



WATER-RIGHT DOCKET

White Sands National Monument

Docket No: 2

DOG CANYON WATER SYSTEM DECLARATION OF TAKING 2399

Preliminary Docket Information

00-00-0000: untitled note to the file regarding extinguished or transferred water rights no. 386 and 1193

Note to File

By declaration of taking and condemnation by purchase in 1939 and 1940, the United States acquired certain tracts of land and appurtenant rights (from J.L. Lawson) to the use of waters of Dog Canyon to provide a water supply to WHSA. The appurtenant water rights #386 and #1193 were either extinguished or transferred to the United States by the judgement in the condemnation, No. 82 Civil. On November 16, 1940, the United States filed an independent Federal Water Withdrawal No. 2399 to cover the diversion of waters of Dog Canyon and their conveyance to the Monument.

Refer to docket WHSA-0001 "Dog Canyon Water System - Declaration of Taking #2399" for a complete history of condemnation proceedings, history of land ownership, current status of Dog Canyon water rights, etc.

DEPARTMENT OF THE STATE ENGINEER,
STATE OF NEW MEXICO.

In Re.Application
No.386.

6-29-12

PROOF OF BENEFICIAL USE.

State of New Mexico,)
County of Otero.) SS.

John B.Stark being duly sworn on oath says that he is a resident of the said County of Otero,State of New Mexico,and is the father of H.S.Stark who with James Madison on the 10th day of February, 1910,made application No.386 to appropriate certain waters of Dog Canon in the said County of Otero; that the said H.S.Stark died at the said County of Otero on or about the 1st of October,1911,intestate, and his heirs being as follows,John B.Stark,Maggie Stark(father and mother)Robert Stark,age 25 years, Curry Stark age 27 years and Mimmie Stark age 34 years(brothers and sister); that the said H.S.Stark having no personal property no Administrator has been appointed for his estate.

That the said Applicants with the heirs of the said H.S.Stark,completed the construction work on the Canal for the purpose of diverting the said waters,the Certificate of Construction being issued by the State Engineer on the 16th day of April,1912.

That the said applicants during the flood season of 1911 made beneficial use of the said waters by diverting and using the same on their lands as follows,James Madison 140 acres in the following tract,NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.17,and SW $\frac{1}{2}$ SE $\frac{1}{4}$,NE $\frac{1}{2}$ SE $\frac{1}{4}$ Section, Township,18 S.Range 10 East,H.S.Stark 180 acres,in the following tract,NE $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 17,Township,18 South,Range 10 East,N.M.P.M. That while the construction works were not fully completed they were sufficient to carry the water and did carry the water to irrigate the full amount applied for,viz,320 acres.

That the applicant James Madison and the said heirs of H.S.Stark deceased ask that a final permit be issued to the by the State Engineer for the said waters for the 320 acres,so diverted and beneficially used by them.

That the undersigned represents further that when the said application was made that James Madison had only eighty acres of land which was claimed by him under the laws of the United States, and that after the land in the said Township was open for filing the said Madison on the 14th day of June, 1911, filed on the said land heretofore described herein, his receipt being No. 782426 from the Land Office at Las Cruces, New Mexico.

That all the facts herein set forth are within the personal knowledge of the undersigned.

John B. Stark

Subscribed in my presence and sworn to before me this the 26th day of June, 1912.

My commission expires Nov. 11th, 1913

Henry W. Parker
Notary Public.

STATE OF NEW MEXICO, + SS.
COUNTY OF OTERO. +

W.L. Garrison and J.F. Pridmore being first duly sworn on oath say, that they are personally acquainted with James Madison, and knew H.S. Stark during his life, also personally know the above named John B. Stark, that they have each read over the foregoing proof of the beneficial use of the flood waters of Dog Canon under application No. 326, and know of their own personal knowledge that the several facts therein stated by the said John B. Stark are true.

W.L. Garrison

J.F. Pridmore

Subscribed in my presence and sworn to before me this the 26th day of June, 1912.

My commission expires Nov. 11th, 1913

Henry W. Parker
Notary Public.

C O P Y

State of New Mexico

License to appropriate Water

Recorded in Book D, Page 386

Refers to Permit No. 386

Whereas, John B. Stark, for Stark & Madison, has actually made application to beneficial use of 3.2 sec. ft. of water through the canal as constructed for diversion under permit No. 386 for irrigation of the following described lands being in Township eighteen, County of Otero, New Mexico, to-wit:

James Madison 140 acres, NW¹/₄ Sec. 17, SW¹/₄ Sec. 8, T. 18 N., R. 10 E., H. S. Stark 180 acres, W¹/₂ Sec. 17, T. 18 S., R. 10 E.
Total of 320 acres irrigated.

If for other purposes state for what:

Now, therefore I, Charles D. Miller, State Engineer under the provisions of the Irrigation Law of 1907, issue this license to John B. Stark for Madison & Stark, of Alamogordo, County of Otero, New Mexico, to use the same for the above stated purposes and can be changed only as provided by law.

Date of application for permit to appropriation was 10th day of February, 1910.

In testimony whereof, I, Charles D. Miller, State Engineer of New Mexico, have hereunto set my hand this 28th day of June, A. D., 1912.

(Signed) Charles D. Miller,
State Engineer.

Seal:

DEPARTMENT OF STATE ENGINEER, |
STATE OF NEW MEXICO. |

In Re. Application
No. 386.

-----PROOF OF COMPLETION OF WORK-----

State of New Mexico, |
County of Otero. | SS.

John B. Stark being first duly sworn, on oath says, that he is a resident of the said County of Otero, State of New Mexico, and is the father of H.S. Stark who with James Madison, on the 10th day of February, 1910, made application No. 386 to appropriate certain waters of Dog Canon, in the said County of Otero; that the said H.S. Stark died at the said County of Otero about the 1st day of October, 1911, intestate and his heirs being as follows, John B. Stark, Maggie Stark (father and mother), Robert Stark of Shamrock, N.M. age 25 years, Curry Stark of Los Angeles, Cal. age 27 years, and Minnie Stark of El Paso, Tex. age 34 years (brothers and sister); that the said H.S. Stark having no personal property no Administrator has been appointed for his estate.

That the said H.S. Stark before his death, and his heirs afterwards with James Madison, after the 31st day of May, 1911, when the last proof of Construction work was made, proceeded with the said works of diversion of the said waters of the said Dog Canon and on or about the 15th day of March, 1912, the said work was completed. That the said work as now completed is as follows, the Canal or ditch being of an average width at the top of 4 feet, at the bottom 2 feet, two feet deep, and with a carrying capacity of 18 Cubic feet of water per second.

That this proof is made by this affiant for the reason that he is advised and believes that an interest in water is real estate and on the death of his son, H.S. Stark, his interest in the said waters descends to him and the other heirs above mentioned, by and under the

9-8-12
386

the laws of the State of New Mexico, and for the futher reason that the other applicant, James Madison, is temporarily absent from the State at work and can not make this proof required by the State Engineer.

This affiant futher says that all the facts above, set forth herein are of his own personal knowledge, and are not given on information.

He therefore asks that a Certificate of Completion of the Construction work under the said application be issued to the said James Madison, and the above named heirs of H.S.Stark, dec.

John B. Stark

Subscribed in my presence and sworn to before me this the 6th day of April, 1912.

My Commission Expires May 16th, 1912

J. L. Lawrence

Notary Public.

State of New Mexico, ↓
County of Otero. ↓ SS.

W.L.Garrison and J.F.Pridmore being first duly sworn on oath say that they are each personally acquainted with the above named John B.Stark; that they have read over foregoing proof of construction work and know of their own personal knowledge that the several facts therein stated by the said John B.Stark are true. ~~of their own personal knowledge.~~

W. L. Garrison

J. F. Pridmore

Subscribed in my presence and sworn to before me this the 6th day of April, 1912.

My Commission Expires May 16th, 1912

J. L. Lawrence

Notary Public.

BEFORE THE TERRITORIAL ENGINEER No.386.
OF TERRITORY OF NEW MEXICO.

In Re.Application of James Madison and H.S.Stark.

Proof of Work Completed before June 3rd,1911.

Territory of New Mexico, §
County of Otero. § SS.

H.S.Stark being first duly sworn on oath says that he is the same person who with James Madison made application No.386 for certain Flood Waters out of the Dog Canon,in the County of Otero in the said Territory. That within a very short time after Feb.10th 1910 and long prior to the 3rd day of December,1910 they began the construction of their ditch leading from the said Canon to their lands shown in the Application.That the work which they have done to date is as follows, to wit; Constructed a ditch 90 feet long 2 feet deep and 5 feet wide;a ditch 219 feet long 1 foot deep and 3 feet wide and connected with arroya;a ditch 300 feet long 1 foot deep and 3 feet wide to an other arroya; a dam at the head of the main diversion ditch 24 feet long,5 feet high,18 feet at base and 6 feet at the top; also a dam out of the last arroya where ditch was constructed, 3 feet high and 20 feet long,also a ditch 930 feet long 18 inches deep and 4 feet wide to the land of this affiant.

That the work as completed at this date is more than one third required to complete it as provided in their application.

My Commission Expires May 16th, 1912

Subscribed in my presence and sworn to before me this the 31st day of May,1911.

Notary Public.

←
No evidence
prior to
2/3/10

The Alamogordo News

ESTABLISHED IN 1890

GUTHRIE SMITH, EDITOR AND PUBLISHER

9-11-10

ALAMOGORDO, N. M.

Legal Notices.

NOTICE DEPARTMENT OF TERRITORIAL ENGINEER

Number of Application 386
Santa Fe, New Mexico.

Feb 23 1910

Notice is hereby given that on the 10th day of February, 1910 in accordance with Section 26 Irrigation Law of 1907 James Madison and H. S. Stark, of Alamogordo, County of Otero, Territory of New Mexico, made an application to the Territorial Engineer of New Mexico for a permit to appropriate from the Public waters of the Territory of New Mexico.

Such appropriation is to be made from Dog Canon at point South Bank Dog Canon whence S. E. Corner Tp. 18 S. R. 10 E. bears S. 39 degrees 20 minutes, E. and S. W. Corner of old rock house at mouth of canon bears S. 62 degrees, 30 minutes E. by means of Diversion, and 20 cu. ft. per sec. in flood times and or more as it is to be conveyed to Sec 8 and 17, Tp. 18 S. R. 10 E. by means of Ditches, and there used for Irrigation of 320 acres.

The Territorial Engineer will take this application up for consideration on the 24th of May, 1910 and all persons who may oppose the granting of the above application must file their objections substantiated with affidavits (properly backed with application number) with the Territorial Engineer on or before that date.

VERNON L SULLIVAN,
Territorial Engineer

PUBLISHERS AFFIDAVIT.

I, Guthrie Smith,

editor and publisher of The Alamo-

gordo News, a newspaper of general

circulation, published at Alamogordo,

in the County of Otero and Territory

of New Mexico, state on oath, being

duly sworn, that the attached notice

was published in said paper for 4

consecutive issues, first publication

being March 10 1910, and last publi-cation March 31 1910.

Subscribed and sworn to before me this

9th day of April 1910.

J. L. Lawrence
Notary Public.

My Commission Expires May 16th, 1912

TERRITORY OF NEW MEXICO

APPLICATION FOR PERMIT

No. 386

1. Date of receipt of application February 10th, 1910
2. Name of applicant James Madison and H. S. Stark
Postoffice address Alamogordo County of Otero
Territory of New Mexico
3. If applicant is a corporation, give, No.
(a) Date and place of organization of corporation _____
(b) The amount of capital stock _____ (c) The amount paid in _____
(d) The names and address of Directors _____
4. Quantity of water claimed _____ sec. ft.
(a) By diversion 20 sec. ft. (b) Storage of flood waters _____ sec. ft.
(c) During flood season _____ sec. ft.
during flood season
5. Periods of annual use 20/ sec. ft. from about July 1st to September 1st.
6. Source of water supply (a) Name Dog Canyon (b) Which is a tributary of _____
Has no tributaries
7. Location of point of diversion _____ Sec. _____
Township _____ Range _____
At a point in the South Bank of the Dog Canyon Arroyo about 1/4 mile
below the mouth of the Canyon. Whence the S. E. Cor. of T. 18 S.
R. 10 East bears S. 39° 20' the S. W. Corner of the old rock house
at the mouth of Dog Canyon bears S. 62° 30' East.
8. To be used for Irrigation
IRRIGATION AND DOMESTIC USE:
(a) Number of acres to be irrigated 320 acres
(b) In the following legal subdivisions) S $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 8, and W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Sec. 17, in Tp. 18 S., R. 10, surveyed but not accepted.
MANUFACTURING, MINING AND POWER PURPOSES:
(c) To be used for _____ (b) Amount of power to be generated _____
horse power. (c) At what point _____
(d) At what point water will be returned _____
9. Estimated cost of work \$200.00
10. Description of work for diversion By an open ditch running from the Arroyo to the land

DIMENSIONS OF STORAGE WORKS:

- (a) Height of dam _____ feet; length of dam at top _____ feet;
length of dam at bottom _____ ft.; material used in construction _____
(wood, earth, stone or concrete) _____
(b) Capacity of reservoir _____ ac. ft.

DIMENSIONS OF CANAL OR DITCH:

- (a) Size of head-gate width _____ ft; height _____ ft; (c) Canal
is 5 ft. top width at bottom 3 ft. Width at water line _____ ft;
depth 2 $\frac{1}{2}$ ft; Average grade per 1000 ft. is 15 ft.
Length of main Canal is about 2 miles and across the following
sections: 16, 17 & 8, Tp. 18 S., R. 10 E.

11. Other reservoirs and canals, name or number, location and size and capacity of each.

12. Reference Citizens National Bank and W. E. Carmack (?)

I, James Madison & H. S. Stark do solemnly swear that the statements and answers to questions in this application are true to the best of my knowledge.

/s/ Claimant James Madison
H. S. Stark

Subscribed and sworn to before me this 7th day of February 19 10.

/s/ J. L. Lawson
Notary Public.

SEAL:

APPROVAL OF TERRITORIAL ENGINEER.

The number of this permit is 386
Date of receipt of first application February 10, 19 10.
Return of map, application for correction , 19 .
Corrected map, application received , 19 .
Publication ordered Feb. 23, 19 10 Paper Alamogordo News
Publication of notice completed and proof filed English, April 11, 1910 19 .
Application recorded in Book D, Page 386
Approved June 3, 19 10.

This is to certify that I have examined the within application for a permit to appropriate the the public waters of the Territory of New Mexico, and hereby approve the same.

AMOUNT OF WATER TO BE APPROPRIATED

(a) cubic feet per second: (b) By storage acre ft.
(c) Remarks: This application is approved provided that same shall not be in excess of the equivalent of 3 second feet continuous flow during the irrigation season with permission to divert as high as 20 second feet in times of flood provided that the total amount so diverted shall not be in excess of the 3 second feet continuous flow during the irrigation season and also that this permit shall not be exercised to the detriment of others having prior valid rights to the use of water of this stream system.

The construction of the within described works to be completed not later than Dec. 3, 1910

One-fifth of the work above specified to be completed on or before June 3, 1911
The whole of said work to be completed on or before June 3, 1912
The time for application to beneficial use shall not be later than June 3, 1912

Witness my hand this 3rd day of June 19 10

/s/ Vernon L. Sullivan
M.
Territorial Engineer.

Other Supporting Information

C O P Y

John H. Bliss
State Engineer

STATE OF NEW MEXICO
OFFICE OF
STATE ENGINEER
Santa Fe

February 5, 1948.

Mr. A. van V. Durn,
Chief, Water Resources Branch,
Department of the Interior,
Washington 25, D. C.

Dear Sir:

Reference is made to your letter of January 21st, regarding your request for copies of Water Right Applications Nos. 386 and 1193, and the related file maps, together with a voucher for \$7.00 to cover the cost of reproduction.

Under separate cover, we are mailing the maps as follows:

Map filed as proof of Application 386
" " " " " " 1193
Water Resource Map of Otero County, Arizona, compiled by
State Board of Water Commissioners.

Enclosed herewith are copies of the following:

Water Right Application No. 386
License Issued on Application No. 386
Water Rights Application No. 1193
License issued on Application No. 1193.

Your voucher is also enclosed, which has been signed as requested.

We are sorry for this delay and hope it has not inconvenienced you in any way.

Very truly yours,

John H. Bliss,

State Engineer.

ma
encl. Copies of Licenses Nos.
386 & 1193
Copies of Permit Nos. 386 & 1193
Voucher

By: (Signed) A. F. Bron
Asst. State Engineer.

386
July 1, 1912.

J. L. Lawson, Esq.,
Alamogordo, N.M.

Dear Sir:-

We take pleasure in sending you under separate cover license to appropriate in the case of Stark & Madison application. You did not mention in the affidavit what crops had been raised from this 320 acres, and whether or not the flood water was distributed over the 320 to the extent of beneficially raising and producing crops thereunder. However, we are sending this matter to you, as the writer has only a few days in which to take advantage of this opportunity of issuing one more paper for your clients.

Very respectfully,

State Engineer.

CDM.

J. L. LAWSON
ATTORNEY AND COUNSELLOR AT LAW
ALAMOGORDO, NEW MEX.

*Make out
L. L. Lawson June 29*

6/26/12.

State Engineer,

Sant Fe, N.M.

Dear Sir:-

I am enclosing your proof of beneficial use of the flood waters of Dog Canon, in this County. I am also enclosing you \$1.00 to cover the fee for the permit.

Under the showing made it would appear that the permit should issue to James Madison and to the heirs of H.S. Stark, Dec., without attempting to determine who the heirs are. This would be in line with the law of the State, and also follow the custom of the United States in issuing patents.

Very truly yours,

J. L. Lawson

L/L/.

April 15, 1912.

J. L. Lawson, Esq.,
Alamogordo, N.M.

My dear Mr. Lawson:-

This is to acknowledge receipt of protest of Mr.
H.W. Schofield against the granting of application by the
Tularosa Community Ditch to change the place of use of water
of the Tularosa river. This has been filed with the case
and will be part of the record considered at the proper
time.

Very respectfully,

State Engineer.

CDM.

J. L. LAWSON
ATTORNEY AND COUNSELLOR AT LAW
ALAMOGORDO, N. M.

Madison Hents
appl
386

4/13/12.

Hon. Chas. D. Miller,
Santa Fe, N. M.

Dear Mr. Miller:-

Replying to your letter of the 8th inst relative to the application No. ~~386~~, I beg to say that the water has been devoted to a beneficial use, but the parties are not at this time prepared to furnish you the proof. The time has not yet expired and before it does or within a reasonable time thereafter the proof will be made up and sent you.

I am enclosing you the fee of \$1.00 to cover the Certificate of Construction.

Very truly yours,

J. L. Lawson

J. L. LAWSON
ATTORNEY AND COUNSELLOR AT LAW
ALAMOGORDO, N. M.

386

4/13/12.

Hon. Chas. D. Miller,

Santa Fe, N.M.

Dear Mr. Miller:-

The check in the Stark and Madison (12)
matter was not placed in my former letter of this date.

I am enclosing it herein.

Very truly yours,

J. L. Lawson

386
April 8, 1912.

Hon. J. L. Lawson,
Alamogordo, N.M.

Dear Mr. Lawson:-

I beg to acknowledge receipt of proof of construction in behalf on the H. S. Clark and J. S. Madison application No. 386. We can issue to the parties described in such proof the affidavit or certificates of construction which will cost one dollar. Before taking action on this particular case, and while waiting receipt of check for this amount, I am anxious to learn whether or not the application to beneficial use has also been made. If it has been made, and the acreage described as having been irrigated from this source and under this permit, and that it is the maximum that can be irrigated, that the time has expired, etc., we can then issue a license to appropriate which is the final paper granted by this office. I think I have written you on some other cases regarding the data necessary for a license to appropriate, and the fact that it curtails or diminishes the water right application if the use has not been as large as described in same. This also would cost one dollar, but if it is not ready to make proof of beneficial use I suppose that it can be postponed until some time in the future if the time set for such use has not expired. I will get these certificates of construction ready, however, and upon advice from you will take action accordingly.

Very respectfully,

CDM.

State Engineer.

J. L. LAWSON
ATTORNEY AND COUNSELLOR AT LAW
ALAMOGORDO, NEW MEX.

386

4/6/12.

Hon. Chas. D. Miller,
State Engineer.
Santa Fe, N.M.

Dear Mr. Miller:-

I am sending you the proof of final
and complete construction work in Application No. 386.

You will notice in this proof that one of the parties died
since the application was filed, and that I am using the father
of H.S. Stark to make the proof, he being an heir under our law to
this incipient water right.

This is the first case of this kind which I have had and do
not know what has been your practice on such matters. I have en-
deavored to comply with the irrigation and laws of descent of the
State.

In case there are any additional requirements we shall be
pleased to furnish the additional information.

Very truly yours,

J. L. Lawson

386 April 8, 1912.

Hon. J. L. Lawson,
Alamogordo, N.M.

Dear Mr. Lawson:-

I beg to acknowledge receipt of proof of construction in behalf on the H. S. Clark and J. S. Madison application No. 386. We can issue to the parties described in such proof the affidavit or certificates of construction which will cost one dollar. Before taking action on this particular case, and while waiting receipt of check for this amount, I am anxious to learn whether or not the application to beneficial use has also been made. If it has been made, and the acreage described as having been irrigated from this source and under this permit, and that it is the maximum that can be irrigated, that the time has expired, etc., we can then issue a license to appropriate which is the final paper granted by this office. I think I have written you on some other cases regarding the data necessary for a license to appropriate, and the fact that it curtails or diminishes the water right application if the use has not been as large as described in same. This also would cost one dollar, but if it is not ready to make proof of beneficial use I suppose that it can be postponed until some time in the future if the time set for such use has not expired. I will get these certificates of construction ready, however, and upon advice from you will take action accordingly.

Very respectfully,

CDM.

State Engineer.

J. L. LAWSON
ATTORNEY AND COUNSELLOR AT LAW
ALAMOGORDO, NEW MEX.

386

6/1/11.

Hon. C. D. Miller,
Territorial Engineer,
Santa Fe, N.M.

My dear Mr. Miller;

I am enclosing you proof under oath of the
first construction work of James Madison and H. S. Stark on
their application No. 386 for the Flood Waters of the Dog
Canon, in this County.

Very truly yours,

J. L. Lawson

June 3, 1910.

J. L. Lawson, Esq.,
Alamogordo, N. M.

Dear sir:

I send you today by express approved application and map of
Madison and Stark's project on Dog canon. The charge of \$1.00 is for
recording permit on said application.

Wishing your clients the best of success, I am,

Yours very truly,

Territorial engineer.

3
April 11, 1910.

Mr. Guthrie Smith, Editor,
The Alamogordo News,
Alamogordo, N. M.

Dear Sir:-

This is to acknowledge receipt of publisher's affidavit in the matter of the notice of publication in English of application No. 386 of James Madison and H. S. Stark. Same has been filed in this office.

Yours very truly,

Territorial Engineer.

Feb. 10, 1910.

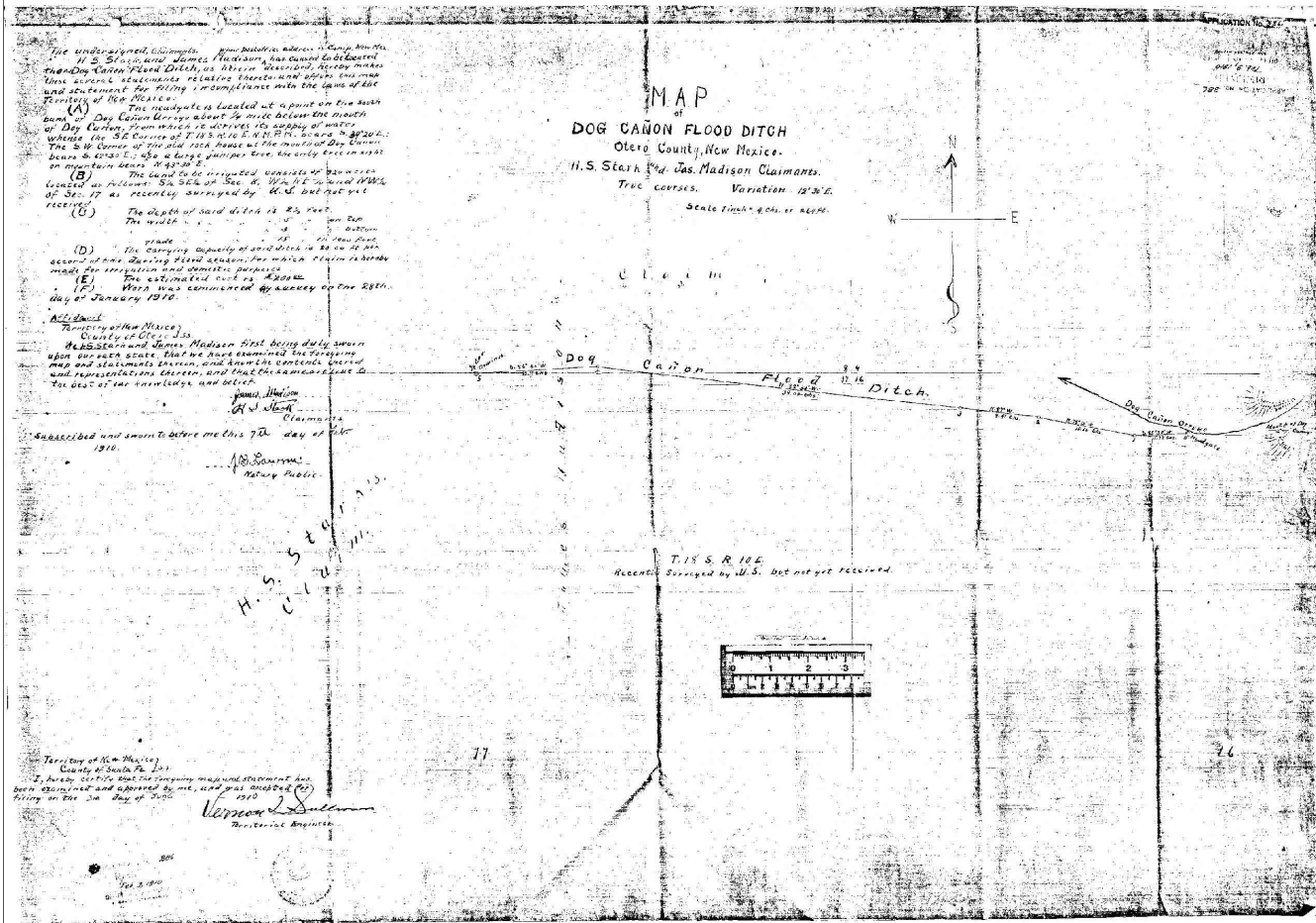
J. L. Lawson, Esq.,
Alamogordo, N. M.

Dear Mr. Lawson:

This is to acknowledge receipt of maps and application of
Madison and Stark together with filing fee of \$5.00 Everything appears
to be O. K.

Yours very truly,

Assistant Terr. Engr.



Docket Information

Number of Documents in Docket 24

Documents Dated from 2/10/1910 to 2/5/1948

Docket Compiled: 7/28/2011