



# WATER-RIGHT DOCKET

## Organ Pipe Cactus National Monument

Docket No: 13

WILLIAMS SPRING

Preliminary Docket Information

09-30-1974: water right/source docket information

WATER RESOURCES/WATER RIGHT S DATE: Sept. 30, 1974

WATER RIGHT/SOURCE DOCKET INFORMATION

REGION Western AREA Organ Pipe Cactus National Monument

SITE Williams Spring

STATE Arizona COUNTY Pima DOCKET NO. <sup>WR-13</sup> ~~WR-45~~  
(See memo 5/23/78)

LOCATION ~~SW 1/4, NW 1/4, SE 1/4~~ SEC 7, T 17 S, R 7 W, G&SRB&M

REGIONAL BASIN WESTERN MEXICAN DRAINAGE LOCAL BASIN RIO SONOITA

ACQUIRED BY

APPLICATION A-3065 PERMIT CERTIFICATE

ACTION DUE PRIORITY June 20, 1950 RESERVATION April 13, 1937

QUANTITY 550,000 gpy USE Stockwatering

STATUS SOURCE Tributary of Sonoyta River

REMARKS See General Review of Water Rights in Organ Pipe  
Hydrology unit = 15080102

### NARRATIVE:

The Gray partners filed Water Right Application No. A-3065 on June 20, 1950 to appropriate 550,000 gallons per year from Williams Spring located in Organ Pipe Cactus N.M. The National Park Service in a letter dated July 27, 1950 protested this application on the basis that the source was on federal land, and the applicant had no legal right of access to the proposed points of diversion except under a special use permit covering grazing. The Park Superintendent, in a memo dated October 28, 1950, described Williams Spring as follows:

This is a ground flow spring located about 1 1/2 miles NW of Quitobaquito. Also known as Rincon Spring. This is a very good spring and was developed at one time by a man named Williams. He irrigated a few acres of alfalfa from this water. The Grays claim to have bought his equipment, but it was practically unused until we fenced the International Boundary along this section. All formerly cultivated land has since reverted to natural vegetation.

The Acting Regional Director in a memo dated December 22, 1950 to the BLM, requested a determination be made as to whether the land including Williams Spring was considered as having been withdrawn under Public Water Reserve No. 107 established by Executive Order of April 17, 1926. A report by Paul Cutter of the BLM, made on March 16, 1951, in response to this request stated that:

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.

Mr. A. van V. Dunn, in his report of August 1, 1951, disagreed with Cutter's conclusion and stated that Williams Spring had sufficient flow and there was sufficient public need for the water, to make the spring susceptible of inclusion in parcels of Public Water Reserve No. 107, under withdrawal of April 17, 1926. However, there is nothing in the record to show that Williams Spring was included in Public Water Reserve No. 107.

Mr. Coker, attorney for the Gray partnership, submitted affidavits of John Cameron, Jasper N. Meadows, James T. Havin, and Samuel E. McDaniel in

(Continued)

Compiled by M. Ackerman

Approved by W. Werrell

Page 1 of 13

support of the Gray's water right applications. The affidavits stated that Williams Spring was used by B. Blankenship for livestock watering purposes long prior to 1919 and the Grays had used it continuously since that date. The affidavits stated that they believed that about 1916 Meadows, Wright, and Keenan located mining claims on what is now known as Williams Spring and used the water for domestic and agricultural purposes. Later Meadows transferred his interests to Wright and Keenan who subsequently sold their rights to Frank Williams. About 1920, the Grays purchased said Williams Spring from Frank Williams and have used the spring for stock watering continually since.

This information coincides with a water source report made by Bill Hoy on July 13, 1968 for Williams Spring (sources of information may be identical).

On April 17, 1957, the Arizona Land Title and Trust Company filed a report giving the results of a search of the records in the office of the County Recorder of Pima County (made at the request of the Park Service). Search was made of the Miscellaneous Records indices under the following names (only a partial list):

|                   |                             |
|-------------------|-----------------------------|
| Jasper N. Meadows | The Gray Family             |
| Richard Wright    | Frank Williams              |
| Bill Keenan       | Williams Spring or Millsite |

The following instruments appeared of record relating to Williams Spring (Wright and Meadows had filed claims for the Pappoose Lode Claim in the Agua Dulce Mining District in Pima County):

1) Location Notice by H.D. Williams dated October 10, 1879 and recorded November 5, 1879 in Book 1 of Location Notices at page 32 for Williams Spring Millsite located between the Empire Ranch and Davidson's Spring. (This location is believed to be between Tucson and Benson, South of the highway where an Empire Ranch still exists. The area has a Davidson Canyon which has several springs).

2) Location Notice by G.R. Martinez dated November 15, 1915 and recorded December 13, 1915 in Book 2 of Location Notices at page 218, for the Williams Millsite and water rights, four miles northeasterly from Silverbell and three miles southeasterly from Daily's Mining Camp and Tucson Wagon Road in the Silverbell Mining District. (This location is believed to be in the presently known Silverbell area, several miles N.S. of Tucson).

3) Location notice by T.M. Williams, Fort Grant, Pima County, dated November 24, 1879 and recorded November 29, 1879 in Book 1 of Location Notices at page 39 to claim an unnamed spring and 5 acres in Clark District, 2½ miles northwest of Cedar Springs, Pima County. (A search in Arizona Place Names was made to determine where the "Clark District" was located. The Book lists Fort Clark and Clark Camp but neither were in Pima County. Also listed was Clarkstown which was a town very near Ajo. Cedar Springs is a common name given to springs and affords no clue. This location is not believed to be within present Park boundaries.)

As late as June 28, 1974, the Water Rights Division of the Arizona State Land Department had no record of the final judgement relating to this application. The Gray family is still using this source for stockwatering.

Due to the death of the last Gray brother in 1976 this source is no longer used for stockwatering. The Monument now uses it for wildlife.

May 1978

(continued)

page 2 of 3

The Arizona Department of Water Resources issued an Order of Cancellation for applications for a permit to appropriate waters, No. A-3064 and A-3065, which were filed on June 20, 1950, by the Gray Brothers (Bob, Henry, Jack and Robert). Due to the death of the brothers and the failure of anyone to process the applications in a timely manner, the state has now officially cancelled the applications. See WR #12 Aquijita Wash for copy of Order.

James H. Hershey  
September 18, 1980

FORM NO. 9-1904-B

S G NO. C-17-07 07CADRecorded by N. CarmonyU.S. DEPT. OF THE INTERIOR  
GEOLOGICAL SURVEY  
WATER RESOURCES DIVISION  
GROUND WATER SITE INVENTORY  
SPRING SCHEDULEDate 1-26-77Check One ☒ English ☐ Metric Units

## GENERAL SPRING DATA (1)

Site Ident No 15730113012601 RG Number R=0 Transaction T= D M V  
 add, delete, modify, verified  
 Site-Type 2= S Data Reliability 3= C U L M \* Reporting Agency 4= USGS  
 field checked, unchecked, location not, minimal  
 Project No. 5= WMP District 6= 0A State 7= 0A accurate data Pima 8= 019  
 County (or town)  
 Latitude 9= 315730 Longitude 10= 11130126 Lat-Long Accuracy 11= S O T M  
 deg min sec deg min sec sec, 5 sec, 10 sec, Min  
 Local Number 12= C-17-07 07CAD Land Net 13= SENESEWS 07 T 17S R 07W 6  
 1/4 1/4 1/4 section, township, range, merd  
 Location Map 14= QUITEBAQUITA SPRINGS Scale 15= 62500  
 Altitude 16= 1110 Method of Measurement 17= A L M Accuracy 18= 20  
 altimeter, level, map  
 Topo Setting 19= D C E F H K L Ø P S T U V W Hydrologic Unit (OWDCI) 20=  
 depression, stream, dunes, flat, hilltop, sink, swamp, offshore, pediment, hillside, terrace, undulating, valley, upland, flat, draw  
 Use of Water 24= A B C D E F H I M N P R S T Y Z  
 air cond., bottling, commercial, dewater, power, fire, domestic, irrigation, medicinal, industrial, public, recreation, stock, institution, washed, diesel, other supply  
 Secondary Water Use 25= Tertiary Use of Water 26=  
 Source of Geohydrologic Data 36=

## OWNER IDENTIFICATION (1)

R=158 \* T= A D M \* Date of Ownership 159= 01/01/1801  
 add, delete, modify month day year  
 Name: Last 161= WPS First 162= Middle Initial 163=

## OTHER SITE IDENTIFICATION NUMBERS (1)

R=189 \* T= A D M \* Ident 190= Assigner 191=  
 add, delete, modify  
 New Card Same R & T Ident 190= Assigner 191=

## SITE VISIT DATA (1)

R=186 \* T= A D M \* Date of Visit 187= 12/14/1976 Name of Person 188= ANDERSON T  
 add, delete, modify month day year

## FIELD WATER QUALITY MEASUREMENTS (1)

R=192 \* T= A D M \* Date 193= 12/14/1976 Geohydrologic Unit 195=  
 add, delete, modify month day year  
 New Card Same R thru 195  
 Temperature 196= 0, 0, 0, 1, 0 Degrees C 197= 14  
 Conductance 196= 0, 0, 0, 9, 5 µ Mhos 197= 1100  
 Other (STORET) Parameter 196= Value 197=  
 Other (STORET) Parameter 196= Value 197=

## DISCHARGE DATA (1)

R=134 \* T= A D M \* Entry No 135= Date 136=  
 add, delete, modify month day year  
 Discharge 138= Source of Data 139=  
 Method of Measurement 140= C E F M Ø R U V W Z  
 current, estimated, flume, totaling, orifice, reported, venturi, volumetric, weir, other meter, meter

## FOOT NOTES:

① Source of Data Codes:

S D Ø A R L G Z  
 reporting, driller, owner, other gov't, other lost, geologist, other reported, agency

NATIONAL G W FILE

## OTHER SPRING DATA (1)

R=171 \* T= (A) D M \* Spring's Name 172 = WILLIAMS

add, delete, modify

Type of Spring 173 = A B C D E F G H J K L P Q R S T Z \*

artesian, perched, contact, depression, perched, fracture, geysier, perched, artesian, artesian, fracture, perched, perched, perched, tubular, other  
depression, tubular, depression, seepage, depression, fracture, seepage, filtration, cave

Permanence 174 = E G I P R S Z \* Sphere of Discharge 175 = A W \*

ebb & flow, geysier, intermittent, perennial, seepage, seasonal, other Subaerial Subaqueous

Improvements 176 = B C G H L N P R T Z \* Number of Openings 177 = \*

board, concrete, gallery, spring, lined, none, pond, pipe, trough, other

Flow Variability 178 = \* Basis for Variability 179 = A B C D E Z \*

one year, 1.5 years, over 5 years, over year, less than, other  
continuous continuous continuous intermittent A-D

## GEOHYDROLOGIC UNIT DESCRIPTIONS (1)

R=90 \* T= A D M \* add, delete, modify

Unit Identifier 93 = \* Lithology 96 = \* Lithologic Modifier 97 = \*

## WATER QUALITY DATA COLLECTION NETWORK PARTICIPATION (1)

R=114 \* T= (A) D M \* Begin Year 115 = 1976 \* End Year 116 = \* Source Agency 117 = USGS \*

add, delete, modify

Frequency of Collection 118 = 118 \* Type of Analyses 120 = A B C D E F G H J K L M Z \*

physical, common, trace, pesticides, nutrients, sanitary, codes, codes, codes, codes, all or, other  
chemical elements B&D B&E B&F D&E C,D&E most

Network Site 257 = \*

## WATER PUMPAGE/WITHDRAWAL DATA COLLECTION NETWORK PARTICIPATION (1)

R=127 \* T= A D M \* Begin Year 128 = \* End Year 129 = \* Source Agency 130 = \*

add, delete, modify

Frequency of Collection 131 = \* Method of Collection 133 = C E M U Z \* Network Site 259 = \*

calculated, estimated, metered, unknown, other

## OTHER DATA AVAILABLE (1)

R=180 \* T= A D M \* Type of Data 181 # \* Loc 182 = C D Z \* For 261 = F M P Z \*

add, delete, modify

cooperator, district, other files, machine, published, other

New Card Same R&T Type of Data 181 # \* Loc 182 = C D Z \* For 261 = F M P Z \*

mat

## PERTINENT REMARKS (1)

R=183 \* T= A \* 185 = \*

New Card Same R&T 185 = \*

185 = \*

## FOOT NOTES:

## ② Frequency of Collection Codes

| A                                            | B                                                             | C       | D    | F      | I | M | O | Q | S | W | Z |
|----------------------------------------------|---------------------------------------------------------------|---------|------|--------|---|---|---|---|---|---|---|
| annual, bi-monthly, continuous, daily, semi, | intermittent, monthly, one time, quarter, semi, weekly, other | monthly | only | annual |   |   |   |   |   |   |   |

|  |  |  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |

PERMANENT REFERENCE  
 Do Not Discard

 WRD Exp. (GW)  
 August 1966

# NATIONAL PARK SERVICE

 Spring No. (C-17-7) 7 dbc

## SPRING SCHEDULE

U. S. DEPT. OF THE INTERIOR

GEOLOGICAL SURVEY

WATER RESOURCES DIVISION

CARD D

Record by: W. Werrell Source of data: Field Date: Feb. 14, 1974

State: Ariz 04 County: Pima 10 Map name and scale: Preliminary Map: Quitobaquito 1 NE, 7 1/2

Latitude: 315730N Longitude: 1130126 Sequential number: 1

Lat-long accuracy: 1 T 17 N 8 R 7 S Sec 7 SW 1 NW 1 SE 1 GSR PM

Local spring number: C-17-07 07 DBC Other number: Williams Spring

Local use: Williams Spring Owner or name: WILLIAMS SPRING

Owner or name: National Park Service Address: \_\_\_\_\_

Ownership: County, Fed Gov't City, Corp or Co, Private, State Agency, Water Dist F

Use of: (A) (B) (C) (H) (I) (M) (N) (P) (R) (S) (T) (U) S

Water: Air cond, Bottl, Comm, Dom, Irr, Med, Ind, P S, Rec, Stock, Instit, Unused \_\_\_\_\_

Altitude: 1095 1095 USGS Topo Accuracy: 20 Cont. 3 Disch. 1 gpm 1

Unit of meas: 1 cfs 2 gpm 2 How determined: Bucket, meter, weir, est 0 Date of meas: June 12, 52 6 9 5 2

Magnitude: >100 cfs, >10-100, >1-10, 101 gpm-1 cfs, 11-100 gpm, 1-10 1/8 gpm-1 gpm, <1/8 gpm 6

Impelling force: 1 Artesian 2 gravity, thermal 1 Permanence: Perennial 1 Card design: D

CARD E

SAME AS CARD D Variability: \_\_\_\_\_ Phys. Province: Basin & Range 2 2

Phys. section: Sanoran D B Drainage basin: Western Mexican Drainage WMD Sub-basin: Rio Sonora 1

Topo: (C) (D) (F) (H) (S) (T) (U) (V) (O) S

Topo: str. chan, loc dep, flat sur, hilltop, hillside terr, undul, val flat, offshore \_\_\_\_\_

Aquifer: \_\_\_\_\_ system \_\_\_\_\_ series \_\_\_\_\_ aquifer, formation, group \_\_\_\_\_

Lithology: \_\_\_\_\_ Origin: \_\_\_\_\_

Rock structure: Bedding: \_\_\_\_\_ str. dip \_\_\_\_\_ Joints: \_\_\_\_\_ str. dip \_\_\_\_\_ str. dip \_\_\_\_\_

Fault: \_\_\_\_\_ Type of spring: Artesian A Number of open: one 1

Size of openings: \_\_\_\_\_ str. dip \_\_\_\_\_ Sphere of discharge: 1 Improvements: Dug gallery 7

Yes \_\_\_\_\_ width \_\_\_\_\_ height \_\_\_\_\_ discharge \_\_\_\_\_

Gases: No \_\_\_\_\_ Minerals: \_\_\_\_\_ Biological: Flora: \_\_\_\_\_

Fauna: \_\_\_\_\_ Quality of water data: Type: \_\_\_\_\_

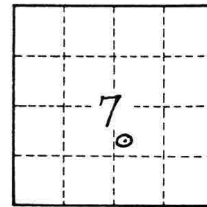
Iron: \_\_\_\_\_ ppm \_\_\_\_\_ Sulfate: \_\_\_\_\_ ppm \_\_\_\_\_ Chloride: \_\_\_\_\_ ppm \_\_\_\_\_ Hardness: \_\_\_\_\_ ppm

Sp. Cond:  $K \times 10^6$  1250 5 Temp: 56 °F 56 Date Feb 14 2 7 4

Freq: QW 78 Freq: Disch. \_\_\_\_\_ Card design: E

Remarks: \_\_\_\_\_

Township and Range location determined  
 by projection on USGS Topo Map:  
 Quitobaquito Springs - 15'.  
 Also known as "Rincon Spring".



GPO 831-585

WILLIAMS SPRING

WILLIAMS SPRING

Location: 13.2 miles from the Visitor Center on a bearing of 271°. It is located in a cove (rincon) on the west side of the granite Quitobaquito Hills approximately 1.3 miles northwest of Quitobaquito.

Altitude: 1,100 feet.

Flow: Approximately 1 gallon per minute.

Origin of Name: Named for Frank Williams, one of the owners. It has also been called Rincon Springs because of its location in a cove in the hills.

History: Probably used by early Indians and miners as a source of water. Leo Blankenship watered cattle at the spring prior to the time when he sold his rights to the Gray family. In 1916 J. N. Meadows, R. Wright, and William Keenan had mining claims at the spring and used the water for domestic and agricultural purposes. Meadows soon left and Wright and Keenan shortly thereafter sold their rights to Frank Williams who built a burro trap there. In 1920 the Grays bought the title, etc., and have since used the water for watering stock.

*This information from N.P.S., 12-13-76, JWA*

ORPI 7-68

## WATER SOURCE REPORT

Name of Water Source: Williams (Pinson) SpringsQuito-  
Quadrangle Quitobaquito T. 17S R. 8W Elevation 1100 ft. Map Scale 1:62500Photos Yes Sketch No Recorded on Map Yes

**Access Route:** From Cattleguard at Quitobaquito drive around (south) ~~at~~ pond and along boundary fence  $1\frac{1}{2}$  mi. and turn right at second jct. and drive northeast 1.1 mile to Spring.

**Terrain:** Flat. Spring located in cove ("rincon") on west side of granite Quitobaquito Hills.

**Ground Cover:** Badly overgrazed; considerable cholla, few mesquite. Olney bullrush + 1500 gal. p/day & pluchea border pools.

**Flow:** Past (date) 1 gal. in 57 sec. Present Present

Depth 2-3 ft. Length        Width        Storage        gals. (estimated)

**Brief History:** Blankenship watered cattle at spg. during 1914 (?) and 1919 when rights were sold to Gray family. 1916: J. N. Meadows, R. Wright & Wm. Keenan had mining claims at spgs. & used for domestic & agri. purposes.

Meadows left & Wright & Keenan soon sold rights to Frank Williams, who w/ Grays used for domestic & stock purposes. 1920 Grays bought title, etc. built

**Present Development and Human Use:** Overnight camping is allowed here (w/ burro a camping permit). Site is primitive (no facilities) and unattractive due trap to overgrazing. A concrete trough carries water + 60 yds to a concrete tank for cattle watering. A barbwire fence surrounds spring to keep cattle out.

**Wildlife Use:** Unknown misc. misc. wildlife probably drink from trough & its overflow.

**Remarks & Recommendations:**

1. **Development and Maintenance** None during cattle watering.

2. **Protection and Use** After Gray departure consideration might be given to trail from Quitobaquito to to Rincon Spg. via Burro Spg.

Observer-Compiler Bill Hoy Title Seas ranger Date 7/13/68

Other Supporting Information



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. Supernaugh, 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

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. Patnam, 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., 175 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. 464, 56 Pac. (2d) 1937.

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

NATIONAL PARK SERVICE  
Region Three  
Santa Fe, New Mexico

December 22, 1950

Memorandum

To: Mr. Eastburn M. 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. 7 W., G. & S. R. M.
2. Williams Spring, also known as Hinson 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. 4 W., 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

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

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. 17S., R. 7W., 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. 484, 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  
/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. 7 W., G. & S. R. M.
2. Williams Spring, also known as Hinson 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. 4 W., 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

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:CGP  
CINIKMS

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

July 26, 1950

PROTECTION ACCORDED WATER DEVELOPMENTS ON 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. 247), 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.

ABBY  
EP

x

|                               |           |    |           |
|-------------------------------|-----------|----|-----------|
| Number of Documents in Docket | 26        |    |           |
| Documents Dated from          | 7/26/1950 | to | 1/26/1977 |
| Docket Compiled:              | 6/3/2011  |    |           |

Documents Dated from 7/26/1950 to 1/26/1977

Docket Compiled: 6/3/2011