwater - domestic - municipal - industrial)
Wildlife, Ranch operations (historical)
- If for irrigation use, number of acres irrigated from well _____.
- Owner of land on which well is located. If same as Item 1, check this box ☒

(Address) (City) (State) (Zip)
- Well data (If data not available, write N/A)
 - Depth of Well 21 feet
 - Diameter of casing N/A inches
 - Depth of casing N/A feet
 - Type of casing N/A
 - Maximum pump capacity not more than 35 gallons per minute.
 - Depth to water 10 feet below land surface.
 - Date well completed (Month) (Day) (Year) 1905
- The place(s) of use of water. If same as Item 3, check this box ☒.

Organ Pipe Cactus -- Alamo Well
Attach additional sheet if necessary.
- DATE JUN 3 1982 SIGNATURE OF REGISTRANT (Sgd) Gerard S. Witucki

GERARD S. WITUCKI
CHIEF, DIVISION OF WATER RESOURCES

Land History

Form NPS-L-1 UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

State Arizona Tract No. _____
County Pima Deed No. 3
Civil Subdivision _____ Area _____ acres Organ Pipe Cactus National Monument.
Name of Park or Area
Area based on survey of _____ Date _____ Alamo Canyon
Section of Park or Area
Legal Description: Well on Federal land.

Method of Acquisition: Built on Federal land. Appropriation or Source of funds: _____
Cost (if purchased) or estimated value: _____
Acquired from: _____
Accepted by Secretary (____) Opinion of Att'y. Gen.-title in U. S. (____) date: _____
Physical Characteristics: _____

Improvements on Land at time of Acquisition: Well.

Existing or outstanding special use permits, reservations, rights, or rights of way: Title claimed by Mrs.
Birdie Del Miller.

Report Based on: Reports of Water Resources Branch.
Prepared by: A. van V. Dunn, Chief, Water Resources Branch date: 1/21/48.
Map References: MM-POC-6950.
Remarks: This well is on Federal land to which Mrs. Miller has no access.
The land is grazed by the Gray family under Federal Permit.

25348

Supporting Hydro Data

PERMANENT REFERENCE
Do Not Discard

NATIONAL PARK SERVICE

FORM 9-1642B
(DEC 68)Well No. (C-16-4) 6 abd

WELL SCHEDULE

U. S. DEPT. OF THE INTERIOR

GEOLOGICAL SURVEY

WATER RESOURCES DIVISION

W. Werrell

MASTER CARD

Record by C. English, USGS, 3-6-56 Source of data Field Date Aug 8, 74 Preliminary Map: Tonoca SW - 7 1/2'State Arizona 04 County Pima 10Latitude: 32° 03' 59" N Longitude: 111° 24' 25" W Sequential number: 1Lat-long accuracy: 1 T. 16 R. 4 Sec. 6 SE k. NW k. NE k. G & SR PMLocal well number: C-16-04 06 ABD Other number: Alamo WellLocal use: ALAMO WELL Owner of name: Alamo WellOwner or name: ALAMO WELL Address: Ownership: County, (C) Fed Gov't, (F) City, Corp or Co, Private, State Agency, Water Dist FUse of water: (A) Air cond, Bottling, Comm, Dewater, Power, Fire, Dom, Irr, Med, Ind, P S, Rec, (S) Stock, Instit, Unused, Repressure, Recharge, Desal-P S, Desal-other, Other SUse of well: (A) Anode, Drain, Seismic, Heat Res, Obs, Oil-gas, Recharge, Test, Unused, (W) Withdraw, Waste, Destroyed WDATA AVAILABLE: Well data Freq. W/L meas.: Field aquifer char. Hyd. lab. data: Qual. water data: type: Specific conductance KFreq. sampling: Pumpage inventory: yes no period: Aperture cards: yes no Log data:

WELL-DESCRIPTION CARD

SAME AS ON MASTER CARD Depth well: 21 ft 21 Meas. accuracy Depth cased: ft Casing type: Diam. 54 in Finish: (C) porous concrete, (F) gravel w. concrete, (G) gravel w. (screen), (H) horiz. gallery, end, (P) open perf., screen, sd. pt., shored, (W) other XMethod: (A) air bored, (B) cable, (C) aug, (D) hyd jetted, (H) air reverse, (J) percussive, (P) driven, (R) drive wash, (T) other DDate drilled: 1905 ? 9:05 Pump intake setting: ft Driller: William Miller name address Lift: (A) air, (B) bucket, (C) cent, (J) multiple, (L) multiple, (M) multiple, (N) multiple, (P) piston, (R) rot, (S) submerg, (T) turb, other P Deep D Shallow Power: (type) diesel, elec, gas, gasoline, hand, gas, wind, H.P. 3 Trans. of meter no. Descrip. MP top of concrete curb, 2.6 ft above LSD, Alt. MP Alt. LSD: 2390 2390 Accuracy: USGS Topo - 40' Contours 3Water Level: 9.53 ft above MP; Ft below LSD 10 Accuracy: ADate meas: June 12, 52 6:52 Yield: gpm Method determined Drawdown: ft Accuracy: Pumping period: hrs QUALITY OF WATER DATA: Iron ppm Sulfate ppm Chloride ppm Hard. ppmSp. Conduct 800 K x 10⁶ 4 Temp. 24.5 °C 76 Date sampled Aug 8, 74 8:74Taste, color, etc. Well No. (C-16-4) 6 abd

Well No. (C-16-4) 6 abdLatitude-longitude 32.03.59^N 112.42.51^S
d m s d m s

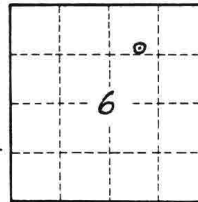
HYDROGEOLOGIC CARD

SAME AS ON MASTER CARD
 Physiographic Province: Basin & Range 2.2 Section: Sonoran
Desert B Drainage Basin: Gila River-Texas 23 Subbasin: San Cristobal 26
 (D) (C) (E) (F) (H) (K) (L)
 Topo of depression, stream channel, dunes, flat, hilltop, sink, swamp,
 well site: (G) (P) (S) (T) (U) (V)
 offshore, pediment, hillside, terrace, undulating, valley flat 27 C
 MAJOR
 AQUIFER: system series 28 29 aquifer, formation, group 30 31
 Lithology: 32 33 Origin: 34 Aquifer Thickness: 35 ft
 Length of well open to: 36 ft Depth to top of: 37 ft
 MINOR
 AQUIFER: system series 44 45 aquifer, formation, group 46 47
 Lithology: 48 49 Origin: 50 Aquifer Thickness: 51 ft
 Length of well open to: 52 ft Depth to top of: 53 ft
 Intervals Screened:
 Depth to consolidated rock: 54 ft Source of data: 55
 Depth to basement: 56 ft Source of data: 57
 Surficial material: 58 59 Infiltration Characteristics: 60
 Coefficient Trans: 61 gpd/ft 62 Coefficient Storage: 63
 Coefficient Perm: 64 gpd/ft²; Spec cap: 65 gpm/ft; Number of geologic cards: 66

Bobby and Henry Gray state that
this well was dug sometime between
1900 and 1910.

Concrete curb is 4'9" x 5'3".

Park inventory of wells, Dec 15, 1951
states that well was dug after 1914.

Well No. (C-16-4) 6 abd

ORPI 7-68

WATER SOURCE REPORT

Name of Water Source: Alamo WellQuadrangle Alt. AigT-16S R. HW Elevation 2400 ft. Map Scale: 62500Photos yes Sketch No Recorded on Map yes

Access Route: From Alamo Bridge drive east on dirt rd. + 4 miles to Jack Gray residence, at mouth of canyon. Well is located at far end of corral below residence; has gas pump; no windmill.

Terrain: Hilly, eroded due to being in mouth of Alamo canyon. Well is 15' deep in wash; high cement walls.

Ground Cover: Mesquite along wash, various cactus.

Flow: Past (date) 3500 gal/day/ ^{3/51} Present unk
(18'-6/50)

Depth 42' Length 4' Width 4' Storage gals. (estimated)

Brief History: Millers purchased well & nearby mining well for \$750.00. Contracted Rube Daniels to dig well 1914. Millers purchased area from Powell & Hubsteader. Rented rights to Gray family in 1937. Well formerly pumped by windmill. Area reportedly used as "am.Papago Indian village in 1917."

Present Development and Human Use: Two sm. buildings--residence of Jack & Lucille Gray, corral, well & minor materials.

Wildlife Use: Probably misc. varieties due to trough in corral & number of waterholes in canyon.

Remarks & Recommendations:

1. Development and Maintenance Could be considered as visitor use area after departure of Gray family.

2. Protection and Use Same as above.

Observer-Compiler Bill Hoy Title Game ranger Date 7/26/68

C. S. E. = "Chuck" S. English

**UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY**

ALAMO
Canyon well **WATER RESOURCES DIVISION** *(C-16-5) acc.*

WELL SCHEDULE

Date *3-6*, 19*56* Field No.
 Recorded by *CE* Office No.
 Source of Data *National Park S. & N.S.*

1. Location: State *AR.* County *Phillips*
 Map *SW 1/4 Sec. 1 NE 1/4 sec. 1 T. 16 N. R. 5 E. 16 W.*

2. Owner: *U.S. Park S. & N.* Address
 Tenant *U.S. Park S. & N.* Address
 Driller *Wm. Miller* Address

3. Topography

4. Elevation ft. above
 below

5. Type: Dug drilled, driven, bored, jetted 19

6. Depth: Rept. *21* ft. Meas. ft.

7. Casing: Diam. *4 1/4* in. to in. Type
 Depth ft. Finish

8. Chief Aquifer *Shinarump and underlying* From ft. to ft.
 Others

9. Water Level *2.0* ft. rept. 19 *58* above
 meas. below

..... which is ft. above
 below surface

10. Pump: Type *C* Capacity G.M.
 Power: Kind *W* Horsepower

11. Yield: Flow G.M., Pump G.M., Meas., Rept. Est.
 Drawdown ft. after hours pumping G.M.

12. Use: Dom. Stock PS, RR, Ind., Irr., Obs.
 Adequacy, permanence

13. Quality: Temp. °F
 Taste, odor, color Sample ^{No}
 Unfit for Yes

14. Remarks: (Log, Analysis, etc.) *Hand Driven in dry seasons*
10/19/58 15.77
11/58

Water level measurement
 of Oct. 19, 1962
 corresponds to trip
 by P. E. Dennis.
 Listed water level is
 probably referenced to land surface datum.

Other Supporting Information

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

A-38799
(Field number)Region V, Albuquerque, New Mexico
(Region)MAR 16 1951
(Date)

REPORT

Land district and serial No. Phoenix Date of examination February 19, 1951
Paul F. Cutter
 Name Withdrawal Field examiner Valuation Engineer
Proposed Withdrawal-Organ Pipe
 Subject Cactus National Monument Approved: /s/ Adlai S. Baker
Chief, Land Classification
 Date December 22, 1950
(Application or proof)

Lands involved: Aquajita and Williams Springs in
T. 17 S., R. 7 W., and
Alamo Spring in T. 16 S., R. 4 W.
Containing 120 Acres

On December 22, 1950, the Acting Regional Director, National Park Service, Santa Fe, New Mexico, requested this office to determine whether or not the above named springs are considered to have been withdrawn under Public Water Reserve No. 107 created by executive order of April 17, 1926.

I made examination February 19, 1951, in company with Wm. R. Superbaugh, Superintendent of the Organ Pipe Cactus National Monument. We went to each of the first two named springs and examined and measured the flow. Report is now submitted as follows:

The Organ Pipe Cactus National Monument was created by executive order of April 13, 1937. The lands were subject to grazing use. Decision of November 18, 1941, (1890780) promulgated the Act, opening the lands in the Monument to subsurface location of minerals. The Gray Brothers of Ajo, Arizona, operating a cattle raising business under the name of Gray Partnership have the grazing rights to the surface in this area of the Monument. Under the terms of the lease the Park Service has some control over their activities in the Monument. On June 20, 1950, the partnership filed applications with the State Water Commissioner for permits for the use of such waters. The Park Service has protested issuance of such permits by the State Water Commissioner's office. The partnership has been allowed 90 days from February 1, 1951, in which to file answer to the Park

PFCutter;kb

Orig. & 3 cc: N'tl. Park Ser., Santa Fe
 1 cc: RO
 1 cc: RO T&R
 1 cc: Area Manager

Service allegations. From Superintendent Supernaugh it was learned that the Park Service is anxious to prevent the Gray Partnership from obtaining a permanent, legal foothold in the Monument. It was for this reason that the water filings were protested and this office was requested to report on the matter.

It should be born in mind that the grazing lessees cannot run cattle under the lease in the Monument unless a supply of water is made available. So far as I could determine, the Park Service does not object to the use of the water so much as it objects to the method of the lessee in obtaining an actual right to the use of the water through a filing in the State office. The question of ownership of waters arising and flowing on Government lands is still somewhat controversial and has not yet been settled in the courts or before the Department to the satisfaction of everyone. There are decisions not in harmony with precedent. Even the executive order of April 17, 1926, did not withdraw the water, but only the land upon which it occurred.

Under Article 1, Chapter 75, Section 101 of the Arizona State Water Code, "The water of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface, belongs to the public and is subject to appropriation and beneficial use, as herein provided. Beneficial use shall be the basis, measure and limit to the use of water. Whenever the owner of a right to the use of water shall cease or fail to use the water appropriated for five (5) successive years, the right to the use shall cease, and the water shall revert to the public and again be subject to appropriation."

All the lands on which the named springs are situated are unsurveyed. Such lands cannot be filed upon except under the mining laws and in the present instance the surface and subsurface estates have been separated so that only the underground mineral can be located. It is therefore difficult to see how a declaration by this office that the land does or does not come under the interpretation of the Executive order of April 17, 1926, can help the Park Service in this controversy.

Even if the State awards the partnership a water right to the use of the waters, such right is not permanent and is subject to cancellation upon a showing that there has been a lapse of five years in applying the water to beneficial use (stockwatering).

True, there has no doubt been some tramping and destruction, due to overgrazing, of certain rare vegetation occurring in

the United States only in this portion of Arizona, near the springs. A declaration by this office that the lands within one-fourth mile of such springs are reserved and withdrawn for public watering purposes would not prevent further destruction of such plant life. Springs in this portion of the Southwest have a habit of increasing, decreasing and even drying up, depending upon the frequency and amount of rainfall during the immediately preceding period. According to Mr. Supernauth, there had been three rainfalls of about one half inch each during the six immediately preceding weeks. The flow measured was therefore probably greater than usual, but less than the flow would be after the summer cloudbursts.

Aquajita Spring

This spring is situated right on the Mexican border only a few feet north of the fence situated along the 60-foot strip of "no man's" land along the international boundary. The spring is a little over one-fourth mile south and east of boundary marker No. 172 and in what will probably be, when surveyed, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T. 17 S., R. 7 W. Quitobaquito Spring just northwest of Marker No. 172 and in SE $\frac{1}{4}$ Section 18 (when surveyed) was the cause of the creation of Public Water Reserve No. 88 by executive order of November 21, 1923, although the land was erroneously described as being approximately the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17. This fact is mentioned so that there will be no misunderstanding that Aquajita Spring was the spring included in Public Water Reserve No. 88.

Aquajita Spring is in two parts of a ravine which forks to form an island. A low one-foot dam was constructed across each fork and each flow was measured. Fine silt was packed on the upper face to prevent seepage there and under the dam. The flow through a trough was caught in a can of known volume and the time of filling was noted. Several different tests were made and a check was had later in the day. The two seeps combined averaged 2500 gallons per day.

The executive order of April 17, 1926, contemplated only the withdrawal from settlement, location, sale or entry and reservation for public use of vacant, unappropriated, unreserved public land containing a spring or water hole, and lands within one-fourth mile of such spring if the lands are unsurveyed, provided such water holes are needed or used by the public for watering purposes. Water holes providing sufficient water only for domestic purposes (about 250 gallons per day) were not reserved. Public necessity, accessibility, and sufficiency for general use for watering purposes are essentials. The waters must also be natural waters not requiring artificial development.

Since the Gray Partnership is the only cattle grower having a right to the use of this water by virtue of its grazing lease from the Park Service, it appears that the water is not needed or used by the general public for watering purposes. It is difficult to see, therefore, how this land containing Aquajito Spring can be considered to be within the interpretation for Public Water Reserve No. 107 (executive order of April 17, 1926).

In the application (A-3064) before the State Water Commissioner, the Gray Partnership shows that the spring waters 100 cattle per day as a maximum, and produces 550,000 gallons of water per annum. This is only a little over one half the flow I obtained, indicating that the flow on date of my examination was greater, due to recent rains, than the average flow, or that the applicant was only appropriating the water from one of the two springs. He alleged that he had appropriated this water and placed it to beneficial use prior to 1919. The Act of July 26, 1866, Section 2339 R. S., constitutes a recognition by the United States of water rights acquired under usage, custom and state laws (98 U.S. 453).

In decision of April 9, 1945, involving Phoenix 075481, the Secretary held that Public Water Reserve No. 107 is not applicable to lands containing a spring validly appropriated by private parties under state laws prior to April 17, 1926.

In my opinion the land containing Aquajito Spring should not be interpreted under the executive order of April 17, 1926, creating Public Water Reserve No. 107, since the land is not needed or used by the general public for watering purposes.

If the Park Service had need of this water for recreational purposes by members of the general public travelling through the Monument past this spring, it should be protected by a fence and the clean water impounded by an undersurface dam, and piped to a storage reservoir. The overflow could be piped to a trough for cattle use. This would protect the water and make it fit for human consumption, but would not prevent overgrazing and destruction of vegetation in the vicinity.

Williams (or Rincon) Spring

An earthen reservoir 50 x 60 feet and now 1½ feet deep has been constructed at this spring. Since an initial trough or trench through the dam was excavated too deep, requiring several hours to refill the reservoir to its normal height, prior to measurement, Mr. Supernaugh agreed to return another day to take the

measurement. By letter of March 4, 1951, he indicated that the normal flow was slightly over 1500 gallons per day.

Gray Partnership filed Application A-3065 before the State Water Commissioner indicating that the spring was on unsurveyed SW $\frac{1}{4}$ Section 7, T. 17 S., R. 7 W., and produced 550,000 gallons per annum. This is approximately the same flow as that obtained by Mr. Supernaugh. The Gray Partnership indicated that the spring has been used and appropriated since 1919 and watered a maximum of 100 head of cattle daily.

This spring is off the beaten paths in the Monument and not used by the general public for watering purposes. It appears therefore, that it should not be interpreted as coming within the purview of executive order of April 17, 1926, creating Public Water Reserve No. 107.

Alamo Spring

This watering is situated on what probably will be when surveyed the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 6, T. 16 S., R. 4 W. Gray Partnership filed Application A-3068 before the State Water Commissioner for this spring. The flow was shown to be 100 gallons per day, or 550,000 gallons per annum. The two figures are not in agreement. It was shown that the development consisted of a well 4 x 4 x 18 feet deep, and that the flow would water 150 cattle per day.

I examined this tract in company with Pete Fennessey, a watchman employed by the Gray Partnership. A strong wind was blowing. I measured the flow produced by the operation of the windmill and found it to be at the rate of 3500 gallons per day. No spring was found on the surface. Artificial works were necessary to produce a flow. Since a well was necessary to obtain water, it clearly does not come within the purview of executive order of April 17, 1926, creating Public Water Reserve No. 107.

The well is far removed from the beaten path and seldom, if ever, visited by the general public. A sub-headquarters house is maintained by the Gray Partnership a few hundred feet west of the spring and on the same subdivision (projected). The development is important to the stockgrower and has been utilized as indicated for many years.

Conclusion

The lands covered by these waterings are unsurveyed, and the springs are such that they cannot be interpreted under executive order of April 17, 1926, creating Public Water Reserve No. 107. Even

were such an interpretation possible it would not prevent use of the water by the Park Service's grazing lessee for stockwatering. If the applicant can show appropriation and beneficial use prior to April 17, 1926, as alleged, the land could not be considered to come under the order.

If the Park Service lease to the Gray Partnership has a clause forbidding overgrazing, it appears that the lease could be cancelled if such overgrazing near the springs is causing destruction of rare and valuable plant life. Mining claims would no doubt then be located over the springs and grazing use would then continue until such claims were declared invalid after due process.

To prevent issuance of permit by the State Water Commissioner at the hearing involving the protest against the water filings the Park Service will have to show either that the water is not of the type that can be appropriated, or that the public use in connection with Park Service administration constitutes a higher use than for stockraising. Either method of attack will be difficult to sustain.

/s/ Paul F. Cutter

Paul F. Cutter
Valuation Engineer

LC:PFC

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Post Office Box 1695
Albuquerque, New Mexico

December 27, 1950

Memorandum

To: P. P. Patraw, Acting Regional Director, National Park Service, Region III
From: Regional Administrator, Region V
Subject: Public Water Reserve No. 107 within Organ Pipe Cactus National Monument

Consideration has been given to your memorandum of December 22 discussing Aquajita and Williams Springs in T. 17 S., R. 7 W., and Alamo Spring in T. 16 S., R. 4 W., G.&S.R.M., Arizona.

The executive order of April 17, 1926 contemplated only the withdrawal from settlement, location, sale or entry and reservation for public use of vacant, unappropriated, unreserved public land containing a spring or water hole, and lands within one-fourth mile of such spring if the lands are unsurveyed, provided such water holes are needed or used by the public for watering purposes. Water holes providing sufficient water only for domestic purposes (about 250 gallons per day) were not reserved. Public necessity, accessibility, and sufficiency for general use for watering purposes are essentials. The waters must also be natural waters not requiring artificial development.

It appears therefore, that Alamo Spring, being in fact a well, may not be subject to the interpretation. We will, however, list the matter for investigation by one of our field men who will examine all three springs as well as any other springs or water holes in which you might be interested, within the monument. His investigation will cover the essentials mentioned above. It should be realized, however, that the withdrawal applies to the land on which the water exists and not to the water per se.

The Arizona State Water Code of 1939, Article 1, Chapter 75, Section 101, provides that the flowing waters of all sources (including springs) are public and subject to appropriation and beneficial use. On the other hand, a spring of water, as such (not flowing) is not one of the sources from which water may be appropriated. See McKenzie v. Moore, 20 Ariz. 1., 176 Pac. 568.

"Springs are subject to appropriation when, in their natural undeveloped state, the flow is sufficient for beneficial use; watering stock is a beneficial use, thus such a spring may be appropriated, though it does not flow beyond the boundaries of the land upon which it is located."

See Parker v. McIntyre, 47 Ariz. 404, 56 Pac. (2d) 1337.

Chapter 75, Section 102 provides that "any person may appropriate any unappropriated water for domestic, municipal, irrigation, stock watering, water power, wildlife (including fish), or mining uses, for his personal use or for delivery to consumers. The person first appropriating shall have the better right.....". Wildlife uses must be held by the Water Commissioner to be inferior to stock watering uses in the event it becomes necessary to determine the relative values.

Because of uncertainty of court action on similar matters, the Forest Service has for over the past 10 years filed notices of water appropriation with the Arizona State Water Commissioner for waters within the several National Forests needed or used for public or administrative purposes. The Forest Service did not concede that this was necessary, but did it as a precautionary step to insure their use without the necessity of litigation.

You will be further advised upon submission of the field report which we will have expedited.

/s/ E. R. SMITH

E. R. Smith,
Regional Administrator

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Post Office Box 1695
Albuquerque, New Mexico

December 27, 1950

Memorandum

To: P. P. Patraw, Acting Regional Director, National Park Service, Region III

From: Regional Administrator, Region V

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You will be further advised upon submission of the field report which we will have expedited.

/s/ E. R. Smith
/t/ E. R. Smith,
Regional Administrator

C O P Y

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

December 22, 1950

Memorandum

To: Mr. Eastburn R. Smith, Area Administrator
Bureau of Land Management
Albuquerque, New Mexico

From: Acting Regional Director

Subject: Request for determination of status of sources of water
in Organ Pipe Cactus National Monument

It is requested that a determination be made as to whether the lands including the following described sources of water within Organ Pipe Cactus National Monument, Pima County, Arizona, are considered as having been withdrawn under Public Water Reserve No. 107 established by Executive Order of April 17, 1926:

1. Aquajita Spring, located in Sec. 17, T. 17 S., R. 7W., G. & S. R. M.
2. Williams Spring, also known as Rincon Spring, located in Sec. 7, T. 17 S., R. 7 W., G. & S. R. M.
3. Alamo Spring, located in Sec. 6, T. 16 S., R. 4W., G. & S. R. M.

The last-mentioned spring is actually a well on the edge of Alamo Wash.

Applications have been filed with the State Land Commissioner of Arizona, by persons holding grazing permits within the national monument, for appropriation of these waters. Since the lands involved are owned by the United States and withdrawn for national monument purposes, it would be greatly to the disadvantage of the Government if the pending applications are granted.

The Superintendent, Organ Pipe Cactus National Monument, whose headquarters are located about 33 miles south of Ajo, Arizona, will render all possible assistance to the representative of the Bureau of Land Management who may be designated to make an inspection on the ground for the purpose of the determination requested.

(SIGNED)

P. P. Patraw
Acting Regional Director

Copy to: Director (2)
Gen. Supt., SWNM (2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D. C.

July 26, 1950

Memorandum

To: Regional Administrator, Region II
San Francisco, California

From: Director, Bureau of Land Management

Subject: Withdrawal of public land containing springs or water
holes; protection of range improvements.

My opinion has been requested concerning your memorandum of April 14 relating to the above matters. You state that the range manager C-1, in connection with a water development constructed under a cooperative agreement, has recommended that "the development be protected by a public water withdrawal"; that this recommendation was motivated, in part, by experience in another case "wherein there was a conflict of interest by virtue of a notice of mill-site location posted in an area which much earlier had been withdrawn as a public water reserve"; and that available information in connection with the range manager's last recommendation "indicates that the water supply being developed under this cooperative agreement was in its natural state inconsequential both from the standpoint of public use and public need."

You ask to be advised as to the protection which is accorded to a developed water supply of this kind by Executive Order of April 17, 1926 establishing Public Water Reserve No. 107, and whether it would be proper to issue an order under the general powers of the President withdrawing from all forms of disposal under the nonmineral public land laws, and also from disposal under the mining laws "every smallest legal subdivision upon which are located sources of water supply feeding range improvements and the improvements themselves."

The Executive Order of April 17, 1926 reads as follows:

"Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases', as amended by act of Congress approved August 24, 1912 (37 Stat. 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring

or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), and in aid of pending legislation."

The act of June 25, 1910, as amended, cited in the Executive Order provides that the lands withdrawn "shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals." Section 10 of the act of December 29, 1916, also cited in the Executive Order, provides that the lands withdrawn and reserved for water purposes by the public "shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe."

In 43 CFR 292.2 it is stated: "The Executive Order of April 17, 1926 was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes."

The Department in a decision of February 27, 1936 (55 I.D. 466) held that the Executive Order of April 17, 1926 is a continuing withdrawal and that it attaches to any lands which at the time of its issuance were, or which subsequently become, of the character and status defined in the order. The Department also held:

"As to the question whether the land is reserved by the order of April 17, 1926, it is not believed that there is any language in the order or regulations thereunder that restricts the terms 'spring or water hole' to those created solely by the forces of nature. The springs or water holes withdrawn, are as the regulations state, 'springs and water holes capable of providing enough water for general use for watering purposes.'"

Any water development on the public lands capable of producing enough water for public watering purposes, made by the United States or pursuant to a cooperative agreement with it, is therefore within the purview of the Executive Order of April 17, 1926. See in this connection decision of the Department of December 26, 1947, as modified July 28, 1948, A-23951, in the case of Jack A. Medd, and memorandum of November 10, 1948, to the regional administrators, regions 1 to 5, inclusive, to the effect that the United States has the paramount right to waters developed under the authority of permits. The Executive Order of April 17, 1926 does not apply, of

course, to a spring or water hole to which private rights had attached on April 17, 1926, which have not since been abandoned, or to a private water-well development on public lands lawfully made prior to the general orders of withdrawal (43 CFR 297.11 and 297.12).

You are, therefore, advised as follows:

1. Public lands in public water reserves within the scope of Executive Order of April 17, 1926 are subject to location under the mining laws of the United States, so far as the same apply to metalliferous minerals.
2. Mining locations when made on the withdrawn lands are subject to the provisions of section 10 of the act of December 29, 1916, and the lands must "be kept and held open to the public use" for watering purposes.
3. The issuance of an order under the general powers of the President withdrawing lands containing "sources of water supply feeding range improvements and the improvements themselves" would have the effect of rewithdrawing the lands containing springs or water holes and removing such lands from the operation of the mining laws relating to metalliferous minerals. Such action, in my opinion, would not be proper, in view of the provisions contained in the act of June 25, 1910. It is doubtful that the Attorney General would approve such an order.
4. The validity of a mill site location on the withdrawn lands would depend on whether it was made in connection with a mining claim located for metalliferous minerals. See decision of the Department of November 13, 1931 in the case of Coeur d'Alene Crescent Mining Company (53 I.D. 531).

After referring to the possible need for withdrawing public lands of the type which you describe from all forms of disposal under the public land laws, including the mining laws applying to metalliferous minerals, you state:

"To properly place the public on notice of the fact that the withdrawal affects specific lands, the withdrawal order might require that upon the construction or authorization of any such improvements the records of the land office concerned be noted to reflect the existence of improvements."

A notation of the construction of range or other improvements on the public lands by the United States or pursuant to an agreement with it should be made on the land office records, in accordance with section 83.2(c) of the Bureau Manual. Improvements of this kind are accorded protection as indicated in 43 CFR 101.20 and 205.13 to 205.15, inclusive.

Any application which may be received for public lands containing range or other improvements should be given consideration in accordance with section 83.4 of the Bureau Manual.

/s/ Jacob N. Wasserman
Chief Counsel

Approved:

/s/ Marion Clawson

Director

DL:GGP
1 INI:MS

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D. C.

July 26, 1950

PROTECTION ACCRUED WATER DEVELOPMENTS OF THE PUBLIC
LANDS MADE BY THE UNITED STATES OR PURSUANT TO
AN AGREEMENT WITH IT

Developed water supply -- range improvements -- withdrawal --
mining claims.

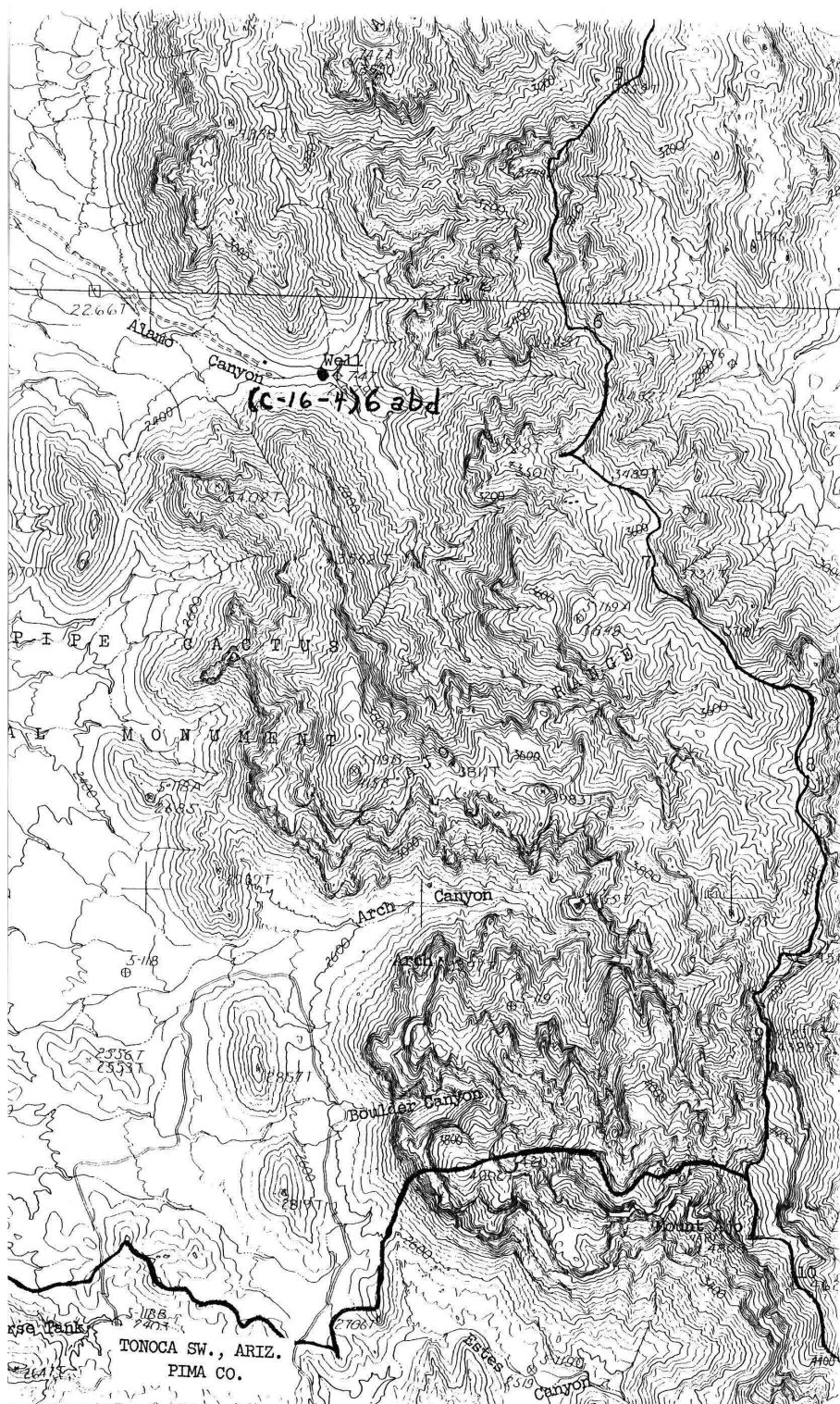
Any water development on the public lands capable of producing enough water for public use for watering purposes made after April 17, 1926, by the United States or pursuant to an agreement with it is within the scope of Executive Order of April 17, 1926, establishing Public Water Reserve No. 107.

Mining locations when made on the withdrawn lands must be kept and held open to public use.

The issuance of an order under the general powers of the President withdrawing the public lands containing springs or water holes used as a source of a developed water supply and removing such lands from the operation of the mining laws relating to metaliferous minerals would not be proper, in view of the provisions contained in the act of June 25, 1910 (36 Stat. 847), as amended.

A notation of the construction of all range or other improvements placed on the public lands by the United States or pursuant to an agreement with it should be made on the land office records.

AGBY
HP



Docket Information

Number of Documents in Docket 30

Documents Dated from 1/21/1948 to 11/2/1987

Docket Compiled: 6/3/2011