WATER-RIGHT DOCKET

Arches National Park

Docket No: 2

SPRING CANYON SPRING (UNNAMED SPRING).

Preliminary Docket Information

00-00-0000: application to appropriate water for stock watering, state of utah; application 21087

WATER RIGHT RECORD

Park: ARCH
Docket Number: Federal #2

IDENTIFICATION NO: ARCH S 3 0 2 4 2 2 A F 0 2

DITCH/WATER SYSTEM:

SOURCE OF SUPPLY: Spring Canyon Spring (Nameless Spring)

LOCATION: S71°37'W 933 ft. from N¼ corner, Sec. 30 T24S, R22E, SLB&M

WATER RIGHT:

Appropriator: United States of America, National Park Service

Application/Permit Number: 21087

Certificate Record Number: 5676

Date of Priority: October 3, 1949

Quantity of Water: .0008 c.f.s.

Purpose: Wildlife and stock watering

Irrigated Land Description:

SUMMARY OF STATUS: The water is collected in a bottomless concrete box and conveyed through pipe to a series of metal stock troughs. This land was first held under squatter's rights by various parties. Marvin Turnbow perfected the rights under the Homestead Act. The land was conveyd to the United States by Emmet and Lena Elizondon in 1948, with stock-watering privileges for 35 years. Diligence Right-1900, as it has been used by local stockmen for more than 60 years.

State Water Rights Documentation

10-28-1991: letter to state of utah natural resources department from nps regarding enclosed signed blue line copies of statement

United States Department of the Interior

NATIONAL PARK SERVICE
Southeast Utah Group
Arches and Canyonlands National Parks
Natural Bridges National Monument
Moab, Utah 84532-2995

IN REPLY REFER TO:

L54 (ARCH-M)

October 28, 1991

Mark P. Page, Area Engineer
State of Utah Natural Resources Department
P.O. Box 718
Price, Utah 84501-0718

Dear Mr. Page

Enclosed are signed blue line copies of Statement of Water User's Claim forms for Water Rights 01-25, 01-28, 01-114, and 01-166. I apologize in the delay of getting these signed forms back to you. The National Park Service is submitting statements for Water Rights 01-25 and 01-166 to complete the appropriation process.

As you are aware, the United States has not been joined pursuant to 43 USC 666 in the action to determine rights to the use of water within the drainage area of the Colorado River in San Juan, Grand, and Uintah Counties, Utah, and exclusive of the Green River drainage. The National Park Service submits claims for all four of the above-referenced water rights as a matter of comity and reserves the right to change these claims or file other claims within this adjudication area upon proper joiner in the adjudication.

Sincerely,

Noel R. Poe
Superintendent
Arches National Park

cc: WASO (479) - Pettee (w/attachments)
DOJ - Hill

NATIONAL PARK SERVICE 75 1916 - 1991

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

IN AND FOR GRAND COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF ALL THE WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE COLORADO RIVER IN SAN JUAN, GRAND AND UINTAH COUNTIES, UTAH, AND EXCLUSIVE OF THE GREEN RIVER DRAINAGE.

STATEMENT OF WATER USER'S CLAIM

Water Right No. 01 - 28

Civil No. 4477

Map No.

****

HOW TO USE THIS FORM:

This form is important to you in asserting your water rights in the pending judicial adjudication described above. Under Utah law, unless you file this form in a timely manner, your water rights cannot be recognized and you may not assert them further. The State Engineer has made a hydrographic survey of this area, which includes your water rights and uses. Your receipt of this form constitutes notice to you that the survey has been completed and that a signed Statement of Water User's Claim is due from you within 90 days. Review the information shown on this form carefully. If you agree with the information and accept it as your Statement of Water User's Claim, sign the form & return it to the Division of Water Rights in Price, Utah. The Division of Water Rights will file your Statement of Water User's Claim with the District Court in Moab, Utah. If you do not agree with the information, contact the above Division of Water Rights office to resolve the problem.

****

1. **WATER RIGHT AND OWNERSHIP INFORMATION:**

   A. **NAME:** USA National Park Service — **INTEREST:** 100%
   Water Resources Division
   ADDRESS: 301 South Howes Room 335, Fort Collins, CO 80521

   B. **TYPE OF RIGHT:** Application To Appropriate No. A21087 5676

   C. **PRIORITY DATE:** October 3, 1949

2. **SOURCE INFORMATION:**

   A. **QUANTITY OF WATER:** 0.0008 cfs

   B. **DIRECT SOURCE:** Unnamed Spring

   C. **POINT OF DIVERSION -- SURFACE:**
   (1) S 294 feet W 885 feet from N¼ corner, Section 30, T 24S, R 22E, SLBM

   D. **DRAINAGE AREA:** NW Colorado River — **COUNTY:** Grand

3. **WATER USE INFORMATION:**

STOCKWATERING: from Jan 1 to Dec 31. EQUIVALENT LIVESTOCK UNITS: 105.

4. PLACE OF USE: (which includes all or part of the following legal subdivisions:)

BASE	TOWN	RANG	SEC	NORTH-EAST¼ NE	NW	SW	SE	NORTH-WEST¼ NE	NW	SW	SE	SOUTH-WEST¼ NE	NW	SW	SE	SOUTH-EAST¼ NE	NW	SW	SE
SL	24S	22E	30					X											

5. CERTIFICATION OF CLAIM AND WAIVER OF SUMMONS:

The undersigned hereby enters their appearance in this water adjudication proceeding and hereby waives service of summons or other process and waives service of the notice of completion as required by Sections 73-4-4 and 73-3-4 of the Utah Code Annotated, 1953 as amended.

STATE OF UTAH)
) SS
COUNTY OF GRAND)

The undersigned swears on oath that he makes and certifies this Water User's Claim either as the claimant himself or as the duly-authorized agent of the claimant, that he has read and knows the contents of the claim, that he signs the same, and that the information supplied therein is true to the best of his knowledge and belief.

Title: _____ Noel R Poe
(Individual or Office) Signature

Subscribed and sworn to before me this 26th day of October, 19 91

Commission expires: 1/19/92 Lee Stocks
Notary Public

LEE STOCKS NOTARY PUBLIC STATE OF UTAH

FORM C-1 5000

ORIGINAL

Entry No. 288865 Filed for record June 5, 1959 at 11:55 AM
Bk. 6X, page 84, Esther Sturrville Recorder Grand Co., Utah
Fee $1.60, Abs. Bk. 9A Pg. 1 Sec. 30 T24S R22E Lines

CERTIFICATE OF APPROPRIATION OF WATER

STATE OF UTAH

APPLICATION NO. 21087 **CERTIFICATE NO.** 5676

NAME AND ADDRESS OF APPROPRIATOR UNITED STATES OF AMERICA, NATIONAL PARK SERVICE, BOX 1728, SANTA FE, NEW MEXICO

SOURCE OF SUPPLY UNNAMED SPRING **IN** GRAND **COUNTY, UTAH;** COLORADO RIVER **DRAINAGE AREA**

QUANTITY OF WATER EIGHT/TEN THOUSANDYTHS (0.0008) SECOND-FOOT **PRIORITY OF RIGHT** OCTOBER 3, 1949

PERIOD AND NATURE OF USE FROM JANUARY 1 TO DECEMBER 31 INCLUSIVE OF EACH YEAR FOR STOCK-WATERING PURPOSES

Whereas, *It has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected in accordance with the Laws of Utah;*
Therefore, *Be it known that I,* WAYNE D. CRIDDLE *the duly appointed, qualified and acting State Engineer, by authority of the Laws of Utah, do hereby certify that said appropriator is entitled to the use of water as herein set out, subject to prior rights, if any, for diversion and use as follows, to wit:*

The water appropriated is yielded by an unnamed spring, the point of issuance, being the point of diversion, situated S71°37'W 933.0 ft. from N¼ Cor. Sec. 30 T24S R22E SLBM. The water is collected at its source by means of a bottomless concrete box having outside plan dimensions of 3 ft. long, 2 ft. wide, and height of 3.25 ft, conveyed therefrom in a Southeasterly direction 33.0 ft. through 1-in. diameter pipe, where it is discharged into a series of semicircular metal stock troughs 2 ft. in diameter and totaling 70 ft. in length. The water appropriated is, during the aforesaid period, intermittently used from the trough to water 105 cattle, such wildlife ranging in the area that may need water, and also to water such cattle as may be trailed through the area.

The works employed in this appropriation are to be operated and maintained in such manner and condition as will prevent waste of water.

In Witness Whereof, *I have hereunto set my hand and affixed the seal of my office this* 29th *day of* May, 19 59

Wayne D. Criddle
Wayne D. Criddle STATE ENGINEER

-84-

Certificate of Appropriation of Water

State of Utah

.....Drainage Area

Certificate No.....

To.....

.....

For.....

.....

.....

Entry No. 288865

Filed for record this 5th day

of June 1959, at 11:55 o'clock

A.m., and recorded in Book 6X

of ~~Water~~ Misc Page 84

Esther Somerville

Recorder Grand County, Utah

This certificate must be filed for record with Recorder of Grand County, Utah, within thirty days from its date.

04-08-1959: proof of appropriation of water for stock-watering purposes, state of utah: application 21087

Proof of Appropriation
on
Application No. 21087

Proof of Appropriation of Water for Stock-Watering Purposes

(Corrected - New map drawn and changes made in accordance with State Engineer's letter of April 27.)

STATE OF UTAH

Do not fill out this blank until you have read carefully the pamphlet on "Rules and Regulations" and instructions in the body and on the back hereof.

5/15

1. *The name of the appropriator is* The United States of America - National Park Service
2. *The post-office address of the appropriator is* Box 1728, Santa Fe, New Mexico
3. *The flow of water appropriated, in second-feet, is* .00078 .0008
4. *The quantity of water appropriated, in acre-feet, is* .....
5. *The water is used each year from* January 1 (Month) (Day) *to* December 31 (Month) (Day) *incl.*
6. *The water is stored each year from* ..... (Month) (Day) *to* ..... (Month) (Day) *incl.*
7. *The drainage area to which the direct source of supply belongs is* Colo R.W. (Leave blank)
8. *The direct source of supply is*† Unnamed spring in Grand County (Name of stream or other source) *which is tributary to* Salt Wash, *tributary to* Colorado River

†NOTE—If water is drawn from a well or a tunnel, the source should be designated as "Underground Water" in the first space and the remaining spaces should be left blank. If the source is a stream, a spring, a spring area, or a drain, so indicate in the first space, giving its name, if named, and in the remaining spaces designate the stream channels to which it is tributary, **even though the water may sink, evaporate, or be diverted before reaching said channels.** If water from a spring flows in a natural surface channel before being diverted, the direct source should be designated as a stream and not a spring.

9. *The point of* ~~diversion from a stream~~ issuance of *spring,* ~~spring area, drain, well (strike out words not needed)~~ *is in* Grand *county, situated at a point** S. 71°37'W. 933 feet from the N¼ corner of Section 30, T.24S., R.22E., S.L.B&M.

*NOTE—Give the location of the point at which the water is first diverted from its source or channel with reference to a United States survey corner or mineral monument. In case of storage on the natural channel of source of supply, describe the point of intersection of stream bed with the center line of impounding dam. If a spring area, describe the point at which water is collected and diverted therefrom, and under General Remarks give a description by metes and bounds of said area.

10. *The diverting and carrying works consist of* concrete collecting box, one inch diverting pipe and iron watering trough.
11. *The cross section of the diverting channel is* ~~V-~~ ~~U-~~ ~~box~~ O (Strike out ones not needed)
12. *The nature of the diverting channel is* ~~earth, wood,~~ iron, ~~concrete.~~ (Strike out words not needed)
13. *The length of the diverting channel, exclusive of laterals, is* 33 *feet*
14. *The top width of the diverting channel is (if a ditch)* ..... *feet*
15. *The bottom width of the diverting channel is (if a ditch)* ..... *feet*
16. *The depth of water in the diverting channel is (if a ditch)* ..... *feet*
17. *The width of the diverting channel is (if a flume)* ..... *feet*
18. *The depth of water in the diverting channel is (if a flume)* ..... *feet*
19. *The diameter of the diverting channel is (if a pipe)* one *inches*
20. *The grade of the diverting channel is* 150 *feet per thousand*
21. *The number and kind of stock watered are as follows:* 105 head of cattle part time, and the wildlife in Arches National Monument.
22. *The place where the water is used is* at the trough

NOTE—Give place of use by legal subdivisions of section, township, and range of United States land survey, also by name, if any. If equalizing or distributing reservoir is used, give location of point of diversion therefrom by reference to a United States survey corner or mineral monument.

23. *Construction of works was commenced** 1933, *and completed* 1934
*Date of first work subsequent to approval of Application. (See also the note under General Remarks.)
24. *Works were first used to convey water* ....., 1934
25. *Water was measured by* William E. Fields *Date* April 8, 1959 (Name of hydrographer)
26. *Water was measured by vessel,* ~~weir, reservoir capacity, or by~~ (Strike words not needed)

(Give sufficient data under General Remarks to enable State Engineer to check the water measurements. It is necessary that the results of a series of such measurements be given.)

GENERAL REMARKS

NOTE—Give detailed description of the diverting and carrying works, tracing the water from point of diversion to place of use; give length and dimensions of each type of diverting channel. If all works necessary to apply the water to use were constructed prior to the time of approval of the Application herein described, so indicate and give a history of the development work. Name other rights, if any, to which this water is supplemental. If other uses incidental to stock-watering are included in this proof, give period and extent of such uses.

This spring or seep is intercepted by a collecting box which is dug out of the bedrock and augmented with two 6" concrete side walls. This collecting box measures 2' wide, 3' long and 3.25' deep. It has a concrete top with a 1.35' square opening which is covered by a tight fitting wooden cover. Down 2.4' from the top of the collecting box is a diversion consisting of a one-inch pipe. This pipe is underground for 26' then is along the top of the ground for 7'./ It feeds into a series of metal troughs semicircular in shape 1' radius and 14' in length. Each trough is connected by a one-inch pipe and separated by a 4" x 4" wooden brace. These troughs measure 70' in length overall and are supported by bolted 2" x 6" side rails with 2" x 4" cross braces and 6" vertical juniper posts. (See Typical Section A-A) in a southeasterly direction.

This development was made by the U. S. Grazing Service under the "drought relief" program of 1933-1934 and prior to the application of this water right. The exact dates of installation and cost of project are not known. It is estimated the original cost was $500. Since that time stockmen with allotments on the grazing district to the east of the monument have been permitted to drive their cattle across the monument under special use permits in order to reach their allotments and to water their stock at the spring. Two deer were sighted in the vicinity of the springs by the engineer making the measurements on April 8, 1959 and there is evidence of 6-8 head of deer in the close vicinity. Of course all types of local wildlife use this as a watering point.

The measurement was made at the outflow end of the pipe as it falls into the trough. A one gallon can was used as a vessel and it was filled three times. The time increment was read each time and were as follows: (a) 2 min. 55 seconds (b) 2 min. 52 seconds (c) 2 min. 50 seconds. The average is 2 min. 52 seconds which gives a flow of 0.348 g.p.m. or .00078 c.f.s.

Nothing in this proof, or the perfection of the rights thereunder, is intended to constitute a waiver of other rights which the United States may have to the use of this, or any other water in Arches National Monument.

CERTIFICATE OF APPROPRIATOR

(Do not sign until proof has been submitted to the State Engineer and accepted as sufficient.)

STATE OF ~~UTAH~~, NEW MEXICO
County of Santa Fe } ss.

I, Hugh M. Miller, Regional Director, National Park Service Region Three being first duly sworn, do hereby certify that I am the authorized representative of the United States of America who made an Application to appropriate water from an unnamed spring in Grand County, Utah county for wildlife and stock-watering purposes; that said Application is filed in the State Engineer's office as No. 21087; that the works necessary to accomplish the diversion and perfect the appropriation of water in accordance with the said Application have been completed; that the foregoing statement of facts is submitted in proof of the completion of said works and the appropriation of said water; that I made the said statement and that each and all of the items contained therein are true to the best of my knowledge and belief.

Hugh M. Miller Signature of Appropriator.

Subscribed and sworn to before me this ..... day of ....., 19....
(Seal)
My Commission Expires....., 19.....
Notary Public.

CERTIFICATE OF DISINTERESTED WITNESSES

(One witness should be the engineer who prepared proof maps, etc. Do not sign until proof has been submitted to the State Engineer and accepted by him as sufficient.)

STATE OF UTAH,
County of ..... } ss.

..... and .....having both been duly sworn, each for himself says that he is personally acquainted with the works constructed by.....
.....
for the diversion and appropriation of water from.....
in.....county for stock-watering purposes; that said works have been fully completed and used to the extent and in the manner particularly set forth in the foregoing statement of facts; that he has read said statement and that each and all of the items therein contained are true to the best of his knowledge and belief.

Signature of Witness.

Signature of Witness.

Subscribed and sworn to before me this ..... day of ....., 19....
(Seal)
My Commission Expires....., 19.....
Notary Public.

STATE ENGINEER'S ENDORSEMENTS

Dates

.....Application received in State Engineer's office; Approved.....
.....Proof of Appropriation due in State Engineer's office.
.....Written proof and maps received in State Engineer's office by.....
.....Written proof and maps returned for correction by.....
.....Corrected written proof and maps resubmitted, received by.....
.....
.....Corrected written proof and maps examined and Certificate written by .....
.....Certificate of Appropriation issued (No.....)
.....Maps, profiles, and drawings filed on Hanger No.....page.....
.....Fee for filing proof and maps $6.00, received by.....Receipt No.....
.....Fee for issuing Certificate $1.00, received by.....Receipt No.....

This written proof and the maps and drawings pertaining thereto are found to comply with the requirements of the Laws of Utah, and the same are hereby approved.

....., 19.....
State Engineer.

Proof of Appropriation
on Application No.....

05-14-1959: court document, state of new mexico: certificate of appropriator; application 21087

CERTIFICATE OF APPROPRIATION

(Do not sign until proof has been submitted to the State Engineer and accepted as sufficient.)

STATE OF ~~UTAH~~, NEW MEXICO)
County of Santa Fe) ss.

I, Hugh M. Miller, Regional Director, National Park Service, Region Three authorized representative of being first duly sworn, do hereby certify that I am the ~~xxxxxxxxxxxxxxxx~~ the United States of America who ~~xxxxxxx~~ made an Application to appropriate water from an unnamed spring in Grand County, Utah ~~xxxxx~~ County for stock-watering purposes; that said Application is filed in the State Engineer's office as No. 21087; that the works necessary to accomplish the diversion and perfect the appropriation of water in accordance with the said Application have been completed; that the foregoing statement of facts, submitted in proof of the completion of said works and the appropriation of said water, that I made the said statement and that each and all of the items contained therein are true to the best of my knowledge and belief.

~~and certificate~~ for and in behalf of U.S. of America, National Park Service,

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

By [signature]
Hugh M. Miller Signature of Appropriator.

Subscribed and sworn to before me this 14th day of May, 1959

(Seal)

My Commission Expires Feb. 24, 1963 John N. Diehl
Notary Public.

CERTIFICATE OF PROOF ENGINEER

STATE OF ~~XXXX~~ NEW MEXICO,)
COUNTY OF SANTA FE) ss.

William E. Fields having been duly sworn, certifies that he is the engineer who prepared the within proof, that he is personally acquainted with the works constructed by United States of America for the diversion and appropriation of water from unnamed spring in Grand county under Application No. 21087 for ~~wildlife and~~ stock-watering purposes, and that the accompanying tracings were prepared from field notes of a survey made by him ~~between~~ the 8th day of April, 1959, ~~and the day of~~, 19__; that said works have been fully completed and used to the extent and in the manner particularly set forth in the foregoing statement of facts and on the accompanying tracings; that he has read such statement and that each and all of the items therein contained are true to the best of his knowledge and belief.

William E. Fields
William E. Fields PROOF ENGINEER

Subscribed and sworn to before me this 14th day of May, 1959

(Seal)

My commission expires Feb. 24, 1963. John N. Diehl
NOTARY PUBLIC

STATE ENGINEER'S ENDORSEMENTS

Dates

Oct 3, 1949 ..... Application received in State Engineer's office; Approved Mar 13 1957

Apr 25 1958 ..... Proof of Appropriation due in State Engineer's office.

Apr 23 1959 ..... Written proof and maps received in State Engineer's office by Eca

..... Written proof and maps returned for correction by .....

..... Corrected written proof and maps resubmitted, received by .....

..... Corrected written proof and maps examined and Certificate written by .....

..... Certificate of Appropriation issued (No. .....)

..... Maps, profiles, and drawings filed on Hanger No. ..... page .....

..... Fee for filing proof and maps $6.00, received by ..... Receipt No. .....

..... Fee for issuing Certificate $1.00, received by ..... Receipt No. .....

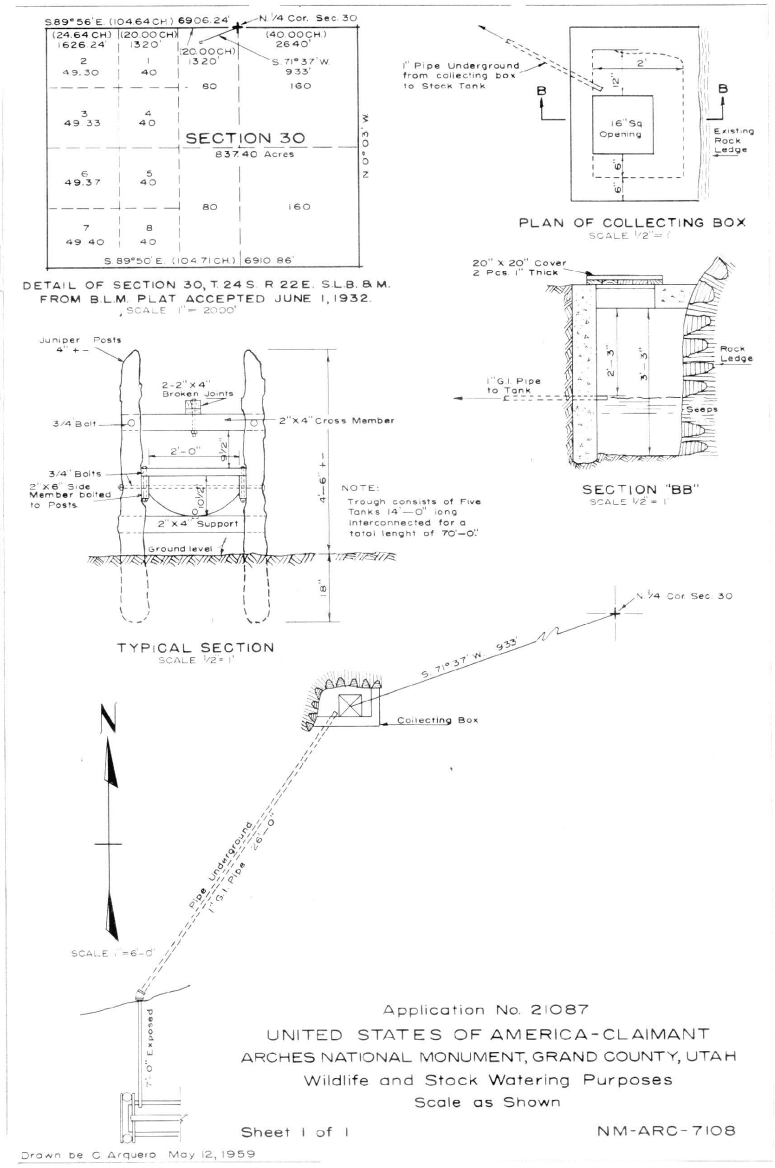
This written proof and the maps and drawings pertaining thereto are found to comply with the requirements of the Laws of Utah, and the same are hereby approved.

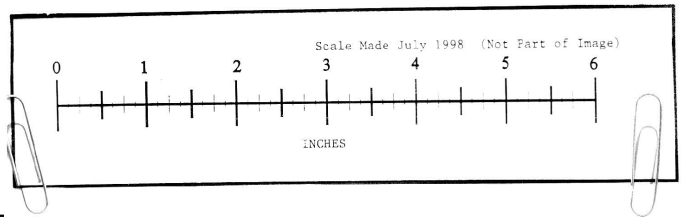
....., 19.....

State Engineer.

Proof of Appropriation on Application No. 21087

05-12-1959: map: arch wildlife and stock watering purposes; application 21087





00-00-0000: application to appropriate water for stock watering, state of utah; application 21087

Form F—7-46 7,000

Application No. 21087

Application to Appropriate Water for Stock Watering

STATE OF UTAH

Do not fill out this blank until you have read carefully and thoroughly understand the Rules and Regulations on the back hereof and all the notes in the body of it, as well as the Rules and Regulations in pamphlet form promulgated by the State Engineer.

For the purpose of acquiring the right to use a portion of the unappropriated water of the State of Utah, for stock watering purposes, Application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of the Laws of Utah.

Note.—The information given in the following blanks should be free from explanatory matter, but when necessary a complete supplementary statement should be made on the following page under the heading "Explanatory."

1. *The name of the applicant is* United States of America
2. *The post-office address of the applicant is* National Park Service, Interior Building, Washington 25, D. C.
3. *The quantity of water to be appropriated is* 0.0011 *second-feet or* ..... *acre-feet* (See note on following page)
4. *The water is to be used each year from* January 1 (Month) (Day) *to* December 31 (Month) (Day) *incl.,* *and stored each year (if stored) from* -- (Month) (Day) *to* ..... (Month) (Day) *incl.*
5. *The drainage area to which the direct source of supply belongs is* Colorado River (Leave blank)
6. *The direct source of supply is*† nameless spring in Grand County (Name of stream or other source) *which is tributary to* Salt Wash, *tributary to* Colorado River

†**Note.**—Where water is to be diverted from a well, a tunnel, or a drain, the source should be designated as "Underground Water" in the first space and the remaining spaces should be left blank. If the source is a stream, a spring, a spring area, or a drain, so indicate in the first space, giving its name, if named, and in the remaining spaces, designate the stream channels to which it is tributary, even though the water may sink, evaporate, or be diverted before reaching said channels. If water from a spring flows in a natural surface channel before being diverted, the direct source should be designated as a stream and not a spring.

7. *The point of ~~diversion from stream~~, spring, ~~spring area, drain, well (flowing or pump), tunnel,* (Strike words not needed) *or* ~~is in~~ is in Grand *county, situated at a point** S. 71°37' W. 933 feet from the N¼ corner of Section 30, T. 24 S., R. 22 E., S.L.B. & M.

***Note.**—The point of diversion must be located definitely by course and distance or by giving the distance north or south, and east or west, and described with reference to some United States land survey corner or United States mineral monument, if within a distance of six miles of either or if at a greater distance, to some prominent and permanent natural object. **(Also see note on page 4.)**

No Application will be received in which the point of diversion is not described definitely. Any change made in this description after Application is received and before approved will bring down priority of Application to date when amendment is made of record in the State Engineer's office, if made after approval it must be by change application.

8. *The diverting and carrying works will consist of* Concrete collecting box, 1-inch diverting pipe, and iron watering trough.
9. *The cross section of the diverting channel will be* -[-]---\---/ ○ (Strike ones not needed)
10. *The diverting works and diverting channel will be constructed of* ~~earth, wood~~, iron, ~~concrete.~~ (Strike words not needed)
11. *The length of the diverting channel, exclusive of laterals, will be* 33 *feet*
12. *The top width of the diverting channel will be (if a ditch)* -- *feet*
13. *The bottom width of the diverting channel will be (if a ditch)* -- *feet*
14. *The depth of water in the diverting channel will be (if a ditch)* -- *feet*
15. *The width of the diverting channel will be (if a flume)* -- *feet*
16. *The depth of water in the diverting channel will be (if a flume)* -- *feet*
17. *The diameter of the diverting channel will be (if a pipe)* 1 *inches*
18. *The grade of the diverting channel will be* 150 *feet per thousand*
19. *The number and kind of stock to be watered are as follows:* 150 head of cattle part time, and the wildlife in Arches National Monument

EXPLANATORY

The following additional facts are set forth in order to define more clearly the full purpose of the proposed appropriation. If additional space is required under this paragraph, sheets cut the same size as this form folded should be added identified as "Explanatory Continued."

The concrete collecting box is 2 feet wide, 3 feet long, and 3 feet deep.

The iron watering trough is 2 feet wide, 60 feet long, and 1 foot deep.

This stock watering development was made by the Grazing Service, under the "drought relief" program of 1933-1934, the spring being located on what was then part of the Windows section of Arches National Monument. Since that time stockmen with allotments on the grazing district to the east of the Monument have been permitted to drive their cattle across the Monument to reach their allotments, and to water their stock at said spring. This application is filed with the view to establishing federal rights to the diversion and use of the water in connection with the related use of Monument lands under federal permit.

Nothing is this application, or the subsequent perfection of rights, is intended to constitute a waiver of other rights which the United States may have to the use of this, or any other water on Arches National Monument

United States of America
By: A. E. Demaray
Associate Director *Signature of Applicant**
National Park Service
Department of the Interior

*If applicant is a corporation or other organization, signature must be in the name of such corporation or organization by its proper officer. If a corporation, the affidavit below need not be filled in. If there are more than one applicant, a power of attorney, authorizing one to act for all should accompany the Application.

STATE OF UTAH,
} ss.
County of.....

On the.....day of....., 19....., personally appeared before me, a notary public for the State of Utah, the above applicant who, on oath, declared that he is a citizen of the United States.

My commission expires
(SEAL)

Notary Public.

(This page is not to be filled in by applicant)

State Engineer's Endorsements

1. 10:30 a.m. Oct. 3, 1949 *Application received* ~~*over counter*~~ *by mail* *in State Engineer's office by* NN
2. *Priority of Application brought down to, on account of* ~~No fee~~
3. No fee req. *Fee for filing Application, $*____, *received by* ____ *Rec. No.*____
4. Oct. 20, 1949 *Application copied in book* S-19, *page* 534, *and indexed by* LCN GP
5. Oct. 4, 1949 *Application platted by* ACT
6. Nov. 7, 1949 *Application examined by* CNH
7. *Application returned, with letter, to*____ *for correction*
8. *Corrected Application resubmitted* *over counter* / *by mail* *to State Engineer's office.*
9. *Fee for publishing notice requested.*
10. June 16, 1950 *Fee for publishing notice, $* 7.50, *received by* NN *Rec. No.* 23537
11. Nov. 7, 1949 *Application approved for advertisement by* CNH
12. Mar. 15, 1950 *Notice to water users prepared by* CNH
13. Mar. 23, 1950 *Publication began; was completed* Apr. 20, 1950
    Notice published in Times-Independent, Moab, Utah
14. Mar. 24, 1950 *Proof slips checked by* CNH - NN
15. June 10, 1950 *Application protested by* belated protest of U.S. of America, Bureau of Land Management. Protest withdrawn 1-15-57
16. March 11, 1957 *Application designated for* *approval* / ~~*rejection*~~ *by* JMG
17. *Fee for approving Application requested*
18. No fee req. *Fee for approving Application, $2.50 received by*____ *Rec. No.*____
19. March 12, 1957 *Application proofread by* LE RR
20. March 12, 1957 *Application* *approved* / ~~*rejected*~~ *and returned to applicant*

This Application is approved, subject to prior rights, if any, on the following conditions:

1. *Actual contruction work shall be diligently prosecuted to completion.*
2. *Proof of Appropriation shall be submitted to the State Engineer's office by* April 25, 1959
3.

/s/ Joseph M. Tracy
Joseph M. Tracy *State Engineer.*

21. *Time for making Proof of Appropriation extended to*
22. *Proof of Appropriation submitted.*
23. *Fee for filing Proof of Appropriation, $1.00, received by*____ *Rec. No.*____
24. *Fee for examining maps, profiles and drawings, $5.00, received by*____ *Rec. No.*____
25. *Fee for issuing Certif. of Appropriation, $1.00, received by*____ *Rec. No.*____
26. *Certificate of Appropriation, No.*____, *issued*

I Hereby Certify that the foregoing is a true copy of the Application by____ to appropriate water and of the endorsements therein as shown by the records of my office on the date given below.

Salt Lake City, Utah,____, 19____

State Engineer.

Application No. 21087

NOTICE TO APPLICANT

The approval of this Application is not a Certificate of Appropriation. It is merely your authority to begin construction work, which must be prosecuted diligently to completion. To secure a Certificate of Appropriation under this Application, Proof of Appropriation must be submitted within the time limit allowed by the State Engineer. The amount of water for which Certificate will be issued will depend upon the amount of water actually put to a beneficial use, not to exceed, however, the amount of water specified in this Application. Proof of Appropriation must be made in accordance with the requirements of the law. For further information write the State Engineer.

Note—The second space provided in Paragraph 3 on page 1 must not be used except in cases in which storage is contemplated; in such case Paragraph 4 (first line) should indicate the time in each year during which the water will be released and used. The lands to be inundated by the reservoir shall be described under "explanatory" as nearly as may be and by government subdivisions if upon surveyed land, and the area of the reservoir when at full stage shall be given in acres.

If the Reservoir is Located on the Channel of the Source from which the water is to be appropriated, it shall be so stated under "explanatory," and—

1. The intersection of center line of stream bed and longitudinal axis of impounding dam shall be described in Paragraph 7.
2. The point where the released storage will be rediverted from the natural stream shall be described under "explanatory" in accordance with the note under Paragraph 7. If a diversion dam is involved, the point of rediversion is intersection of center line of stream bed and longitudinal axis of dam.

When Water is not Stored in the Natural Channel of the Source from which it is to be appropriated, it shall be so stated under "explanatory," and—

1. The point of diversion from the supplying source shall be described in Paragraph 7.
2. The intersection of center line of stream bed and longitudinal axis of impounding dam and the point where the released storage will be rediverted from a natural channel shall be described under "explanatory" in accordance with the note under Paragraph 7. If a diversion dam is involved the point of rediversion is intersection center line of stream bed and longitudinal axis of dam.

In all cases Paragraphs 8 to 18 inclusive, shall describe the entire diverting works, exclusive of natural channels and laterals, even if already constructed in whole or in part.

If Application is Made for the Water of a Number of Springs, or other sources collected at a common point, said point shall be described as the point of diversion in Paragraph 7 and the point of diversion from each source shall also be described under "explanatory," in accordance with the note under Paragraph 7. The quantity of water sought from each source shall be indicated under "explanatory," the total equaling the quantity specified in Paragraph 3. Where the source of supply is in reality a spring area, the point of diversion is the point where the water is collected within the area, the point of collection being described in Paragraph 7; in such case the exterior boundary of the spring area shall be described under "explanatory" by metes and bounds and located as outlined by the note under Paragraph 7.

Rules and Regulations

If a dam is not required across the natural channel of the stream or outlet of the lake comprising the supplying source to divert water into the diverting channel, the point of diversion or rediversion shall be the intersection of the axis of the first tangent in the diverting channel and the high water line on the adjacent side of the natural channel or body of water of the supplying source.

All waters in this state, whether above or under the ground, are the property of the public, subject to all existing rights to the use thereof. No appropriation of the unappropriated public water may be made and no rights to the use thereof shall be recognized except Application for such appropriation first be made to the State Engineer.

The Application must be signed by the applicant at the bottom of page 2 and the affidavit relating to citizenship acknowledged before a Notary Public before the Application be received by the State Engineer.

An Application shall not be made for more than one purpose, except where the secondary purpose is a necesary incident to the primary one; as for instance, an Application for irrigation purposes may specify domestic purposes as a necessary incident.

An Application made to appropriate water for use in a single system with one or more points of diversion or sources of supply, or both, if the water is commingled, may be accepted if made by one person or by a corporation, if and when the points of diversion be in close proximity or located in contiguous sections by government survey; provided, however, that the quantity of water sought, also tie to a U. S. land survey corner, be given for each point of diversion, and the point of commingling given by tie to a U. S. land survey corner.

In case a material error is made in the description of the point of diversion, or in case any error is made the correction of which would enlarge the rights sought in an Application after its receipt in the State Engineer's office, then such error may be corrected before advertising, but the priority date of the Application will be changed to the time when the corrected Application is resubmitted (received) in the State Engineer's office; and, if the notice to water users has been published, the State Engineer may in his discretion before approval cause a revised notice to be published at the expense of the applicant.

When there are two or more coapplicants the Application must be accompanied by a power of attorney, authorizing one to act for all.

The applicant's permanent address should be given in Paragraph 2, and the State Engineer notified promptly of any change in address; otherwise applicant may lose rights initiated by Application by failing to receive notices sent from the State Engineer's office.

No Application or other paper (requiring a fee) pertaining to an Application will be marked received unless accompanied with the required filing fee.

Applications accepted and numbered by the State Engineer, when returned to applicant for correction or additions, must be amended with red ink. Erasures must not be made, but any matter may be eliminated by running a red line through it in such manner that the stricken matter may still be read. Corrected Applications must be resubmitted to the State Engineer's office, within sixty days from the date of State Engineer's letter returning Application for correction; otherwise the Application will lapse.

Applicants will be informed by the State Engineer's office when cost of publishing notice of Application is due, and must advance cost within sixty days after date of notice, otherwise Application will lapse.

Fees Required by Law Payable to State Engineer

For filing Application to appropriate 10 second-feet of water or less and additionally, $1.00 for each second-foot above 10.	$2.50
For filing Application to appropriate 500 acre-feet of water or less and additionally, 2 cents for each acre-foot above 500.	2.50
When the filing fee on any application to appropriate water shall exceed $1,000.00, the balance of the fee in excess of $1,000.00 may, at the option of the applicant, be paid at the time the Proof of Appropriation is submitted.	
For approving and recording comleted Application	2.50
For filing written Proof of Application	1.00
For examining map, profile and drawings that are part of the Proof of Appropriation	5.00
For issuing Certificate of Appropriation	1.00

NOTE—Applicants will save time and expense by familiarizing themselves with the law before making Application.

L-54

Region Three
Santa Fe, New Mexico

JUN 25 1959

Memorandum

To: Director

From: Acting Regional Director

Subject: Certificate of Appropriation of Water, Application 21087, Spring Canyon Spring, Arches National Monument

Attached is a photostat copy of Certificate No. 5676 granted by the State Engineer May 29, 1959 and recorded in the records of Grand County, Utah, June 5, 1959 at 11:55 a.m., Entry No. 288865, Book 6X Misc., Page 84, by Esther Somerville, Recorder Grand County.

Superintendent Wilson had advised that the correct nomenclature for this spring is "Spring Canyon Spring". However, the certificate reads "unnamed spring in Grand County" in order to be in conformity with the application.

We have placed a photostat copy of Certificate 5676 in our Docket No. 2, added the certificate number, crossed out Salt Wash stock watering facilities, and added Spring Canyon Spring. We have also added the priority of October 3, 1949 on the jacket of our docket. Similar entries should be made in the Washington Office, Western Office of Design and Construction, and Superintendent's dockets in order that all copies may be in agreement.

Harthon L. Bill [SIGNED]
Acting Regional Director

Attachment

In duplicate

Copy to: Supt., Arches w/c attachment
WODC (2) w/c attachment

Copied from Park files 2/21/86

06-03-1959: memorandum to superintendent from assistant regional director regarding attached original certificate of appropriatio

IN REPLY REFER TO:
L-54

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

June 3, 1959

Certified Mail

Memorandum

To: Superintendent, Arches

From: Assistant Regional Director

Subject: Certificate No. 5676, Application 21087, Docket No. 2, Arches National Monument

Attached is the original Certificate of Appropriation, Certificate No. 5676 dated May 29, 1959.

6/5/64-200

Please have the certificate recorded in the county and return to this office certified mail after it has been recorded. It should be recorded as soon as convenient and must be recorded before July 2.

The recording fees are properly chargeable to Regional Office Work Order 3-WR-59, and you can claim reimbursement on reimbursable voucher, Standard Form No. 1129.

As soon as we receive the recorded certificate, photostat copies will be made and a copy will be returned to you, Western Office of Design and Construction, and the Washington Office for insertion in your Docket No. 2.

Given to John Bell 6/17/59

Harthon L. Bill
Harthon L. Bill
Assistant Regional Director

Attachment

Copy to: Director (2) w/o attachment
WODC (2) w/o attachment
Mr. Giles w/o attachment

05-29-1959: letter to nps from state of utah regarding enclosed certificate no. 5676 - record it with the county; application 21087

FORM 88 2M 2-1958

THE STATE OF UTAH

OFFICE OF STATE ENGINEER

SALT LAKE CITY

May 29, 1959

United States of America
National Park Service
Box 1728
Santa Fe, New Mexico

CERTIFICATE ISSUED

APPLICATION NO. 21087

Gentlemen:

Enclosed is Certificate No. 5676 issued by the State Engineer as the final step in completing the appropriation relating to Application No. 21087.

Under the law this Certificate must be recorded in the office of the County Recorder in the County where the water is diverted, within 30 days from the receipt hereof. You should attend to this matter at once.

Yours very truly,

Wayne D. Criddle

Wayne D. Criddle
STATE ENGINEER
STATE CAPITOL
SALT LAKE CITY 1, UTAH

ADDRESS ALL COMMUNICATIONS TO:

ASR:js
Encl: Certificate

L54-OBL

May 20, 1959

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Water Rights, Application 21087, Docket 2, Arches

Some time between May 13, 1949, (Mr. Ratcliff's memorandum) and the establishment of the subject water rights, spring names have become confused. Using Mr. Ratcliff's memorandum, I am changing the name on the tab on the subject docket to read ~~Salt Wash~~ Spring Canyon Spring, Stock Watering Facilities." All offices should do the same, unless there is need for further correction. In my unanswered memorandum of December 4, 1957, I suggested Fresh Water Spring, which I now believe to be incorrect.

The error appears to have started in a letter of September 28, 1949, to the State Engineer from Mr. Burney, which I wrote. This may have caused all the subsequent difficulty with the protest. If the name should be changed to Spring Canyon Spring, Mr. Kell or Mr. Fields might advise the State Engineer.

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Arches
Chief, WODC (2)

L54-OBL

May 20, 1959

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Water Right Proof, Application 21087, Docket 2, Arches

The completion of proof has been well done as outlined in the memorandum of May 15 from Mr. Kell. I am particularly glad that the State Engineer did not require more specific proof of water consumption, as suggested in my memorandum of April 28.

I have filed Drawing 7108 above 7107 and below the application, and filed the photostat of page 3, as signed, above the page as originally sent to the State Engineer, making references on each as to your letter of May 14 to the State Engineer, and initialing them. I also noted on Drawing 7107 that it was rejected by letter of April 27 from the State Engineer, and filed the copy of letter of April 27 and your reply of May 14 at top of contents of Part II of the docket. I have also made indicated changes you listed as items 1, 2 and 3, with reference to your letter, and initialled them.

Drawing 7107 should be removed from the docket if it is not on record in the State Engineer's Office, but Mr. Kell refers to crossing out inapplicable data. Please explain.

I have only filed the photostat of page 3 as an overlay because there will be further extensions, and signature by the State Engineer. I believe that a similar photostat of approved proof might be stappled over the page of the proof form, rather than type in the entries on the original form.

I do not find the request to change item 3 from 0.00078 to 0.0008 in the State Engineer's letter. I assume it was a pencil notation on the returned proof. I should also like to know what color of ink was used in the corrections. These details were indicated on all copies when the work was done here, but the system will have to be changed with the work now handled by your office, after the instruments have been distributed.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Arches
Chief, WODC (2)

L-54

WR Copy
WR 9

Region Three
Santa Fe, New Mexico

May 15, 1959

Memorandum

To: Director

From: Regional Chief of Lands

Subject: Water Right Proof, Application No. 21087, Docket No. 2, Arches National Monument

On April 27, State Engineer Wayne D. Criddle returned our Proof of Appropriation under Application No. 21087, Docket No. 2, Arches National Monument.

In returning the proof, the State Engineer requested the following corrections:

1. On Page 1, Item No. 3, he requested that the flow in second feet be changed from .00078 to .0008.

2. Item No. 22 on the same page, he requested the words "at the trough" be added.

3. On the second page under General Remarks, sixth line, he requested that 24' be changed to 26'. On the same line, he requested that the words "in a southeasterly direction" be added after "7'."

When the State Engineer returned our drawing NM-ARCH-7107, he crossed-out on the print those items which he felt were unnecessary. At the same time, he suggested reducing the scale and making a new drawing on one sheet 8-1/2" x 14" which has been done. A print of the new drawing NM-ARCH-7108 is attached for insertion in your docket.

The Certificate of the Appropriator was signed by Regional Director Miller before Notary Public John H. Diehl on

May 14, 1959. The State Engineer also supplied and glued to the form a "Certificate of Proof Engineer," which was signed by William E. Fields as "Proof Engineer" on the same date and before the same notary.

We have supplied a reproduced copy of Page 3, showing the signatures and the State Engineer's endorsements. We have stapled this page in our file copy of the final proof retained in the Regional Office.

We suggest that all offices make similar entries in the docket, in order that all dockets will be in agreement. The prints of NM-ARCH-7107 should either be destroyed or placed in the correspondence files.

A reproduced copy of the State Engineer's letter of April 27, 1959, requesting the change, is attached and has been placed in our Docket No. 2.

A copy of Regional Director Miller's letter to the State Engineer of May 14, returning final proof and the new linen tracing, is also attached for your files.

John E. Kell
Regional Chief of Lands

Attachment

In duplicate ✓

Copy to: Chief, WODC - w/attachment
Superintendent, Arches - w/attachment

05-14-1959: letter to mr. criddle from regional director regarding at mr. criddle's request, the 3 changes were made to the proof of

L-54

Region Three
Santa Fe, New Mexico

May 14, 1959

State Engineer Wayne D. Criddle
405 State Capitol
Salt Lake City 14, Utah

Re: Application No. 21087

Dear Mr. Criddle:

In accordance with the instructions contained in your letter of April 27, we are returning the corrected copy of Proof of Appropriations, Application No. 21087, for wildlife and stock-watering purposes, Arches National Monument, Grand County, Utah.

As requested in your letter, we have made the following changes:

1. Item 3 has been changed from .00078 to .0008.

2. Under Item 22, we have added "at the trough."

3. On the sixth line after "for 7'," we have added "in a southeasterly direction."

We have reduced the scale and redrawn the map on linen, making it legal size 8-1/2" x 14" as requested by your office.

We have completed the Certificate of Appropriator and the Proof Engineer.

We also acknowledge receipt of the returned purchase order, RO 33-337, dated April 20, 1959 in the amount of $7.00.

Sincerely yours,

(SIGNED)

Hugh H. Miller
Regional Director

Attachment

Copy to: Director (2) - w/1 attachment
Chief, WODC (2) - w/1 attachment
Superintendent, Arches

L54-OEL

Arches

April 28, 1959

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Water Right Proof, Application 21087, Docket 2, Arches

The proof submitted with your letter of April 21 to the State Engineer, relates to a water claim which I consider unusual in any case, as I told Messrs. Fields and Kell. The proof is also somehwat different from what I expected, but I told Messrs. Fields and Kell that I could not offer any form of proof with assurance that it would be accepted in Utah, as first submitted.

I am reasonably certain that changes will be requested. The following comments are based on my past experiences for consideration when the proof is returned, but even my experience is based on old cases.

I am surprised to find the available flow so small. At only about 71% of that claimed in the application, I would ordinarily request an extension of time to see whether the greater flow could be recorded in a wetter year. In this case, the final license, even to the lesser amount, should be enough to permit use of all available water without further protests, which is about all we want.

I anticipate the following requests from the State Engineer unless he waives proof on such a small amount:

1. My latest copy of the Rules and Regulations still prescribes that drawings shall either be 8½" X 14" with 1¼" margin at top; or 24" X 30", with 1½" margin on all sides. A new tracing on proper size of linen will probably be required.

2. I think the capacity of each trough should be given, in gallons. The total capacity of troughs, exclusive of the collecting box, appears to be about 820 gallons; and the measured flow, to which the license will be limited, was about 500 gallons per day, on April 8. I assume that the troughs are not at elevation of collecting box, so the capacity of the latter cannot be added.

WESTERN OFF
DESIGN & CONSTR
MAY 1 1959
CHIEF
ADMIN. ASSIST.
PERSONNEL
PLANS & PROG.
SAFETY
ARCHITECT
ENG.
LAND. ARCH.
ACTION TAKEN—DATE
none

COPY DATE IN MAIL BOX

3. I do not have past experience with claim for water for stock and wildlife watering, but I would not be surprised if proof were requested that 40 to 50 head of cattle actually drink one trough filling in about 14.6 hours, or less, and that other stock was denied the other desired 320 gallons during the proof measurement. This part of the proof would be simplified if troughs were emptied once in considerably less than 14 hours, to permit refilling and use of the 320 gallons within the 24 hour period.

4. You and Mr. Fields made the same mistake that Mr. Wirth and I did on one occasion, in signing the tracing before the first submission to the State Engineer. This will be corrected automatically if the drawing has to be retraced on one of the two standard sizes of linen. If not, please refer to Drawing NP-BC-6956, in Part I of Bryce Canyon Docket 2. A supplemental statement to correct a similar error is in the center of the bottom of that drawing, just under "Detail of Well".

5. I do not think the United States has to pay the $7.00 for which you submitted a voucher, and that voucher will probably be returned for cancellation. You will have to pay the fee for recording the license in the county, when the license is issued.

6. I am not sure that the "saving statement" concerning other Federal rights to the same water, was needed, or will be accepted in the proof. The Solicitor has only prescribed its use on applications. However, if acceptable, it will be applicable to Federal claims to the 0.00032 sec.ft. difference between the 0.0011 sec.ft. claimed in the application, and the 0.00078 sec.ft., on which proof is being made.

I am filing the proof at top of contents of Part II, Arches Docket 2, and other offices should do the same. All other offices should be advised of changes, and be supplied with replacements which may become appropriate.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Arches
Chief, WODC

04-27-1959: letter to nps from state of utah regarding application no. 21087: enclosed written proof and purchase order

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY
April 27, 1959

(L-54)
Arch

United States Dept. of Interior
National Park Service, Regional Director
Santa Fe, New Mexico

Gentlemen: Re: APPLICATION NO. 21087

Returned herewith is one set of written proof, together with Purchase Order No. RO 33-337 covering fees in the amount of $7.00, and under separate cover one sheet of tracing and one ozalid print, all pertaining to the above-numbered application, for completion as outlined below.

The above-mentioned proof of appropriation was received in this office Apr. 23, 1959, no proof fees being required. The State of Utah does not require payment of fees by Federal Agencies other than direct costs.

Give the information requested, Paragraph 22 of the written proof form, i.e. add the words "at the trough".

TRACING

This office only accepts tracings accompanying proof to be either 24"x30" or legal size sheets. When a legal size tracing is used, no certificates are to be lettered on the tracing; however, when a large tracing is prepared, the certificates are to be lettered thereon.

This office has indicated in pencil on the print what it deems necessary as to proof. It appears that the information outlined could be given on two or more sheets of legal size tracing linen, leaving a 1½-in. margin at the top for binding purposes. Note the sketch on back of the print; in fact, the necessary information and data could be reduced and placed on one sheet of linen very easily.

CERTIFICATES

After completing the proof as above outlined, the certificates of the appropriator and proof engineer are to be completed, executed by the proper parties and the executions acknowledged before a notary public in each instance. We are attaching a proper engineer's certificate which is to be used when preparing legal size maps.

You are allowed to and including May 27, 1959 within which to complete the proof as above outlined and return the same to this office.

Yours truly,

Wayne D. Criddle

Wayne D. Criddle
STATE ENGINEER

ASR/wh
Encl: Written Proof, Purchase Order, CC of Letter

cc: Superintendent of Arches National Monument, Moab, Utah

RECEIVED
NPS REGIONAL OFFICE
APR 30 1959
WAYNE D. CRIDDLE
STATE ENGINEER

	SURNAME	DATE
REGIONAL DIR.		
ASST. R.D.		
ADMIN.		
OPERATIONS		
INTER.		
RECREATION		
FORESTRY		
SOLICITOR	Kell Geck	
FILES		

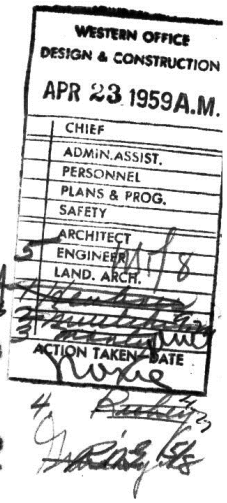
Field

L-54

Arches

Region Three
Santa Fe, New Mexico

April 21, 1959



Certified Mail
Return Receipt Requested

Air Mail

Wayne D. Criddle, State Engineer
403 State Capitol
Salt Lake City 14, Utah

RE: Application 21087
Arches National Monument

Dear Mr. Criddle:

Enclosed is Proof of Appropriation of Water for Wildlife and Stock-Watering Purposes on Application No. 21087 and the original linen Drawing NM-ARC-7107.

We have also enclosed the original and buff copies of Government Purchase Order No. RO-33-337 in the amount of $7.00. The fee has been computed on the following basis:

For filing written proof	$1.00
For examining maps and drawings	$5.00
For issuing Certificate of Appropriation	$1.00
	$7.00

The buff copy of the purchase order should be signed and returned, and if we have made an error in calculating the costs, the corrections should be shown on the buff copy. It would be appreciated if your bill would show the purchase order number and the application number. As soon as we have the correct bill from your office we can place the voucher in line for payment.

The Certificate of Appropriator has been completed but has been left unsigned. It is our understanding that the proof will be returned for signature by me after the drawing and written proof have been examined by the State Engineer and accepted as sufficient.

Yours very truly,

(SIGNED)
Hugh N. Miller
Regional Director

Copy to: Director (2))
Supt., Arches)w/1 attachment
WODC)

03-26-1959: letter to nps from state of utah regarding application 21087: four enclosed forms pertaining to proof of appropriation

THE STATE OF UTAH

OFFICE OF STATE ENGINEER

WAYNE D. CRIDDLE
STATE ENGINEER

SALT LAKE CITY
March 26, 1959

Arches
L 54

Director Region Three
National Park Service
Santa Fe, New Mexico

Attn: Mr. William E. Fields, Civil Engineer, L-54

Dear Sir: Re: APPLICATION NO. 21087

This acknowledges receipt of your letter dated March 18, 1959 pertaining to the above-numbered application.

Enclosed are four forms entitled "Request for Reinstatement and Extension of Time," one sheet containing a brief outline of what is required in making proof of appropriation, and also two forms entitled "Proof of Appropriation of Water for Stock-Watering Purposes" in compliance with your request in your hereinabove referred to letter.

The proof sufficiently prepared so as to be acceptable for filing must be received in this office on or before due date thereof, i.e. April 25 1959, or in lieu thereof a request for extension of time prepared on one of the enclosed forms which after being completed is to be executed by the applicant.

The proof in order to be acceptable for filing must contain under General Remarks of the written proof all details and data of a water measurement taken in accordance with standard engineering practice so as to actually show the flow of water appropriated from the source. The written proof must be accompanied by maps and drawings prepared on tracing linen in black water proof ink showing the total development and its relationship to the United States land net. Drawings showing all dimensions of the facilities used in diverting the water and watering the stock are to be shown.

Yours truly,

Wayne D. Criddle

Wayne D. Criddle
STATE ENGINEER

EKV/wh
Encl: Proof Forms (2)
Forms 25 (4), Guide for Preparing Proof

cc: United States of America, National Park Service
Interior Building
Washington 25, D. C.

Superintendent of Arches National Monument
Moab, Utah

L 54

Arches-Natural Bridges National Monuments
Moab, Utah

March 21, 1959

Memorandum

To: Regional Director

From: Superintendent

Subject: Proof of Benefifial Use of Water, Application 21087, Docket No. 2, Arches National Monument

Attached are prints of Form 25 5M 5-57 with A. & B filled in as requested by Mr. Fields.

I do not understa nd why we need an extension of time as the spring(Spring Canyon Spring) has been developed since 1933. We did not do the development work, but the spring was on lands under National Park Service jurisdiction for four years prior to the development work done by the Grazing Service without our knowledge.

We do not contemplate any further development unless it might be to supply drinking water to the proposed parking areas in the Windows Section. This would entail a gasoline pump, one mile of 3/4" pipe, and a 500 gallon reservoir. A more detailed study will have to be made.

For the past year the water has been used almost exclusively by wildlife. The flow remains at approximately ½ gallon per minute.

There is still a bit of confusion on the Docket numbers and names of two of our watering places. Originally Application No. 21089 and Docket No. 2 pertained to the water rights on land covered in Land Deed 4 which were described as,"Salt Wash Stock Watering Facilities". Apparently the stock-watering use on this land acquired from Emmett Elizondo is classed by the State of Utah as a diligence right and will be good until such time as it suffers a nonuse of five years when the water was available. To avoid further confusion am I correct in giving the following title to the folder covering the property purchased from Emmett Elizondo? Arches National Monument Deed 5, Perfection of Water Rights, Salt Wash Stock Watering Facilities. This folder would have no application or docket number ?

The folder covering Spring Canyon Spring would be as follows? Arches National Monument - Docket 2 - Application No. 21087. - Spring Canyon Spring.

Bates E. Wilson
Superintendent

Attachments: 3

03-18-1959: memorandum to regional director through acting regional chief of operations from civil engineer regarding proof of be

L-54

Region Three
Santa Fe, New Mexico

March 18, 1959

Memorandum

To: Regional Director through Acting Regional Chief of Operations

From: Civil Engineer

Subject: Proof of Beneficial Use of Water, Application No. 21067, Salt Wash Stock Watering Facilities, Docket No. 2, Arches National Monument

During the recent assignment in the Washington Office from March 2 through March 10, Chief, Water Resources Section A. van V. Dunn called my attention to a letter received from the State Engineer, Utah. This letter advises proof of beneficial use under the above numbered application for Salt Wash Stock Watering Facilities must be made by April 25, 1959. This source of water is below the window section at Arches National Monument and more specifically in the NE¼NW¼, Sec. 30, T. 24 S., R. 22 E., S.L.B&M. This is the spring on which Regional Administrator H. Byron Mock filed a protest several years ago. The protest was subsequently withdrawn by State Supervisor Val B. Richman's letter to the State Engineer dated January 16, 1957.

The proof of beneficial use will require measuring of the flow of the springs, size and length of the pipe leading from the springs to the stock watering trough, and careful measurement of the installation as it exists at the present time.

In view of the urgent problem at Carlsbad Caverns National Park coupled with the fact that a field trip to Arches will be necessary to make the final proof, Mr. Dunn recommends that we file for an extension of time on this application. I have requested the necessary forms, rules, and regulations from the State Engineer in order that we can make a request for extension of time as suggested by Mr. Dunn.

(SIGNED)

William E. Fields
Civil Engineer

MAR 18 1959

Copy to: Director (2)
WODC
Supt., Arches

Approved for Distribution (SIGNED)

Date:

Hugh M. Miller, Regional Director

L-54

Region Three
Santa Fe, New Mexico

March 18, 1959

Memorandum

To: Superintendent, Arches

From: Civil Engineer

Subject: Proof of Beneficial Use of Water, Application 21087, Docket No. 2, Arches National Monument

Attached are prints of Form 25 SR 5-57 and a copy of a letter from the State Engineer's Office of Utah dated February 19, 1959 giving us until April 25, 1959 to provide proof of beneficial use of the water under Application 21087 and more particularly the water at Salt Wash Stock Watering Facilities in your area.

We need the specific "nature, extent, and approximate cost of construction work done at that area to this date" and "the nature, extent, and estimated cost of construction remaining to be done to complete the work in accordance with the application" from you. On the form I have placed the letters "A" and "B" where I would like you to write this information and return to me as quickly as possible.

Because it will take field work and because of the many pressing problems in this office at the present, we will be unable to offer proof within the required time. Therefore, it is necessary that we ask for this extension of time immediately.

(SIGNED)

William E. Fields
Civil Engineer

Attachments

Copy to: Director (2) no attachments
WODC no attachments

WESTERN OFFICE
DESIGN & CONSTRUCTION
MAR 20 1959 A.M.
CHIEF
ADMIN. ASSIST.
PERSONNEL
PLANS & PROG.
SAFETY
ARCHITECT
ENGIN
LAND. ARCH.
ACTION TAKEN—DATE

B
3/23
cy made

03-17-1959: Letter to Utah State Engr. from NPS regarding proof/extension of time for WR Applic No. 21087

L54-GBL

March 17, 1959

Mr. Wayne D. Criddle
State Engineer
Salt Lake City, Utah

Re: Application 21087
Arches National Monument

Dear Mr. Criddle:

Your notice of the need for proof or an extension of time under the subject application has been referred to Mr. Hugh M. Miller, Regional Director, Region Three, P. O. Box 1728, Santa Fe, New Mexico. Mr. William Fields has now been employed as an engineer in that office to take over the water rights under the Regional Chief of Lands, as quickly as the work can be shifted from the Washington office.

I shall appreciate an explanation, with copy to Mr. Miller, of the nature of proof which should be made, or whether any proof is needed, for the claimed diversion of only 0.0011 sec.ft. for stock and wildlife use. Sec. 73-3-16, page 30 of your water laws as compiled in 1953, seems to waive proof on the use of flows (which I interpret to include surface waters) of less than 0.015 sec.ft. for domestic and for stock watering purposes. If proof is needed, it is one matter to describe the stock watering facilities and measured flow to them, and an entirely different matter to segregate the water consumption by variable daily numbers of wildlife, the authorized 150 head of stock which enter the Monument from adjacent range, and the incidental evaporation.

Yours very truly,
SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Regional Director, Region Three
Superintendent, Arches
Chief, WODC

WESTERN OFFICE
DESIGN & CONSTRUCTION
MAR 20 1959 A.M
CHIEF
ADMIN. ASSIST.
PERSONNEL
PLANS & PROG.
SAFETY
ARCHITECT
ENGINEER
LAND. ARCH.
ACTION TAKEN/DATE

L54-OBL



March 17, 1959

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Proof or Extension of Time due under Application 21087, Docket 2, Arches

As discussed with Messrs. Kell and Fields when they were in Washington, we are forwarding one copy of Form 25 5M 5-57, and four copies of Form L 25 7M 10-50 for Request for Reinstatement and Extension of Time, and the notice of February 19 from the State Engineer that proof is due under Water Right Application 21087 by April 25. Mr. Kell took an apeco copy of the form with him, for study.

Copies of my letter to the State Engineer are also being sent to you, the Superintendent, and WODC. I suggest that data for a request for extension of time be assembled, but that we give the State Engineer until about mid-April to waive proof, or suggest a form that is more simple than that followed at Zion (Dockets 1 - 4).

If we are to request an extension of time, the 1957 form should be submitted to the State Engineer, but I believe the 1950 edition is adequate for the four docket copies.

Review of the Application 21087 in the docket will show that a completed stock watering system was described therein, as constructed in 1933-1934. The first statement in the request for extension should be that work was actually commenced before approval of the application, by some deleting and interlining.

The answer to the next paragraph may be a copy of the description of the system, as given under "Explanatory" in the water right application, adding an estimated cost.

The answer to the next question may be "none" if the original system is nominally intact. The tank and trough have a capacity of 1032 gallons and the claim is to only 711 gallons.

The request at the top of reverse of the form may be for several years but the State Engineer may grant only one or two years. The ideal reason to offer for the extension would be that the permittee has been unable to maintain his authorized herd of 150 cattle on the range because of drought conditions, if true. However, only 60 to 70 head are needed to consume 711 gallons at 10-12 gallons per day.

I doubt if there would be time to make proof, if the normal type is required, but it could be made as soon as convenient. The normal proof would require a plan similar to those in Zion dockets, measurements of flow and consumed water with descriptions of methods, date, and by whom.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Attachments 6

Copy to: Superintendent, Arches
Chief, WODC

FORM 21 5M 10-58

RECEIVED
Utah Code's Office
GENERAL FILE SERVICE
1959 FEB 24 PM 1:27

THE STATE OF UTAH
OFFICE OF STATE ENGINEER

SALT LAKE CITY
February 19, 1959

United States of America
National Parks Service
Interior Building
Washington 25, D.C.

Gentlemen: RE: APPLICATION NO. 21087

Proof as contemplated by the above numbered application will be due April 25, 1959 . Such proof, together with maps, profiles and drawings, and the statutory filing fees, must be received in this office on or before that date. "Failure to make proof of appropriation or proof of change of water on or before the date set therefor, shall cause the Application to lapse."

Blank forms upon which proof must be submitted and a copy of the Rules and Regulations will be sent upon request. Upon receipt of the proof it will receive an office examination after which a field inspection will follow.

An extension of time for filing proof will be granted only upon the filing of a written request for extension made in affidavit form, showing diligence or a reasonable cause for delay and containing the following information:

1. Amount of work done and approximate cost.
2. Amount of work remaining to be done and its estimated cost.
3. Reason for extension and time desired.

Yours very truly,

Wayne D. Criddle

ADDRESS ALL COMMUNICATIONS TO:

Wayne D. Criddle
State Engineer
403 State Capitol
Salt Lake City 14, Utah

js
Encl: F-25

PROOF DUE

Supt. S.W.R.M

THE TIMES INDEPENDENT
MOAB, UTAH

NOTICE TO WATER USERS

The following applications have been filed with the State Engineer to appropriate water in Grand County, State of Utah, throughout the entire year, unless otherwise designated, all locations being from SLB&M:

21087—United States of America, National Park Service, Interior Bldg., Washington, D. C.; .0011 sec.-ft. for stock-watering use from an unnamed spring, trib. to Salt Wash to Colorado River at a point S. 71°37'W. 933 ft. from N¼ Cor. Sec. 30, T24S, R22E. From a concrete collection box at the spring the water will be conveyed through 1-in. pipe a distance of 33 ft. to a metal trough where it will be used to supply 150 head of cattle and wildlife in Arches National Monument.

21278—Mildruff H. Young, Moab, Ut.; 5 sec.-ft. for irrigation use from Mill Creek, trib. to Colorado River at a point N. 1499 ft. and W. 1249 ft. from SE Cor. Sec. 29, T26S, R24E. The water will be diverted by means of an earth, rock and brush diversion dam and conveyed by canal a distance of 21,120 ft. where it will be used from Apr. 1 to Oct. 1 to irrigate 600 acres of land embraced in SW¼ Sec. 26, N½ and SE¼ Sec. 27, T26S, R23E.

21281—Ralph Keith Goodspeed, Moab, Ut.; 3 sec.-ft. for irrigation use from a dug well 24-ft. deep and 20-ft. square at a point E. 60 ft. from W¼ Cor. Sec. 23, T24S, R20E. The water will be used from Apr. 1 to Dec. 1 to irrigate 95 acres of land embraced in NW¼ and SW¼ Sec. 23, T24S, R20E.

21282—Max H. Young, Moab, Ut.; 2 sec.-ft. for irrigation use from a dug well 24-ft. deep and 20-ft. square at a point S. 65 ft. and E. 275 ft. from N¼ Cor. Sec. 22, T24S, R20E. The water will be used from Apr. 1 to Dec. 1 to irrigate 40 acres of land embraced in N½ and NE¼ Sec. 22, T24S, R20E.

21283—Max H Young, Moab, Ut.; 2 sec.-ft. for irrigation use from a dug well 24-ft. deep and 20-ft. square at a point S. 1540 ft. and E. 55 ft. from N¼ Cor. Sec. 22, T24S, R20E. The water will be used from Apr. 1 to Dec. 1 to irrigate 90 acres of land embraced in S½NE¼ and SE¼, Sec. 22, T24S, R20E.

Protests resisting the granting of any of the foregoing applications, with reasons therefor, must be in affidavit form, with extra copy, and filed with the State Engineer, 403 State Capitol, Salt Lake City, Utah, on or before May 20, 1950.

HAROLD A. LINKE,
State Engineer

(March 23—April 20.)

Published in Moab Times Independent Thursday March 30, 1950

"Spring Canyon Spring"

NOTICE TO WATER USERS

The following applications have been filed with the State Engineer to appropriate water in Grand County, State of Utah, throughout the entire year, unless otherwise designated, all locations being from SLB&M:

21087—United States of America, National Park Service, Interior Bldg., Washington, D. C.; .0011 sec.-ft. for stock-watering use from an unnamed spring, trib. to Salt Wash to Colorado River at a point S. 71°37'W. 933 ft. from N¼ Cor. Sec. 30, T24S, R22E. From a concrete collection box at the spring the water will be conveyed through 1-in. pipe a distance of 33 ft. to a metal trough where it will be used to supply 150 head of cattle and wildlife in Arches National Monument.

COPY

THE STATE OF UTAH
Office of State Engineer
Salt Lake City

March 12, 1957

United States of America
National Parks Service
Interior Building
Washington 25, D. C.

RE: APPROVED APPLICATION NO. 21087

Gentlemen:

Enclosed find Application No. 21087 which has been approved by me. The approved Application is your authority to proceed with actual construction work which, under Sections 100-3-10 and 100-3-12, Utah Code Annotated, 1943 as amended, must be diligently prosecuted to completion. The water shall be put to beneficial use and proof of appropriation made to the State Engineer on or before April 25, 1959, otherwise the application will lapse.

Failure on your part to comply with these requirements may result in forfeiture of your Application.

Yours very truly,

/s/ JOSEPH M. TRACY

Joseph M. Tracy
State Engineer
403 State Capitol
Salt Lake City, Utah

COPY

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

RM:GMK
COOPERATION
National Park Service
Arches National
Monument

JUN 27 1950

Memorandum

To: H. Byron Mock, Regional Administrator, Region IV

From: Director

Subject: Water right application 21087 for the appropriation of waters at Arches National Monument

Enclosed is copy of letter of June 20, 1950 from A. E. Demaray, Associate Director of the Park Service, concerning the above noted subject. Also enclosed is a copy of the application No. 21087 filed by the National Park Service in the name of the United States to appropriate water for stockwatering purposes, a copy of letter of October 15, 1948 from Mr. Dunn of the Park Service to Ed. H. Watson, State Engineer for Utah, report dated October 19, 1948 from Watson to Dunn, and copies of memoranda of April 7 and May 16, 1949, all relating to the above subject.

As indicated in Mr. Demaray's memorandum, the Park Service follows the policy of appropriating in the name of the United States waters situated on national parks or monuments as a means of protecting the public interest against appropriations which might be made for the sole benefit of an individual. In the instant case, the application shows that the water appropriated is for the use of livestock which cross the monument area in order to reach range allotments on the adjacent grazing district.

In your letter of June 9, 1950 to the Park Service, you indicated that the stockwatering facility covered by the appropriation application was developed under the State FERA Program and subsequently transferred to the former Grazing Service for control, maintenance and operation. Apparently, however, no application to appropriate has heretofore been filed in order to inform the State of the Government's interest in this development. The need for this water supply by livestock grazing on adjacent grazing district land does not appear to be questioned. It would seem that the application filed by the Park Service would obviate future controversies with private claimants concerning this continued use. On the other hand, if your protest against the filing was allowed to stand, controversies over alleged private appropriation rights might occur. In the circumstances, it is suggested that unless there are other factual data in support of your protest of which I am not aware, it should be withdrawn.

/s/ Marion Clawson

Director

Enclosures

09-28-1949: Letter to Utah State Engr. from NPS re: enclosed application for nameless spring tributary to Salt Wash

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

In reply refer to:
L54 ARCH

SEP 28 1949

Send to Arches N. M.
for
By JMW 10-4

Mr. Ed. H. Watson
State Engineer
Salt Lake City, Utah

My dear Mr. Watson:

Enclosed is an application for the appropriation of the waters of a nameless spring tributary to Salt Wash, which is in turn tributary to the Colorado River, for stock watering purposes in Arches National Monument. This application is filed primarily to establish or record Federal title to the claims and rights to the water which is enjoyed by local stockmen under permits from the United States.

It is our understanding that there is no fee for filing this Federal application. For reference, see your letter of December 13, 1948, in connection with Water Right Application 20278 for the waters of Yovimpa Springs, Bryce Canyon National Park.

Sincerely yours,

(SIGNED)

A. E. Demaray
Associate Director

Enclosure

Copy to: Regional Director, Region Three (2)

Water rights

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

L54ARCH
Dunn
Vent

1949 SEP 6 PM 1 25

Region Three
Santa Fe, New Mexico

August 31, 1949

Memorandum

To: Director

From: Regional Engineer

Subject: Water Rights, Arches National Monument

As requested in Mr. Demaray's memorandum of August 18, we transmit the following replies to the questions which he listed.

1. Test measurements made at the spring give a flow of 1/2 gallon per minute. This is equal to 0.0011 sec. ft.

2. The diameter of the pipe leading from the spring box to the watering trough is 1". Its length is 33 ft. and the difference in elevation from the inlet to the outlet is 5 ft.

3. The concrete collection box measures 3 ft. long, 2 ft. wide and 3 ft. deep.

4. The tie from the quarter corner is to the concrete spring box which is the point of spring issuance.

I am returning one copy of the tentative application on which I have indicated the answers requested.

J. R. Lassiter
Regional Engineer

Attachment

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

August 27, 1949

Memorandum

To: R Regional Director, Region Three

From: Superintendent, Arches

Subject: Water Rights, Arches, Spring Canton Spring.

The information requested in Mr. Demaray's memorandum L64, Arch, dated August 18, 1949 was obtained yesterday and is herewith submitted to your office. This information is also indicated on the application except for question number 4.

1. Test on flow was ½ gallon per minute and if I have figured it correctly would be ~~0.0032~~ 0.062 sec. feet.

2. Diameter of pipe 1", length 33' and the difference in elevation between inlet and outlet is 5'.

3. The concrete collection box measures 3' long, 2' wide and 3' in depth.

4. As shown on Drawing NM-Arc-6315 the tie from the ½ cor. is to the spring issuance or concrete box.

Bates E. Wilson,
Superintendent.

Arches

ADDRESS:
THE DIRECTOR, NATIONAL PARK SERVICE

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

MAR 23 1949

MEMORANDUM for the Regional Director, Region Three.

We enclose four copies of a letter of February 15 from the State Engineer of Utah with regard to water rights which may be appurtenant to the land acquired from Emmett and Lena Elizondo in Arches National Monument. We also enclose two copies of the letter of February 8, to which it is a reply, although copies were sent to you when written. Please have one copy of each of these letters inserted directly above Mr. Watson's letter of October 19, 1948, in Arches National Monument Deed 5 in your office and at the Monument.

The extra copies of Mr. Watson's letter of February 15 are to complete the letter files. The letter is a significant expression of his interpretation of the water laws, and should be considered in connection with the administration of NPS areas in Utah, as follows:

1. The State Engineer will not obligate himself to notify this Service of applications filed for the appropriation of water in NPS areas, as similar officials in other states do, and, therefore, this Service must be particularly alert to prevent such filings.

2. That the State Engineer will recognize conditions prescribed in land use permits, whether for grazing or other purposes, and, therefore, the instructions in Memorandum FO-563, or its possible future amendments, must be carefully observed to prevent the establishment of undesirable alien water rights on areas in Utah.

3. A history of water use should be prepared in connection with any land purchase in Utah, if the water has been used since prior to 1903 without recording.

4. That it is particularly important to continue water use initiated prior to 1903 without interruptions of more than 5 years at a time if it is likely that the water will be needed in the future. Since this Service has no plan to use the waters of Salt Wash at this time, as an example, the continued use by Mr. Elizondo offers an excellent way to preserve the diligence right for some future developments which are not yet contemplated. It would be well, therefore, to determine from Mr. Elizondo about how much stock has been watered in the past, how many people may have lived on the tract and used the water for domestic purposes, and the extent of past irrigation, if any. We should also be advised, from time to time, of the maximum similar use made by Mr. Elizondo during the 35 years that he retains an interest in the water.

(SIGNED)
Associate Director.

Enclosure 134.
In duplicate.

08-18-1949: Memo to NPS Regl Director from Associate Director re: receipt of additional data for spring in S.30,T.24S, R.22E; an

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

ADDRESS:
THE DIRECTOR, NATIONAL PARK SERVICE

In reply refer to:
L54 ARCH

AUG 18 1949

Memorandum

To: Regional Director, Region Three

From: Associate Director

Subject: Water rights, Arches National Monument

This will acknowledge receipt of the additional data with regard to the spring in Section 30, Township 24 South, Range 22 East, S. L. M., at Arches National Monument, submitted with a memorandum of June 22 by Mr. Davis.

We enclose three copies of a draft of an informatory application for the appropriation of the waters of the spring for stock watering and wildlife purposes. Proof for final license will depend partially on past use and may be influenced by the conditions at the time the proofs are submitted or the final inspection is made by the State Engineer.

Therefore, your proposal to permit Mr. Musselman to enjoy privileges previously granted to Provonsha, if he so requests, will be satisfactory so far as water rights are concerned, and your final action on any request for a permit should, therefore, be based primarily on the broader aspects of grazing, stock watering, and general administration of the Monument.

In order that we may prepare the final application, please supply us with the following information to permit us to correct statements we have marked with question marks on the attached application:

1. Actual flow of the spring.

2. Whether the diversion pipe is 3/4" or 1" as variously reported, its length, and the difference in elevation between inlet and outlet.

3. Dimensions of concrete collecting box at spring.

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

ADDRESS:
THE DIRECTOR, NATIONAL PARK SERVICE

Feb. 8, 1949.

Mr. Ed. H. Watson,
State Engineer,
Salt Lake City, Utah.

My dear Mr. Watson:

As a result of your letter of October 19, 1948, to A. van V. Dunn, Chief of our Water Resources Branch, we have made further investigation of the history of water use on the land in Arches National Monument which was recently conveyed to the United States by Emmett and Lena Elizondo. A copy of a memorandum report of October 31, 1948, from the Superintendent of that Monument is enclosed. Also enclosed is a print of our map of the Monument, NM-AR-7002, on which we have shown the tract formerly owned by Elizondo in red, and two tracts of State school land in orange.

With the acquisition of the Elizondo tract, the United States now owns all land in the Monument except the indicated school lands. Negotiations are in progress for the exchange of the school lands for Federal land outside the Monument, the consummation of which is doubtless only a matter of time.

As stated in Mr. Dunn's letter of October 15, 1948, Mr. Elizondo reserved certain stock-watering privileges on his former tract for 35 years, but such watering is only contemplated when his stock is being driven across the Monument, to or from his range to the north and east of the Monument, and no exclusive stock-watering was reserved. The attached memorandum indicates that such transitory stock-watering has continued for nearly 60 years and no special water system or other stock-watering facilities have been constructed. None are contemplated now. So far as we can determine, no water rights are recorded in your office or that of the County Recorder.

It seems to us, therefore, that the stock-watering use is of a public character for which no water right is required. If, on the other hand, a water right should accrue, the United States should claim title as a public trust. If you agree it is requested, therefore, that you accept this letter as a notice to that effect. As a precaution, we also request that you reject any applications for the appropriation of water for stock-watering within the Monument, if such should be filed hereafter, unless advised to the contrary by this Office.

Sincerely yours,

(Signed)
A. E. Demaray,
Associate Director.

Enclosure 117.
cc: Regional Director, Region Three (2).

C O P Y

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

Ed. H. Watson
State Engineer

February 15, 1949

Mr. A. E. Demaray
Associate Director
National Park Service
Washington 25, D. C.

Dear Sir: RE: GENERAL

It appears from your letter dated February 8, that you are the present owners of a tract of land with a stockwatering water right from one Elizondo and that the water right is not covered by an application in this office.

If the right is 60 years old, as you state, then it must have been initiated prior to 1903. If so, it would be classed as a diligence right, there being no court decree nor no record of the right whatsoever, although diligence rights are covered by decrees. The right, if established as stated, is still good, unless it has suffered a nonuse of five years when the water was available.

No one in the State of Utah owns any water. They only own a right to the use of it. When the use ceases, as stated, the right is lost. If the right becomes lost, there is no way that this office can prevent applicants from seeking to reappropriate it. If water is unappropriated, the State Engineer must, under ordinary circumstances, approve the application for its appropriation.

If you have entered a contract or an understanding with the original owners that they may use the water the same as heretofore, but only under limited conditions, then you will have protected the water right through such use, so long as it exists and to the extent of such use. This office cannot guarantee that applications will be rejected on the source if it should be shown that the water or any part of it is unappropriated. You should, therefore, be diligent in seeing that the water is used by your predecessor or by your own agency.

Yours very truly,

(Sgd) Ed. H. Watson

Ed. H. Watson
STATE ENGINEER

FWC/vm

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P
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UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
Washington 25, D. C.

October 15, 1948

MEMORANDUM for the Regional Director, Region Three.

The accompanying skeleton Arches National Monument Deed 5, form L-1, and copy of letter to the State Engineer, all in duplicate, are being distributed for your information.

As the enclosures indicate, the water right status is not clear. The fact that the abstract does not show water rights recorded in the county is not conclusive that appropriations have not been made with the State Engineer. Testimony with the abstract shows that the stock watering has continued for more than 20 years, but not whether it has continued since before the present water code was adopted in 1919. It is not clear, therefore, whether an appropriative filing is needed, if one has not been made. There is some further question as to whether there are any stock watering facilities, to constitute a water system by which to prove development if we should now make an appropriation.

For these reasons, please advise us as to the earliest water use, and how water is provided for the stock, so far as that information may not be supplied in answer to our letter to the State Engineer.

/s/ A. Van V. Dunn.

Chief, Water Resources Branch.

Enclosure 344.
In duplicate.

C
O
P
Y

10-15-1948: Correspondence between NPS and Utah State Engr re: search for water rights for land tract

COPY COPY

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE
Washington 25, D. C.

October 15, 1948

Mr. Ed. H. Watson,
State Engineer,
Salt Lake City, Utah.

Mr. dear Mr. Watson:

The United States has recently purchased certain land in Arches National Monument, in Sections 7 and 8, T. 24 S., R. 22 E., S.L.M., from Emmett and Lena Elizondo. The vendor reserves the right to water stock on the land for 35 years, and testimony with the abstract indicates that such stock watering has continued for more than 20 years. So far as I know, at the moment, the stock merely drink from natural pools in Salt Wash.

Please advise if you have any records of water rights in the area described. We should also like to know whether an appropriative filing would be required if the "more than 20 years" proves to be since before the present water code was adopted in 1919. We should also like to know whether a water right can be established if the stock is watered at natural pools without man-made developments.

Sincerely yours,

/s/ A. Van V. Dunn.

A. van V. Dunn,
Chief, Water Resources Branch

cc: Regional Director, Region Three (2).

COPY COPY

COPY

Arches Deed No 5

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

Ed. H. Watson
State Engineer

October 19, 1948

Mr. A. van V. Dunn,
Chief Water Resources Branch,
National Park Service,
Washington, 25, D. C.

Dear Sir: Re: GENERAL

This acknowledges receipt of your letter dated October 15, 1948 relative to water rights in the Arches National Monument. Please be advised that a search of the records of this office does not indicate there are any subsisting applications within the area. If the water right to which you refer belonging to Emmett and Lena Elizondo began after 1903 and there is no application in this office therefor, then there is no basis for the water right. Diligence rights must have been initiated before 1903 otherwise they must be covered by applications in this office.

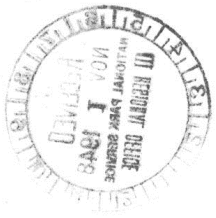
You ask whether or not watering from natural pools without man-made developments establishes a water right. There is a question about this matter, this office taking the attitude that if an appropriation of water is made by means of an application in this office it must be supported by man-made development for drinking facilities.

Yours very truly,

(Sgd) Ed. H. Watson

ED. H. WATSON
State Engineer

FWC/eb



Arches National Monument Deed 5

October 15, 1948.

The United States, by agreeing to reservation of stock watering privileges for 35 years, is obligated to provide water rights, or let vendor perfect water rights if necessary. This deed, when completed, will show title to water for stock watering. Such title will be established in the name of the United States, to conform to policy being followed by the National Park Service.

(SGD.) A. VAN V. DUNN.
Chief, Water Resources Branch.

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Arches National Monument
Moab, Utah

April 16, 1948

MEMORANDUM for the Regional Director, Region Three:

Reference is made to Mr. Demaray's memorandum of March 23rd to the Regional Director, copy to Arches, regarding the water rights in the State of Utah, with attached correspondence from Mr. Ed. H. Watson, Utah State Engineer.

In a recent memorandum I brought up the matter of the use of various springs of water in the monument by stockmen who range on winter allotments adjoining the monument, with the suggestion that crossing permits be granted for access to this water. In reading the above mentioned correspondence it would seem that this would be the logical procedure so that the Service can protect its rights to the water in these springs for any future development.

Ranger Worthington recently made an estimate of the flow of water in Spring Canyon and at Freshwater and it was found as follows:

Spring Canyon - Approximately 65 gallons per hour.
Freshwater Spring - Approximately 5 gallons per minute.

(Sgd) Russell L. Mahan

Russell L. Mahan
Superintendent?

(in dup.)

00-00-0000: land ownership record of elizondo property; 1949

Form NPS-L-1

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

LAND OWNERSHIP RECORD

State Utah

Tract No.

County Grand

Deed No. 5

Civil Subdivision

Area acres Arches National Monument
Name of Park or Area

Area based on ~~survey~~ recprds of Water Resources Branch date Turnbow Homestead
Section of Park or Area

Legal Description:

Method of Acquisition: Purchase and appropriation Appropriation or Source of funds:

Cost (if purchased) or estimated value:

Acquired from: Emmett & Lena Elizondo and State of Utah

Accepted by Secretary (___) Opinion of Att'y. Gen.–title in U. S. (___) date: See Arches N.M. Deed 4.

Physical Characteristics:

Improvements on Land at time of Acquisition:

Existing or outstanding special use permits, reservations, rights, or rights of way:

Report Based on:

Prepared by: A. van V. Dunn, Chief, Water Resources Branch date: 10/15/48.

Map References:

Remarks: Status of water rights acquired with land covered by Deed 4 are not fully defined at this date.

25348

WARRANTY DEED

EMMETT ELIZONDO and LENA ELIZONDO, husband and wife - - - - - - grantor s of Westwater , County of Grand , State of Utah, hereby CONVEY and WARRANT to THE UNITED STATES OF AMERICA- - - - - - - - - - - - -- grantee of United States of America - - - - - - - - - - - - - - - - - - - for the sum of ONE THOUSAND and no/100 ($1,000.00) - - - - - - - - - - - - - - - - - DOLLARS, the following described tract of land in Grand County, State of Utah:

The East Half of the Northeast Quarter ($E\frac{1}{2}NE\frac{1}{4}$) and the Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section 7, and the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$) of Section 8, Township 24 South, Range 22 East, Salt Lake Meridian, containing 160 acres.

This deed is made and accepted by the United States subject to the following express conditions:

(a) That for a period of 35 years from the date of this conveyance, the grantor, his heirs, devisees, administrators, and executors, as the case may be, shall have and enjoy, without payment of any fee or other charge, the right of access to the lands herein conveyed for the purpose of using the water in the Salt Wash running through the property for watering his sheep herd or such other livestock as he may own or control. It is understood and agreed that the permission herein provided for shall entitle the grantor to water his sheep or other livestock herd along the Salt Wash for the full distance which said wash traverses the lands herein conveyed, a distance of approximately 3/4 miles. It is further understood and agreed that this privilege is to be exercised generally during the period from December 1, to May 1, of each year, but it may also be exercised at such other times as may be reasonable and necessary upon approval in advance by the Custodian or other officer in charge of Arches National Monument.
(Continued on reverse.)

WITNESS, the hands of said grantor , this 26th day of ~~March~~ May , A. D. 1948.

Signed in the Presence of

Thomas Ezra Worthington
Russell L. Mahan

Emmett Elizondo
Lena Elizondo

STATE OF ~~UTAH~~ Colorado,
County of ~~Grand~~ Montrose } ss.

On the 26th day of ~~March~~ May , A. D. 19 48 personally appeared before me Emmett Elizondo and Lena Elizondo, husband and wife, the signer of the within instrument, who duly acknowledged to me that they executed the same.

Earl P. Bryant
Notary Public ~~Notary Public~~

My commission expires Jan 17, 1951 Residing in Montrose Colorado

Deed No. 4

(b) That the grantor, without payment of any fee or other charge, shall be permitted to erect a suitable storehouse or grain bin upon the land herein conveyed for the storage of stock feed and supplies for camp use; provided, however, that the site for the erection of such storehouse or grain bin, and the construction plans therefor, shall be approved in writing by the Custodian or other officer in charge of Arches National Monument before construction shall be undertaken. It is understood and agreed that title to the storehouse or grain bin to be erected on the land shall remain in the grantor, who shall be permitted to remove the same at any time during the 35-year period stipulated in paragraph "(a)" above. In the event the structure herein authorized to be erected shall not have been removed within three (3) months following the expiration of the 35-year period so stipulated, the same shall be the property of the United States. In the event of removal or abandonment of the structure by the grantor, it is agreed that the site thereof shall be restored to its original condition at the expense of the grantor.

(c) That the grantor, without payment of any fee or other charge, and during the 35-year period herein stipulated, shall be permitted to drive his sheep or other livestock herd across Arches National Monument lands, using the so-called Slick Rock trail, northwest of Delicate Arch, for the purpose of reaching the lands herein conveyed in order to water the grantor's stock. A second stock driveway running from the east through Cash Valley shall also be permitted for the purpose stated. The stock driveways herein permitted are substantially those used in the past by the grantor but it is understood and agreed that in the enjoyment of the privileges herein provided for, both driveways shall not be less than 1/4 mile, nor more than 1/2 mile, in width and that the boundaries of the said driveways may be fixed and made more definite by the Custodian or other officer in charge of Arches National Monument. It is further understood and agreed that the grantor will exercise due care in the enjoyment of the privileges hereby authorized to guard against injury or damage to the lands and other property of the United States and will not permit his sheep or other livestock herd to stray from the stock driveways or the watering places provided for herein.

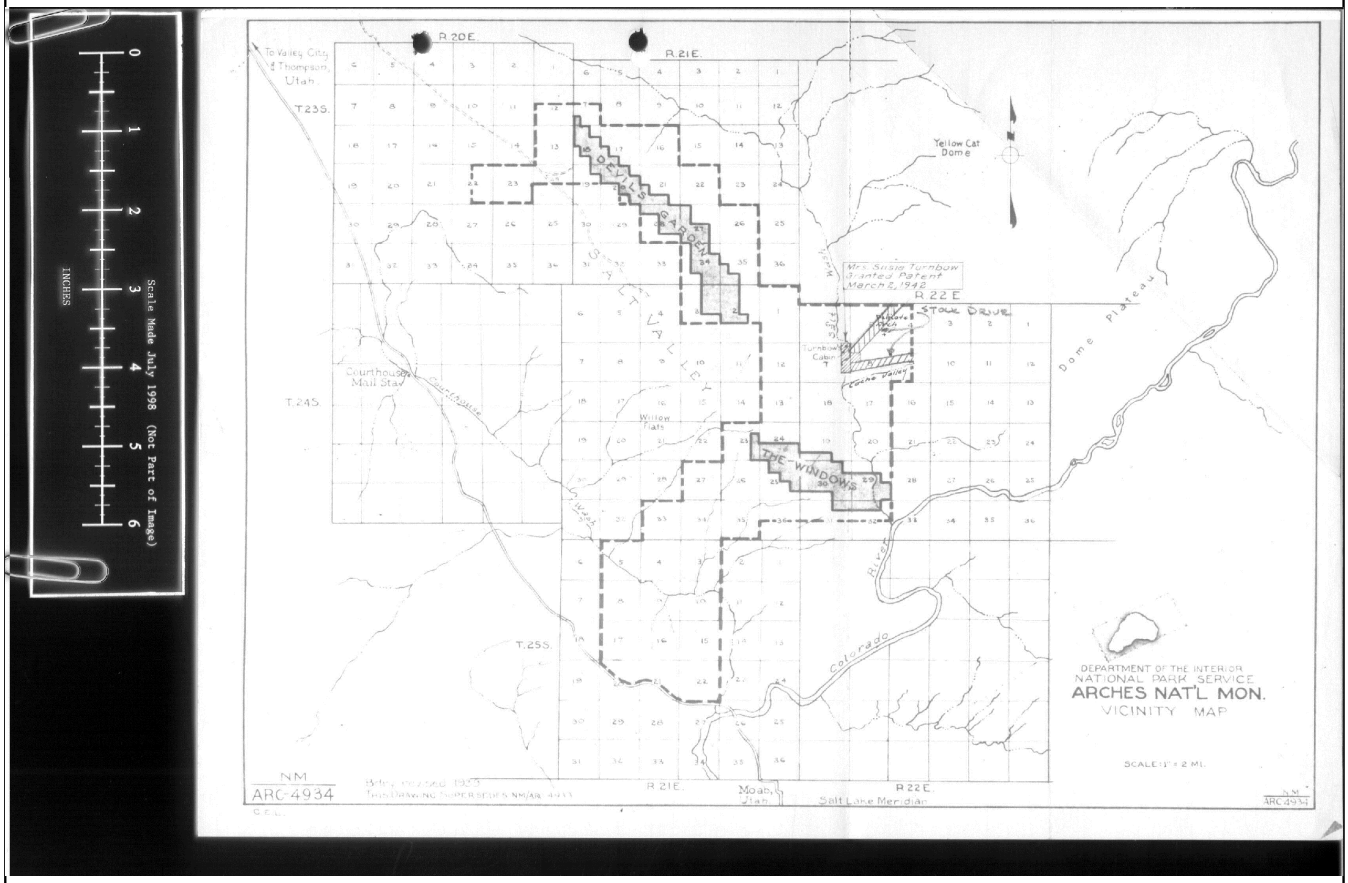
(d) The privileges herein provided for shall not be assignable.

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington

SEP 10 1948

The within deed is hereby accepted on behalf of the United States under authority contained in the Interior Department Appropriation Act, 1948 (Public Law 247, 80th Congress), and pursuant to Departmental Order No. 2402, dated January 14, 1948 (13 F. R. 361).

Acting Director.



Administrative Agreements

WR Copy

MEMORANDUM OF UNDERSTANDING BETWEEN
THE BUREAU OF LAND MANAGEMENT AND THE
NATIONAL PARK SERVICE, RELATING TO THE
USE OF CERTAIN WATERS, AND INGRESS AND
EGRESS ACROSS LANDS WITHIN THE BOUNDARIES
OF THE ARCHES NATIONAL MONUMENT, UTAH

Submitted with memo of Nov. 3, 1950 to Director, NPS from Director, BLM (Memo is L-3019 - ARCH.)

1. This memorandum of understanding relates to the following waters, which are now located within the boundaries of the Arches National Monument or which may in the future be included within said boundaries. As to the latter, this memorandum shall become effective at the time the waters are so included.

Spring No. 1. Salt Valley Wash Spring (also known as Salt Valley Spring) located in the SW¼ of SE¼, Sec. 3, T 24 S., R 21 E., SLM

not in Mt. Monument yet

Spring No. 2. Fresh Water Spring, located in the SW¼ of SW¼, Sec. 5, T. 24 S., R. 22 E., SLM

Just north of Turnbow Trail

Spring No. 3. Spring Canyon Spring, located in the NE¼ of NW¼, Sec. 30, T. 24 S., R. 22 E., SLM

Federal Appr. 21087

(Spring No. 1 is located outside and springs Nos. 2 and 3 are located within present existing boundaries of Monument) Use of these waters by livestock will be to the extent needed to fulfill the stock watering requirements.

2. It is agreed that the National Park Service will allow livestock permitted on grazing district lands adjacent to the Monument boundaries to cross the lands within said Monument for the purposes of:

A. To use the waters from the above listed springs.

B. To provide feasible and practical routes of travel to areas of Federal range within the grazing district adjacent to Monument lands which are now partially or totally isolated by said Monument lands or natural barriers.

The National Park Service agrees that if the Monument boundaries are fenced stock driveways will be established to provide ingress and egress across Monument lands for the purposes listed above. Agreements may be made, however, for the piping of water from said springs to locations on grazing district lands outside of Monument boundaries.

FILE CODE

L54 LWSSC ~~CANX~~ ARCH

MESSAGE MEMO

WRCOPS amr 2/7 WATS

Date 2/3/69
Time
Phone Number Used
Phone Number Called

X	CHIEF		INFORMATION
X	ASST. CHIEF		TAKE ACTION
	STAFF ASSISTANT		PREPARE REPLY
	CHIEF APPRAISER		PLEASE PHONE
	CADASTRAL		
	ACQUISITION		
	SPECIAL PROJECT		
	EXCHANGE		
	HYDR. ENGINEER		
X	FILE		
X	OTHER SUPV.HYDR.		

Arches copies file

PHONE (X) VISIT ( ) CORRESPONDENCE ( )

FROM: Bates Wilson, Supt., Canyonlands (Administers Arches NM)

TO: W.E.Fields, Supv.Hydr.Engr., LWSSC

SUBJECT:

Bates called to tell me that even though they had cleaned the well at Arches and have reworked the pump and are now producing 18 gpm, that the influx of visitors and increased water use this year has already proved this well to be inadequate. They are in dire need of additional water plus projected studies by USGS in the new area of Arches recently added by Presidential proclamation.

I asked them to request for the additional well and water studies in writing, so that we could incorporate this in our program.

cc:
Chief, OLWW, WSC

RECOMMENDED ACTION:

BY: (Sgd) William E. Fields

Other Supporting Information

ARCHES NATIONAL MONUMENT

WATER DOCKET #2

SPRING CANYON SPRING

Spring Canyon Spring, having such other names as Salt Wash Spring and Nameless Spring in Grand County, has been used for stock-watering purposes since the late nineteenth century. Since the Depression spring water has been artificially diverted by a structure built under a 1933-34 program of the U. S. Grazing Service. The NPS purchased the surrounding land in 1948, but allowed the grantor to reserve a 35 year use of the spring for stock-watering purposes. As of Oct. 3, 1949, and in accordance with Utah State regulations, the NPS appropriated the spring's flow, .0008 second-feet, to insure that it could not and would not be appropriated by anyone else while the use was not entirely under NPS control. The Bureau of Land Management, on behalf of stockmen who claimed a diligence water right, protested the NPS appropriation; however, since the aim of the NPS was certainly not to cut off any current water use, the dispute was settled without need for adjudication. A Certificate of Appropriation of Water for the spring was issued to the NPS on May 29, 1959.

Roger P. Smith
LWSSC
August 10, 1967

Chief, Cadastral Section

June 13, 1968

Chief, Branch of Water Resources

Water rights in proposed wilderness areas, Arches

The water rights dockets and files have been reviewed for Arches National Monument and a list of water rights is enclosed. Only one of these, the rights to the spring in Section 30, T. 24 S., R. 22., may be an intrusion but, as explained below, a minor change in the description of the wilderness boundary can clear this up.

The National Park Service has rights to a developed spring in Section 30, T. 24 S., R. 22 E., for stock and wildlife watering. The spring is S.71° 37' W 933 feet from the N¼ corner. As can be seen from the enclosed map of the section based on the BLM plat, section 30 is oversized and the legal centerline, although 2640' west of the east boundary is 4266 feet east of the west boundary.

The proposed wilderness boundary is described as the centerline of the section "about 5/8 mile" from the west boundary. This would put the spring adjacent or within the proposed wilderness area. If the wilderness boundary is revised to refer to the centerline "about 8/10 mile" from the west boundary of section 30, the spring would be well outside the wilderness area.

We also have a record of a spring in Section 6, T. 24 S., R. 21 E., that at one time was considered as a possible source of water for developments on or near the Turnbow or Elizondo tract but the correspondence indicates the spring has not been disturbed. This was confirmed by a telephone call to Superintendent Bates and District Ranger Norton.

There is a very slight possibility of "diligence rights" existing in the area. These would occur where water has been used continually since 1903 or earlier without formal recording of any kind. The water must be developed in some way, the mere watering of stock at a stream or spring, does not give any basis for claiming a diligence right.

(Sgd) Edwin W. Reed

E. W. Reed

Enclosure

cc:
WSC-OLWC, Mr. Rinaldi, Room 901
WSC-OLWW, Mr. Reed, Room 103

EWReed:ljc

Water Rights - Arches National Monument

Docket 1 - Well at headquarters, NE¼ sec. 20, T. 24 S., R 21 E.

Docket 2 - Spring Canyon Spring - Certificate 5676 to water cattle, wildlife, and cattle trailed. Developed by constructing spring box and piping water to drinking trough.

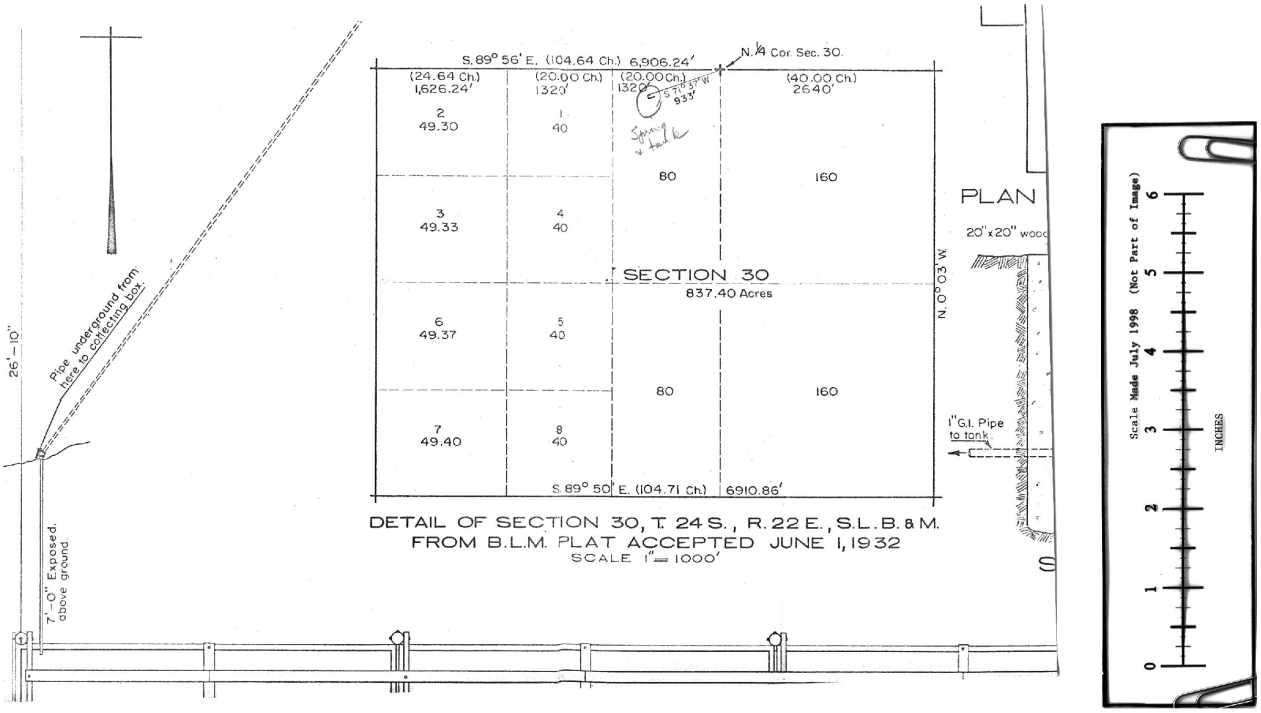
Docket 3 - Fresh Water Spring SE¼SW¼ sec. 6, T. 24 S., R 22 E. No application filed and no use being made.

Docket 4 - Special Use Permit to George White to drive 105 head of cattle across monument down Court House Wash with implied right to water cattle during crossing.

Docket 5 - Devils Garden Well in NW¼NE¼SW¼ sec. 27, T. 23 S., R 21 E.

Land Deed 4 reserved stock watering privileges in Salt Wash within E½NE¼ and NE¼SE¼, sec. 7, T. 24 S., R. 22 E.

00-00-0000: detail of section 30



DETAIL OF SECTION 30, T. 24 S., R. 22 E., S.L.B. & M.
FROM B.L.M. PLAT ACCEPTED JUNE 1, 1932
SCALE 1" = 1000'

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHWESTERN NATIONAL MONUMENTS
BOX 1562
GLOBE, ARIZONA

December 11, 1956

Memorandum

To: Director

From: General Superintendent

Subject: Water Right Application 21087, Stock Driveways and Stock Watering, and Proposed Boundary Changes, Arches National Monument, Utah

Mr. Langley's memorandum of November 16 requested reply to several questions raised by Mr. Dunn's study of water rights, livestock driveways and related problems at Arches National Monument.

The questions beginning on page 16 of Mr. Dunn's memorandum are answered in order.

1. We are attaching a map of Drawing No. NM-ARC-2103-D on which are shown adjoining grazing allotments, livestock driveways, existing fences, etc., which are now in effect.

2. Existing Driveways

a. Mr. Frank Paxton has a special use permit, authorizing him to cross the NW¼ Section 24, T 23 S R 20 E to reach his private land and grazing allotment in Salt Valley. This driveway is not fenced and Mr. Paxton does not follow the existing road, but crosses his sheep by the shortest route. Mr. Paxton usually grazes 2,000 sheep and the permit is issued annually until such time as the boundary extension is finally determine. These sheep water at Salt Valley Wash when snow is not available.

b. Mr. Ross Musselman has a Special Use Permit No. 14-10-340-43 authorizing him to drive 138 cattle across sections 34 and 35 T 24 S, R 21 E to reach his allotment which lies between the Arches National Monument and the Colorado River. This driveway is not fenced and would not exceed ¼ mile as Mr. Musselman crosses by the shortest route.

c o p y

c. Mr. Elizondo has a driveway down Cache Valley from the eastern boundary of the monument to the Turnbow Cabin area. This will be fenced and will average ¼ to ½ mile in width. The old driveway past Delicate Arch over slick rock has been eliminated due to fencing by the Bureau of Land Management. No permit issued for this driveway as the authorization contained in deed to Federal Government when property purchased in 1948.

3. Watering Privileges

a. Mr. Frank Paxton has watering privileges at Salt Valley Wash Spring located in the proposed extension of the boundary to include road to Devils Garden.

b. Mr. Elizondo has watering privileges at Salt Wash near the Twinbow Cabin. In 1955 the Bureau of Land Management fenced the grazing allotment north of Arches and Mr. Elizondo can no longer use Fresh water Spring.

c. Mr. Musselman's cattle water in Salt Wash and possibly 10% or less drift into Spring Canyon Spring for water.

4. Location of springs

a. Salt Valley Wash Spring SE¼ Section 3 T 24 S, R 21 E. This spring has a small concrete trough and a metal tank for stock watering.

b. Freshwater Spring is located in the NW¼ Section 6 T 24 S, R 22 E. In 1956 the flow of this spring was 5 gallons per minute.

c. There is a small spring in NW¼ Section 8, T 24 S, R 22 E which in 1950 produced approximately ½ gallons per minute.

The small spring shown in the SW¼ Section 5, T 24 S, R 22 E is only a wet weather seep and produces very little water.

Neither of these springs are used at present.

d. Spring Canyon Spring in Section 30, T 24 S, R 22 E had a flow of ½ gallon per minute in 1950.

This spring is used by a very small number of cattle belonging to Mr. Musselman.

5. Boundary Extension

Recent studies indicate that it may be possible to eliminate a large portion of the proposed enlargement. We have made tentative studies which indicate the extension should take in the following:

S½ Section 2, T 24 S, R 21 E
NE¼ Section 11, T 24 S, R 21 E
A total of 480 acres.

Just as soon as the studies are completed we will submit a boundary status report covering the changes in the Master Plan.

6. The application of the State Road Commission of Utah for a right-of-way was granted under Special Use Permit No. 14-10-340-37 and the highway has been constructed, including a portion of Lot 8 in Section 26, which lies outside of the boundaries of Arches National Monument.

This road construction will not affect the monument as we have no proposed extensions in that location. The small portion of Section 26 lies between the Monument boundary and the Colorado River.

We trust this information and map will answer Mr. Dunn's questions.

John M. Davis
General Superintendent

Attachment

Copy to: Regional Director (with map)
Supt. Arches

c o p y

VR Copy

L54-L

NOV 16 1956

Memorandum

To: Regional Director, Region Three

From: Assistant Director

Subject: Water Right Application 21087, Stock Driveways and Stock Watering, and Proposed Boundary Changes, Arches National Monument, Utah

Attached are a copy of Mr. Dunn's Review Study of Water Rights, Stock Drives and Stock Watering, and a copy of our memorandum to the Assistant Solicitor concerning the BLM protest of Water Right Application 21087. Also attached is a Federal Power Commission determination of October 17 concerning an application (Utah 017805) which was filed by the Utah State Road Commission, and came to our attention after Mr. Dunn's study was completed. Similar copies are being sent to the General Superintendent, SWRM and Superintendent of Arches, and an extra print of NM-ARC-7003 as modified for the study is being sent to the General Superintendent.

We hope to have the protest of Application 21087 withdrawn as a result of the letter to the Assistant Solicitor. The matter is complicated, however, by the fact that boundary changes have again become a potential issue since the case was first referred to the Solicitor.

The study indicates that the boundary change and interbureau agreement which have been considered since 1948 or 1949 are now obsolete. Moreover, it is our understanding from indirect, informal information that the Superintendent believes it may be possible to locate all, or substantially all, of the road to the Devil's Garden area within the Monument. Although our information has not been corroborated, the MISSION 66 proposal for only a small addition on the west side tends to bear it out. In the circumstances it would assist us greatly to have firm boundary recommendations as soon as they can be formulated. Mr. Dunn points out in his study that much of the potential controversy with BLM and the stockman may be prevented if the road and proposed new boundary can be adjusted to exclude Salt Wash Spring in Sec. 3, T 23 S, R 21 E. A basic question is whether the suggested road relocation can be confirmed by engineering survey.

The study also indicates very inadequate data in this Office on the locations of stock driveways and permits to cover their use; the

boundaries of abutting grazing allotments, and uncertainty as to whether there is a "Fresh Water Spring" in Sec. 6, T 23 S, R 22 E, and also a spring in Sec. 5 or 8, T 24 S, R 22 E. There are other questions in the study which should be answered. We shall appreciate having one of the prints of the map which is being sent to the General Superintendent returned with these data added. Driveways should be shown to approximate width, and conflicting roads and trails should be indicated.

You will note of the land covered by the State Road Commission, application (Utah 017805), that portions lie within the withdrawals for Arches National Monument, and are covered by SUP's. 14-10-340-37 and 58, but do not include land in Sec. 26 which is covered by the first SUP. Your comments would be appreciated as to how the application, if granted, might affect the Monument or any proposed extension thereto.

Assistant Director

Attachments 3

Copy to: General Superintendent, SWRM, with 3 attachments
Superintendent, Arches, with 3 attachments
Mr. Cook, with 3 attachments
Mr. B. Thompson, with 3 attachments
Mr. Dunn, with attachments

AvVDunn:JHG:lct 11-14-56

October 22, 1956

REVIEW STUDY OF WATER RIGHTS, STOCKDRIVES AND STOCKWATERING
Arches National Monument

by
A. van V. Dunn
Chief, Water Resources Section

Introduction

This study was started to document justification for BLM withdrawal of its protest of Park Service Water Right Application 21087 for the appropriation of water of Spring Canyon Spring in Arches National Monument. It seems to provide the justification for the first Federal agency to withdraw the protest of the application of the second Federal agency to eliminate the State Engineer's staff as the tribunal in the Departmental controversy. However, the study has become more comprehensive than was intended, because questions have arisen which must be resolved before the Departmental problems of related land status and use can be settled.

Appendices

The following appendices are attached to, and made part of this study:

A. Chronological Summary of Significant Correspondence since September 28, 1949. (Date Application 21087 was mailed to State Engineer.)

B. Excerpts from file on Patent No. 1114047, Homestead Serial No. 056762, which was granted to the Turnbow Tract which has now been reacquired by the United States.

C. Dates of BLM Subdivision Surveys, Arches National Monument. (Subdivisions of entire designated townships.)

D. Letter of February 15, 1949, to Associate Director from State Engineer, concerning "diligence water rights".

E. Print of Drawing NM-ARC-7003 (with additions to support this study).

Historical Status of Boundary Changes and Grazing Interests

The Windows and Devils Garden Sections of the Monument were established by Proclamation 1875 of April 12, 1929. The Taylor Grazing Act was passed on June 28, 1934. Appendix C indicates that the section subdivision of T 23 S, R 21 E, including the Devil's Garden Area, was made in 1932, and T 24 S, R's 21 and 22 E, including the Windows Section, were subdivided in 1940 and 1928, respectively. The Monument was enlarged by Proclamation 2312 of November 25, 1938, to include other public lands which were subdivided in the years shown in Appendix C.

Appendix B gives excerpts from the file concerning the patented former Turnbow Tract in the Monument, now federally owned, which shows that there has been grazing and stockwatering in the vicinity since 1900 or before. Most, if not all the Federal land surrounding the present Monument is in what is variously designated as Utah Grazing District No. 6, and Grand Grazing District No. 9, and has been allotted to stockmen under the Taylor Grazing Act, and is administered by the Bureau of Land Management. The Turnbow Tract, and land of Frank Paxton in Sec's. 24 and 25, T 23 S, R 20 E, are the only patented lands determined for this study, but each grazing allotment is based on "Base Property" in the form of title to patented land and established water rights. Park Service correspondence indicates that the Monument has included no private land except the Turnbow Tract and State School land, all of which now appear to have been reacquired by the United States.

A memorandum of April 29, 1954, to Director from the Assistant Regional Director, with attached reports on grazing in NPS areas, of which Arches National Monument is only one, in Region Three, stated that there had been no grazing in Arches since 1948. That memorandum refers to an agreement between the Park Service and BLM in 1938 to terminate grazing in the Monument in 10 years, or to permit continued grazing on the land added to the Monument in 1938 for 10 years, but no copy of that 1938 agreement has been found in the Washington Office. The same report also indicates that only four stockmen were authorized by the Park Service to use Monument lands by 1954, as follows, the 1955 Special Use Permit being cited to show continuing status until this past spring, were on record in Washington:

1. Frank Paxton was authorized (1955 SUP. 14-10-340-43 gives erroneous description of land) to drive 2,000 sheep across NW¼ Sec. 24, T 23 S, R 20 E, between his base land and the portion of his BLM allotment to northwest of Monument.

2. Pierre Etchemendy was authorized (1955 SUP. 14-10-340-42) to drive 1200 sheep across Sec's. 34 and 35, T 24 S, R 21 E, to reach his allotment between Windows Section of Monument and Colorado River. (This appears to have superceded SUP. 14-10-340-42 to authorize Ross S. Musselman to drive 138 cattle over same drive

to identically described allotment from November 1, 1955, to April 30, 1959, and permit to authorize Ed Provansha to drive 214 cattle over same route between November 1, 1954, and April 30, 1955).

3. James Westwood was authorized to drive his stock across Monument from State Highway to his allotment northeast of Monument (1949 SUP. I-33mp-240, but no 1955 SUP.), but definition of route and kind and size of herd are not given.

4. Emmett Elizondo was authorized (with no explanation of how his sheep reach his allotment to northeast of Monument):

a. By reservation in deed of May 26, 1948, conveying Turnbow Tract to U. S., to drive 1900 sheep between said tract and his allotment along Cache Valley and Slick Rock trails, and to maintain grain bin and water said sheep on said tract.

b. Presumably by SUP. which is not available, (by formerly SUP. I-33mp-180 from 1949-1950), to drive 1900 sheep across NW¼ NW¼ Sec. 6, T 24 S, R 22 E, to Fresh Water Spring thereon, and to water said sheep at said spring.

Paxton had similar 1944 permit on "grazing permit" form, and has presumably had the continuing privileges since the Monument enlargement of 1938. Etchemendy had similar permit on "grazing permit" form for 1944. Musselman appears to have been successor to Ed Provansha who had 1945 permit to drive 214 cattle over the same sections, but in R 22 E (typographical error), to reach identically described allotment. Elizondo is apparently successor to Henry Revoir for use of Fresh Water Spring to water 1600 sheep. Elizondo also had 1944 and 1946-1951 SUP's. to cover privileges subsequently reserved in 1948 deed to Turnbow tract.

The BLM protest of Application 21087, in June 1950, is supported by an "Affidavit of Use" signed by Earl Dalton, Tom Murphy, G. O. Patterson, Albert Maxwell, Lester Walker and R. L. Holyoak. Appendix B also indicates that Earl Dalton, Albert Maxwell, Lester Walker, George W. Beeson, and J. M. Westwood also testified or witnessed instruments in connection with the proof for patent to the Turnbow Tract. These signatures on designated instruments, together with the fact that James Westwood has SUP. to authorize his stock to cross the Monument to reach an allotment near that of Elizondo, while there is no record of similar SUP. to authorize the stock of Elizondo to do so, suggest that the stock of more than 4 men may make unauthorized use of stock driveways, or that some existing driveways may be needless.

The Monument additions which were proposed in 1948, and included in the Proclamation submitted to the President through the Bureau of the Budget, with letter of November 17, 1949, would apparently include only part of the grazing allotment of Frank Paxton, and Salt Valley or Salt Valley Wash Spring. By letter of November 5, 1948, to the Superintendent, the County Clerk advised that the Board of County Commissioners had approved the proposed boundary change provided the (Salt Valley Wash) Spring be continued for use for stock watering purposes as in the past. By letter of November 10, 1948, to the Superintendent, the Secretary of the Moab Lions Club advised that there was no objection to the change provided said spring in Salt Valley Wash be left open for stock watering purposes at all times. Five months later, a copy of the minutes of the meeting of the Grand County Grazing Advisory Board on April 15, 1949, indicates that the Board then passed a resolution opposing the Monument addition unless Mr. Paxton be granted 99 year grazing privileges, and that watering privileges be granted to: (1) Salt Valley Seeps; (2) Fresh Water Spring; and (3) Spring Canyon Spring. From the reference to "Salt Valley Seeps" and the fact that the parenthetic reference to Spring Canyon Spring follows "carried unanimously", it is only possible from later correspondence to assume that all three springs were wanted by all members of the Board. Spring Canyon Spring seems to have been added in the minutes, after the resolution was passed.

Appendix A gives the significant order of correspondence and negotiations after April 1949. Application 21087 was prepared by the Water Resources Section six months after the Board meeting, without knowledge of the proposed boundary change or of the stockmen's resolution. It was prepared because the water system needed to be supported by an appropriative right under the State Water Laws to the extent storage and use exceeded that from the undeveloped source under valid diligence rights. It was signed and submitted by the Associate Director with clearance by the Acting Chief, Design and Construction, and the Chief Counsel and one of his Assistants, who may not have known of the identity of the spring or its relation to the proposed boundary change. Appendix A also shows considerable lag between respective events in Washington and the field and reports thereon to the other, until the State Engineer had the notice of Application 21087 published in the Moab Times Independent on March 23 and April 20, 1950.

The filing and publication of the notice of Application 21087, without explanation to BLM and the stockmen, was decidedly inopportune, and has not been fully evident until the records were assembled for this study.

Vested Water Rights in Monument

In a letter of June 15, 1942, to the State Engineer, the writer asked if there were any recorded water rights in Sec's. 7 and 8, T 24 S,

R 22 E, primarily to determine the basis of rights appurtenant to the Turnbow Tract. The reply of June 24, 1942, was: "If any rights exist in T 24 S, R 22 E, they were initiated prior to the creation of the State Engineer's Office in 1903."

A somewhat similar inquiry was made by letter of October 15, 1948, after the Turnbow Tract was acquired by the United States, to which the State Engineer gave the following answers in letter of October 19, 1948: ".... a search of the records of this office does not indicate there are any subsisting applications within the area. If the water right to which you refer belonging to Emmett and Lena Elizondo began after 1903 and there is no application this office therefor, then there is no basis for the water right. Diligence rights must have been initiated before 1903 otherwise they must be covered by applications in this office. You ask whether or not watering from natural pools without man-made developments establishes a water right. There is a question about this matter, this office taking the attitude that if an appropriation of water is made by means of an application in this office it must be supported by man-made development for drinking facilities."

Following further study, the Associate Director made further inquiries as to the basis of Federal rights under which Elizondo might be permitted to water stock on the Turnbow Tract in accordance with the reservations in the deed of conveyance to the United States. The answering letter of February 15, 1949, from the State Engineer is attached as Appendix D.

In order to substantiate the fact that there may be diligence rights appurtenant to the Turnbow Tract, and probably to the waters of Fresh Water and Spring Canyon springs, copies of excerpts from the BLM file on Patent 1114047 to the Turnbow Tract are attached as Appendix B. Except for the report in letter of August 20, 1941, item 2 at top of page 4 of that appendix, all testimony supports undefined diligence rights which are probably in good standing. The reservations in the deed to the Turnbow Tract seem to indicate that the United States has acquired any diligence rights of the former owners of that tract, subject to their continued use by Elizondo and those to whom he may assign his grazing interests, until 1983. No attempt has been made to determine the status of title to other diligence rights to that source, of Fresh Water and Spring Canyon Springs, but there is more question as to who owns them than as to whether there has been continuous use since prior to 1903.

The writer has assumed that the United States has probably acquired title in all cases where permittees are continuing to exercise them with authorized access, and that said permittees have relinquished their title by accepting the Special Use and "Grazing" Permits. It also seems evident that some diligence rights have lapsed, which may have been exercised by those who have not had permits to drive and water stock

since at least 1948. These points need legal clarification which may have to await receipt of lists of all stockmen now using water, and the size of their authorized herds; and of all former users who have been denied access since 1948 or before, with the normal size of their herds.

Vested Water Rights on Proposed Monument Addition

Salt Valley, or Salt Valley Wash spring is shown on the BLM plat as a "cistern" in SW¼ SE¼ Sec. 3, T 24 S, R 21 E, on public land between the road to the Devil's Garden and the Monument boundary. It is on the portion of the Paxton grazing allotment which was to be added to the Monument by the unsigned Proclamation of 1949.

Inquiry was made by letter of October 14, 1953, to the State Engineer as to whether there were any recorded water claims to spring in said SW¼ SE¼ Sec. 3, or within one mile thereof. His reply of October 19, 1953, was: "I find there are no filings of record in the State Engineer's Office in the area described in your letter. The only water rights that may exist in this area may be diligence or use rights, initiated prior to 1903, of which this office has no record."

This report was made three years after the protest of Application 21087, and the start of negotiations for interbureau agreement concerning continued water use if the area were to be added to the Monument. No investigation has been made of the BLM records of patent to the Paxton tract in Sec's. 24 and 25, T 23 S, R 20 E, or of the existence of other patented lands between the Monument boundary and the Moab-Thompson road, to determine what early water use may have been recorded therein. It seems reasonable to assume that Frank Paxton, and perhaps others, are relying on diligence rights to Salt Valley Wash spring because no effort was made to establish other rights between 1950 and 1953.

References heretofore discussed, and the drafts of the proposed interbureau agreement which will be discussed hereafter, indicate that the stockmen and BLM recognize the need for consent of the Park Service to continue to use Salt Valley Wash spring if the area is included in the Monument. Neither they nor the Solicitor have been requested to define whether such consent would be based on permissive access to water for which the permittees would retain diligence rights; or on permissive access to, and the use of water under rights which would pass to Federal ownership by inclusion within the Monument. While this may be clear to an attorney, it is not clear to the writer.

Title to Water Development at Spring Canyon Spring - Application 21087

There appears to be no question as to the Federal title to the water system and stock watering facilities at Spring Canyon Spring, but the jurisdiction of the Park Service has been disputed in the protest of Application 21087 by the BLM. The spring and development are in the NE¼

NW¼ Sec. 30, T 24 S, R 22 E, which was included in the Windows Section of the Monument by Proclamation 1875 of April 12, 1929.

By memorandum of April 7, 1949, to the Regional Director, the Superintendent advised:

> "I knew of the existence of this spring but had never investigated same and I did not know it had an excellent flow of good water and was developed by the Grazing Service in 1933 for stock watering purposes. At the time Mr. Bill Provensha of Moab took over the grazing allotment adjoining the Monument in the Windows and Courthouse Towers Sections for his cattle in 1945, he advised me of this spring and stated that no doubt there would be considerable drift from that portion of his allotment between the Windows and the Colorado River to this excellent water. I told him that it would be appreciated if he would control this drift as much as possible but realized it would be a tough job to keep them from same without a fence. Recently, while riding the boundaries with the Musselmans, who are taking over this allotment next year, I visited this spring and found the set-up as mentioned."

The memorandum of May 13, 1949, to the Regional Forester from Forester Ratcliff indicated that Ranger Worthington, who was previously employed by the Grazing Service stated the previous week that "from all information he could gather, it was developed by the Grazing Service under 'drought relief' program in 1933-34." By memorandum of June 22, 1949 to the Director, the Assistant Regional Director quoted the following from an unidentified memorandum from the Superintendent, which is presumed to be subsequent to Mr. Ratcliff's report: "Mr. Dan Winbourn who did the actual construction work on the development of this spring in 1933 for the Grazing Service states that there was no development at the spring prior to this time."

By contrast, the BLM protest of Application 21087, of June 1950 states:

> "1. This spring has been used uninterruptedly as a public stockwatering facility since prior to 1900, thereby establishing a diligence right for various livestock operators and their successors in interest, for whose benefit and on whose behalf the United States of America, Bureau of Land Management, protests granting of such application.
>
> "2. During the period from 1934 to 1936, further development work was done and improvements made at this facility by the Federal Drouth Range Development Service, at a cost of

"$716.48, and in accordance with the provisions of that program, title to the entire improvement was transferred to the former Grazing Service, now a component agency of the present Bureau of Land Management, for future control, maintenance and administration."

The preceding Historical Status of Boundary Changes and Grazing Interests indicates that there was some agreement (not found) between the Park Service and BLM concerning the boundary changes of 1938, but it does not appear to have given the BLM continuing jurisdiction over Arches National Monument. The only agreement between the Park Service and BLM, which now appears to be applicable at Arches National Monument, is the general one of February 20, 1940 (I-8-1 of Manual of Cooperative Agreements). The drafts of specific agreements, which were considered between 1950 and 1953, specify that such agreement shall be in accordance with the agreement of February 20, 1940, under which both agencies agree:

1. The Park Service shall extend all possible cooperation to the Grazing Service . . . to the end that the range management plans of the two Services shall be coordinated (there has been no grazing in the Monument since 1948, as previously quoted).

2. The Park Service shall not issue new, or renew old grazing permits for use of NPS areas, without coordination with Grazing Service permits for use of adjacent grazing districts. (No permissive grazing exists or is contemplated in Arches National Monument.)

3. Fees for grazing in a park or monument shall not exceed those charged by Grazing Service.

4. (Specific) agreements shall be negotiated and executed in the field, and shall be submitted to the Washington Offices for their information.

The First Observation is that the Bureau of Land Management does not have authority to protest Application 21087 on the basis of any jurisdiction over the land which is involved. Moreover, the BLM should supply the Park Service with:

1. Copy of reported instrument by which title to the improvements were transferred to BLM by Federal Drouth Range Development Service.

2. An instrument which will be acceptable to the State Engineer transferring title to said improvements from BLM to Park Service jurisdiction.

The Second Observation is that BLM appears to be maintaining its protest of Application 21087 as a budgel to force retroactive, permanent rights to Monument water resources which it never had, or has lost, for its grazing permittees.

The Basis for Appropriation by Application 21087

Appendix B offers evidence that undefined diligence rights to water of Spring Canyon spring may have been initiated prior to 1903 because of the number of stockmen in the vicinity by that date. This is supported by the Affidavit of Use, signed by Earl Dalton et al., and filed with the BLM protest of Application 21087. (The Affidavit designates correct spring location but assigns the name Salt Valley Spring which has been applied to the different spring on the Paxton allotment in all other records.) However, the Affidavit of Use does not claim that any of the signers has a diligence right, has had access across the Monument since 1938, or that there has been continuous use by successive stockmen with proper chain of title to establish an exclusive right.

In connection with the preceding section on Water Development, Dan Winbourn is quoted as knowing that there was no development until he made the existing one in 1933 at Spring Canyon Spring. The 1933 development definitely constituted the first physical taking with man-made water system, and it permitted use in excess of any quantities used under diligence rights by: (1) impounding and storing water when no stock is present for use when stock demand exceeds natural flow; and (2) by providing an adequate pool (trough) from which stock could lap up mouths full of water:

a. Superintendent's memorandum of April 16, 1948, reported Ranger Worthington's estimate of flow of 65 gph or 1560 gpd. Regional Engineer's memorandum of August 31, 1949, reported spring flow, or diversion had been measured at 0.5 gpm, or 0.0011 sec.ft., or 711 gpd. The ranger probably over-estimated, but either flow would support only very small pool for drinking after seepage and evaporation losses without water tight container.

b. The development of 1933 provided 984 gallons of impounded and stored water for use of stock at any hour of day or day of week, as follows:

(1)	Concrete collecting tank 2' x 3' x 3' equals	86.64 gallons
(2)	Stock watering trough 60' x 2' x 1' equals	897.60 gallons
		984.24 gallons

Nature of Federal Water Claim by Application 21087 and Protest

Application 21087 claims 0.0011 sec.ft. of water (the measured quantity for part time use of 150 head of cattle), with the following explanatory description of the purpose:

> "This stock watering development was made by the Grazing Service, under the 'drought relief' program of 1933-1934, the Spring being located on what was then part of Windows section of Arches National Monument. Since that time, stockmen with allotments on the grazing district to the east of the Monument have been permitted to drive their cattle across the Monument to reach their allotments, and to water their stock at said spring. This application is filed with the view to establishing federal rights to the diversion and use of the water in connection with the related use of Monument lands under Federal permit. Nothing in this application, or the subsequent perfection of rights, is intended to constitute a waiver of other rights which the United States may have to the use of this water, or any other water on Arches National Monument.:

Proclamation 1875 of April 12, 1929, established the Windows Section of the Monument, "subject to prior valid claims . . .". Proclamation 2312 of November 25, 1938 enlarged the Monument, also "subject to all valid existing rights . . .". The proposed Proclamation which was routed to the President with the Secretary's letter of November 17, 1949, and is now being held by BLM, made further boundary changes "subject to valid existing rights, and subject to the public use for stock watering purposes, allowing ingress and egress thereto of spring known as Salt Valley Wash Spring (in proposed addition) . . .". The agreement of February 20, 1940, I-8-1 of Manual of Cooperative Agreements, provides:

> "1. The National Park Service shall extend all possible cooperation to the Grazing Service, consistent with the peculiar conservation duties of the National Park Service, to the end that the range management plans of the two Services may be coordinated."

Application 21087 claims only the measured flow of 711 gallons per day in 1949 although the ranger's estimate of 1948 indicates that there may be 1560 gallons available, the difference of 849 gallons per day possibly standing in adjacent pools or seeping away. The claim is entirely for stockwatering under such access permits as may be granted. The claim is independent of any other Federal rights the United States may have, either by use before 1903 or by sovereign status of the United States. The United States is also bound by conditions in the proclamations to recognize valid diligence rights which stockmen may be able to establish. The

application, therefore, does not conflict with the following interests defined in the BLM protest:

1. Stockmen have used the water since before 1900.

2. The Grazing Service (another Federal agency) claims a Federal interest in the water.

At the time Application 21087 was filed in 1949, Ed Provensha had been permitted to drive 138 head of cattle to his allotment whence some drifted to Spring Canyon Spring for water; and Ross S. Musselman, as successor was to be authorized the same privileges. The Assistant Regional Director's memorandum of June 22, 1949, indicates that the ranger counted an average of only 25 head of drifted cattle at the spring between November 1948 and April 1949, or 18.1% of the herd on the allotment. Other permits since 1944 have authorized driving up to 214 head of cattle, or 1900 head of sheep to the same allotment. SUP. 14-10-340-42 to Pierre Etchemendy for the winter of 1955-56 authorizes 1200 head of sheep. On this basis, assuming 20%, instead of 18.1% of the herd on the allotment are close enough at one time to use Spring Canyon Spring, the following water use has been made during the past 12 years, when cattle and sheep have respectively, but not simultaneously, used the allotment:

20% of 214 cattle equals 43 head at 15 gpd giving 645 gpd water demand
20% of 1900 sheep equals 380 sheep at 1.5 gpd giving 579 water demand
20% of 1200 sheep equals 240 sheep at 1.5 gpd giving 360 gpd (1955-56 herd)

The significant point is that there is no evidence of a diligence right in excess of 645 gpd, and there is a question as to whether that much (being 91% of total measured flow) could have been established by use before the improvements were made in 1933. Moreover, we need an actual count of 475 sheep, or 48 steers at the watering facilities in one day, before proof can be made for license under Application 21087.

Paragraph 4 of the BLM protest indicates that said protest will be withdrawn if Application 21087 is amended to assure unlimited future availability of the water for livestock as in the past. It is probable that more water has been available since 1933-34 than before, as a result of the improvements. The Park Service has continued to permit stock which are permitted to graze on the BLM allotment between the Windows and Colorado River to drift up Salt Wash and Spring Canyon to the spring and watering facilities without the consummation of the supplemental inter-bureau agreement which has been under consideration since May 1950 in different forms. There is no existing permit which limits the number of Mr. Etchemendy's sheep which may use Spring Canyon Spring, but probably no

more than 20% do so, and 40% of his sheep would be the maximum which could obtain adequate water at the spring if the measured flow of 711 gpd is all that is available.

Paragraph 3 of the Protest of June 1950 indicates that the BLM considers year to year permits from the Park Service for stock drives and stock watering inadequate, particularly since they are also revocable. However, in his memorandum of June 4, 1956, to the Area Administrator, the State Supervisor, BLM, appears to be satisfied, stating:

> "It now appears that the Park Service has made arrangements with the livestockmen affected to water their livestock. In view of the arrangements which have been made for the livestock to water within the present Monument boundaries and the fact that the Park Service will not press for the addition to the Monument, we are now willing to withdraw the protest against the Park Service's water right filing on Salt Valley Seep in Sec. 30, T 24 S, R 22 E, SLB&M (Spring Canyon Spring)".

There appears to be no reason for not withdrawing the BLM protest except that it can be used as a cudgel to force BLM objectives which may not be satisfactory to the Park Service, provided there is no boundary change to include Salt Valley Wash Spring on the Paxton allotment in Sec. 3, T 23 S, R 21 E, SLB&M.

Proposed Boundary Changes

The immediate efforts to eliminate the protest of Application 21087 through the Solicitor's Office, were started by memorandum of November 22, 1954, to the Acting Assistant Solicitor from the Chief of Lands. That memorandum quotes discussions of the protest by Messrs. Pincus and Richey in the summer and fall of 1953, based on the premise that the boundary changes proposed in 1948-49 were not desirable at that time (November 1954). The matter appears to have been under consideration in the Solicitor's Office until about April 1956 when it was referred to the Bureau of Land Management.

The Range Staff Officer phoned the writer on April 14, 1956, for a report on the progress of the pending inter-bureau Agreement and boundary revisions, and was told that action was suspended as discussed by Messrs. Pincus and Richey in 1953 and the urgent problem was now to have water right protest withdrawn to eliminate the State Engineer's jurisdiction over the inter-bureau controversies. The resulting memorandum of April 30, 1956, to the Area Administrator from the Director, BLM, with copy to Park Service was a disappointment because it failed to divorce the Protest and other matters which were no longer applicable.

The telephone conversation was covered by the writer's memorandum report of April 18 to the Assistant Director with copies to the Chief of

Cooperative Activities because of relation to boundary changes, and to Chief Forester because of problems of stock drives and stock watering. A copy of this memorandum was subsequently forwarded to the Regional Director by the Chief of Cooperative Activities on June 15, 1956, with a request for an up-to-date boundary status report. A copy of memorandum was forwarded to General Superintendent, SWRO, on June 29, 1956, by the Regional Director, with the suggestion that the Monument addition was only desirable to gain control of entire road to Devils Garden for maintenance and administration and any of following solutions seem possible:

1. Extend boundary as proposed in 1949 and accept administrative problems resulting from uranium claims which have been staked since 1949.

2. Induce County Commissioners to assume all road maintenance both in Monument and on land proposed for addition in 1949.

3. Ask Congress for authority to add Devils Garden Road to those outside boundaries (of parks and monuments) which are maintained under 16 USC Sec. 17 j-2.

4. Have the road declared an approach road, since it is all on public lands.

5. Consider the maintenance a work of necessity, and continue to do it without authority.

The matter was further discussed when Mr. Gadsby was in Region Three, on August 27 and 28, 1956, when he was advised that the Superintendent now believes the road could be relocated almost entirely within the Monument, thus eliminating the need for nearly all the Monument enlargement contemplated in 1948 and 1949. No details were given, and the Washington Office has received no specific details as to the alternative road location or what portion of Monument addition which would still be needed.

The Boundary Status Report of July 8, 1952, was nominally that of 1948-1949, and provided for the addition of 2145.95 acres of the Paxton grazing allotment. Between 1949 and 1952, Mr. Paxton reduced his conditions for consent to:

1. A 10-year agreement or permit to continue the use of all involved land.

2. Agreement that Salt Valley Wash Spring, in SW¼ SE¼ Sec. 3, T 24 S, R 21 E, would be left open for stock watering purposes.

From the various maps in this office, it appears that the spring is in the bottom of Salt Valley Wash, and that the Wash is, or was formerly traversed by a road from Thompson to the Turnbow Tract. The maps also indicate that the old road has been all or partially abandoned and relocated up on the South side of the Wash, across Sec's. 3, 10 and 11. If the Superintendent's proposed alternative location is to be on the north slope of the Wash in Sec. 3, it might be possible to eliminate the S½ S½ Sec. 3, and all land in Sec. 10, which have been proposed for Monument addition. This would entirely eliminate the problems relating to Salt Valley Wash Spring, leaving it outside of the Monument.

Proposed Interbureau Agreement

The BLM draft of proposed agreement, which was submitted with memorandum of November 3, 1950, from Director, BLM (NPS File L-3019 ARCH), was not satisfactory to the Park Service. Two alternative drafts were prepared by the Park Service, the second bearing penciled date of 11/4/53. Neither Park Service draft was acceptable to all interests of this Service, and neither was referred to BLM.

The three drafts provide for continued stock watering at: (1) Salt Valley Wash Spring, which is on Monument addition which was proposed in 1948 and 1949; (2) at Fresh Water Spring, with incorrect location, which was included in the Monument additions of 1938; and (3) Spring Canyon Spring (protested Application 21057), which was included in the Windows Section of the Monument as established in 1929. As previously stated, there was evidently an inter-bureau agreement of about 1938 concerning grazing, stock watering, and stock driveways on the Monument addition of the year. There is also the general inter-bureau agreement, I-8-1, of 1940, to provide for the intergration of such interests on parks and monuments, and on adjacent BLM districts established under the Taylor Grazing Act. There may have been some commitments to the local stockmen before the original Monument was established in 1929.

Until the agreements of 1938 and before are located, there is considerable question as to how much responsibility the Park Service should assume for continued permits to let stockmen use Fresh Water and Spring Canyon Springs. At this time, there is also doubt as to whether Salt Valley Wash spring will pass under Park Service jurisdiction, and need to be covered by agreement. Accordingly, it is not possible to complete an agreement until the final boundary adjustments are decided, and it may not be possible to decide on the final desirable Monument Boundary until new plans are completed for road development.

The BLM draft of 1950 would also make the extent of water use, and extent of stock driveways dependent on needs of the BLM or Grazing District. The subsequent Park Service drafts introduced provisions for limitations to protect Park Service interests. A stock driveway, for

instance, is between 1/8 and 1/4 mile wide, and at least two of those now authorized seem to include, parallel, or cross and recross the existing and proposed public roads. The Park Service now recognizes just four permittees with authority to use the driveways and water, while BLM has protested Application 21087 on basis of six parties to an affidavit of water use, none of whom appear to have had any authority to use Monument land or water resources since at least as early as 1944. There is also a question in the writer's mind as to why the Etchemendy allotment cannot be made accessible from a driveway along the Thompson-Moab road and an entrance at the mouth of Courthouse Wash, and why Westwood and others cannot be provided with access to their allotments across the upper portion of Paxton allotment from the old Thompson road; and thence down Salt Wash, to the north of the Monument.

Between the time when the BLM field office draft of the agreement was prepared and its consideration in Washington, the Washington Office of BLM introduced proposed water storage which is reflected in the Park Service revisions. Provisions were also introduced in Washington to permit piping water from the three aforesaid springs to places of use outside the Monument. There is inadequate definition of the type and extent of potential storage. The Solicitor's Office has also stated since 1953 that the Secretary has no authority to permit the exportation of water resources of a park or monument.

During the Washington Office discussions, it was also agreed that stockwatering would be subordinate to Park Service water use for human consumption. So far as the records show, there is no use of either of the subject springs, the spring near the Turnbow Tract, or the "flowing water" on the Turnbow Tract, for human demands of the Park Service. Plans call for groundwater use at the Headquarters under Water Right Permit 13619, and for groundwater studies to find similar souces for the other developed areas.

These factors all suggest the need for coordinated consideration of Park Service and BLM development plans and needs before any inter-bureau agreement is drafted. Moreover, the agreement should contain provisions for the use of Salt Wash Spring only if it is to be included in an enlarged monument. It may also include provisions for the use of various sources in the existing Monument, but not as conditions for boundary change, or for withdrawing the protest of Water Right Application 21087.

Public Rights and Public Water Holes

The State Engineer has suggested the possible existence of diligence rights initiated prior to 1903. He has been advised that Elisondo claimed rights on the patented Turnbow Tract, but he has not been advised that the Spring Canyon and Fresh Water springs are on unpatented land.

He has taken cognizance of the Affidavit of Use signed by six stockmen which implies public use under diligence rights, but so far as known, the State of Utah does not recognize public water reserves when they are designated by the Bureau of Land Management. BLM appears to lack the basic premise needed for its protest of Application 21087, or the terms it wishes to impose in agreement unless the United States establishes appropriative rights.

Needed Basic Data

The first question is what grazing allotments surround the Monument? We have the approximate outline of only the Paxton grazing allotment as shown on the drawing. We should have outlines of all allotments abutting on the Monument, or allotments to which access is, or must be across the Monument. If there is a gap between allotments at the Monument boundary, that should be indicated. If there are stockmen who drive their stock across the Monument to allotments beyond the limits of the drawing, the owner and location, by at least township and range, should be supplied in tabular form.

The second question is what stock drives and drift lanes cross the Monument? The drawing shows all roads and trails which we have been able to project from the Master Plan, and BLM township plats. The projected trails are shown by relatively small dots and approximate routes of authorized but undefined stock driveways are shown in larger dots. The main Monument road system is shown in solid double lines as far as we are sure of it, and proposed roads and roads projected from BLM plats are shown in broken lines. We should have this transportation system confirmed or corrected, and to have the portions thereof indicated, which are used by stock, giving name of stockman and number of head of stock authorized.

The third question is whether BLM has contemplated developing heavier stock traffic across the Monument. The records indicate that there are only the four following permittees authorized to drive stock across the Monument for access to adjacent grazing allotments which are administered under the BLM under the Taylor Grazing Act. Some of these permittees are successors to former permittees, and some may have been succeeded by others, since the last records were sent to Washington, but the permits do not appear to change except through typographical errors:

1. Emmett Elizondo
2. Pierre Etchemendy
3. Frank Paxton
4. James Westwood

By comparison, the BLM protest of Application 21087 is on behalf of the following claimants who appear in no permits to use land or water in the Monument, although they claim use, not necessarily by themselves, since prior to 1900:

Earl Dalton	Albert Maxwell
Tom Murphy	Lester Walker
G. O. Patterson	R. L. Holycak

For instance, do Eliscondo and Westwood enter the Monument on State Highway 93 along the south side of Township 24 South, or along a trail from Headquarters? Does the stock traverse roads and trails, where they exist, or are stock driveways parallel to such roads and trails?

The following apparent typographical errors are noted:

1. The 1944-45 permit to Ed Provansha authorized use of land in Sec's. 34 and 35, T 24 S, R 22 E, which was not in Monument or even on the same side of River. It is assumed that the driveway was the same as that authorized to Pierre Etchemendy, in Sec's. 34 and 35, T 24 S, R 21 E.

2. SUP. 14-10-340-43 to Frank Paxton, for 1955-56, authorizes use of land in NW¼ Sec. 24, T 25 S, R 20 E, along road in Salt Valley. This is apparently intended to agree with earlier grazing permits, to authorize Mr. Paxton to use land in Sec. 24, T 23 S, R 20 E. If the driveway includes the road, it may be in Sec's. 13 and 19 as well as 24.

3. SUP. 14-10-340-37 of 1955 to the State Highway Commission authorizes road relocation in Sec. 26, T 25 S, R 21 E, although the Monument does not appear to extend into that Section.

The fourth question is whether public driveways are being established by use across the Monument, without NPS permits? The Washington Office records include a number of stock watering and driveway permits on Grazing Permit forms up through about 1948. Except for a 1954 memorandum of explanation, there is then a gap to recent Special Use Permits which have been mentioned from time to time. The gap includes the period when Application 21087 was protested, and BLM drafted a proposed agreement.

There appear to be Special Use Permits to Etchemendy to cross Sec's. 34 and 35 to reach his allotment, but none to authorize stock to traverse Salt Wash and Spring Canyon and to use water from Spring Canyon Spring. There are Special Use Permits to authorize Paxton and Westwood to cross the Monument. Mr. Eliscondo has authority for stock to approach the Turnbow tract and water stock thereon, under reservations in the deed to that tract, but the Washington Office has no records of his authority to cross the Monument from the Thompson-Moab road, if necessary to reach his allotment, or of his present authority to cross the Monument and water stock at Fresh Water Spring.

The fifth question is what alternative access there is between allotments and from them to the Thompson Moab Road, without the use of Monument land? A series of Xs on the drawing shows probable stock drive or drift trail to Spring Canyon Spring. No reference is made to other access which there may be for the stock of James Westwood and others, which follows same route from State Highway 93 toward the northeast corner of the Monument. The question is whether stock other than that of Etchemendy uses Spring Canyon Spring (Application 21087), and if so, by what access.

The sixth question is how many sources of useable water are there in the Monument? As previously mentioned, the BLM draft of proposed inter-bureau agreement lists "Spring 2, Fresh Water Spring, located (incorrectly) in SW¼ SW¼ Sec. 5 . . .". Fresh Water Spring, according to former NPS permits to Elizondo and his predecessors, is in NW¼ NW¼ Sec. 6. Testimony in the records of the Turnbow Tract patent also indicate that the BLM township plat showed a spring in NE¼ NW¼ Sec. 8, which Mr. Turnbow claimed in his first application for patent of E½ Sec. 7 and W½ Sec. 8. That testimony also indicates that Mr. Turnbow explained that the spring was north of Sec. 8, presumably about at site of Spring 2 (not Fresh Water Spring) as described in SW¼ SW¼ Sec. 5 in BLM draft of proposed interbureau agreement. There are, thus, either two springs, or erroneous locations in permits and drafts of agreements. The only other surface water sources on record are the small stream on Turnbow Tract, and Spring Canyon Spring.

A seventh question is whether Salt Valley Spring, or Spring 3, of proposed interbureau agreement, is improved as shown on the BLM township plat, with a cistern, as evidence of related man-made storage.

The eight question is who owns any valid diligence rights to the water sources in the Monument? Elizondo appears to have assigned his interest in rights to water on the Turnbow tract, subject to their continued enjoyment until 1983. A single permit to Revoir, and later to Elizondo, to use Fresh Water Spring at least implies that general rights for the stockmen's association have lapsed, and the permittees have accepted Federal assertion of title in accepting the permits. If the Superintendent's memorandum of April 7, 1949, has sufficient weight with the signature of one party, Bi Provansha appears to have relinquished the chain of title to diligence rights to Spring Canyon Spring, at least by word of mouth.

The ninth question is what the maximum herd has been, and whether cattle or sheep, which has watered at each water source during each of 5 consecutive years from one peak to the next, between 1943 (5 years before controversies started) and the present time.

The tenth question is what maximum flow there is from each water source during the annual period of water use?

Questions 9 and 10 collectively lead to the question of whether diligence rights leave water for appropriative rights. There is apparently water to appropriate at Spring Canyon Spring, but the demand during the 1955-56 season may not have been adequate to make proof for appropriation by Application 21067 of more than half of the apparent flow.

APPENDIX A

Chronological Summary of Significant
Correspondence Since September 28, 1949

September 28, 1949	Application 21087 mailed to State Engineer.
November 17, 1949	Proclamation to revise boundary, as shown on the drawing, was submitted by Secretary's letter to President, through Budget, Attorney General, and Director of Federal Register, but not through Bureau of Land Management.
November 25, 1949	Memorandum to Regional Administrator, Region Four, BLM, from Associate Regional Director, NPS, indicated that the former requested complete report from Range Manager on November 9.
December 9, 1949	Memorandum to Director, NPS, from Director, BLM, indicated that Proclamation and Secretary's letter of November 17 were returned to BLM by Bureau of the Budget, and requested clarification of language in the Proclamation.
December 16, 1949	Memorandum to Director, BLM, from Associate Director, NPS, requested return of draft of Proclamation for corrections.
December 30, 1949	Copy of memorandum of December 27 to Superintendent, from Acting Regional Director, received in Washington Office (the first reference to boundary change to reach Water Resources Section) with copies of:
	a. Resolution of October 12, 1949 by District Advisory Board of Grand Grazing District, Utah #9, concerning said boundary change.
	b. Memorandum of December 13 to Regional Director from Superintendent, transmitting copy of said resolution.
March 23-April 20,1950	Application 21087 advertised in local newspaper by State Engineer.
May 12, 1950	Director received memorandum of May 9, 1950 from Regional Director, with:
	a. Copy of Regional Forester's memorandum of May 8 concerning livestock watering.
	b. Draft of proposed NPS-BLM agreement that primary use of the springs in Monument would be for stock from November 1 to April 30.
June 16, 1950	Director received letter of June 9, 1950, from Regional Administrator, BLM, advising that he had that day protested Application 21087 on behalf of livestock operators to assure unlimited future availability of the water because:

a. Spring was developed by Federal Drought Range Development Administration between November 1934 and August 1935. (No records found of NPS authority for this development on Windows Section which was made part of Monument by Proclamation 1875 of April 12, 1929.)

b. Development was transferred to jurisdiction of Grazing Service for future control. (There is no record of NPS agreement to, or acknowledge of agreements between FORDA and GS.)

c. The stock watering facility is involved in negotiations for proposed extension of Arches National Monument.

d. The spring has been used for stock watering since before the turn of the century.

June 20, 1950 — Director received letter of June 16, 1950, from State Engineer transmitting the following instruments with statement that although protest was not filed within time allowed, the State Engineer may, and should consider the protest:

a. BLM protest of June 9 (?), 1950 of Application 21087.

b. Affidavit of May 8, 1950, of use of Salt Valley Spring (in area described in Application 21087), since before 1900, signed by Dalton, Murphy, Patterson, Maxwell, Walker, and Holyoak, but with no claim to their personal use.

June 30, 1950 — Acting Director acknowledged State Engineer's letter of June 16 and advised that no formal reply (which must be notarized and filed with statutory fee) would be made until misunderstandings were clarified with BLM.

October 11, 1950 — Memorandum of Associate Director, BLM, to Director, NPS, referred to Demaray's memorandum of June 13 to Regional Three, which indicates that NPS should not make commitments for use of water for long periods of time, as desired by BLM, and requesting conference to resolve differences.

October 24, 1950 — Washington Office conference of NPS & BLM representatives, at which BLM expanded scope of proposed agreement to include both Arches and Valley of Fire area at Lake Mead, and agreed to withdraw protest of Application

21087. New agreement was to be drafted. (Discussion predates later report of BLM submission of draft of agreement on November 3, 1950.)

March 13, 1951 — Regional Director's memorandum to Commissioner of Reclamation, concerning Colorado River Storage Project, pointed out that suggested New Moab Reservoir would flood portions of Salt Wash including Spring covered by Application 21087 and former Turnbow tract which was acquired by Deed 4 of May 26, 1948, to the United States.

February 13, 1952 — Proposed NPS-BLM agreement, presumably BLM draft, referred to Regional Administrator, by Director, BLM, for review (per BLM memo of June 13, 1956, hereafter described).

February 20, 1952 — Proposed agreement approved by Regional Administrator, per said BLM memorandum of June 13, 1956 (agreement not acceptable to NPS when reviewed in conference).

May 22, 1953 — Memorandum of Chief of Lands from Chief, Water Resources, presented case for personal consideration by Messrs. Richey (NPS) and Pincus (BLM).

July 29, 1953 — Memorandum to Assistant Director Pincus from Chief of Lands Richey concerning his earlier discussion of withdrawal of protest of Application 21087 with Mr. Woosley's secretary (of which there are no records).

July 31, 1953 — Letter from State Engineer to Park Service asking about progress in resolving protest of Application 21087 since letter of June 30, 1950.

August 4, 1953 — Letter to Mr. Richey from "Bill" Pincus, advised that protest of Application 21087 "cannot be withdrawn overnight" and requested investigation of status of agreement submitted to NPS with letter of November 3, 1950.

October 14, 1953 — Assistant Director's letter to State Engineer advised that settlement was expected that winter.

October 19, 1953 — In reply to NPS inquiry of October 14, the State Engineer advised that there were no recorded water rights within one mile of Salt Valley Spring in SW¼ SE¼ Sec. 3, T 24 S, R 21 E, SLM (which is part of area proposed for addition to Monument) but there may be unrecorded diligence rights initiated prior to 1903.

October 21, 1953 — State Engineer's letter to Assistant Director advised that his further action would be withheld pending further notice from interested parties (this is last communication with State Engineer--now three years old).

November 4, 1953 — General File L-3019 contains BLM draft of proposed agreement with a cover memorandum of November 3, 1950 to Director, NPS from Director, BLM, and a Park Service alternative which is dated November 4, 1953, in pencil. Another original undated draft is filed between correspondence of October 12 and October 14, 1953. File of Branch of Area Investigations includes memorandum of October 9, 1953, to

Chief of Lands from Chief, Park Conservation Branch, transmitting copy of a draft, implying it was prepared by him, and stating it was his understanding that Chief of Lands would obtain BLM clearance, and obtain withdrawal of BLM protest of Application 21087. Presumably, the undated draft was prepared in Branch of Cooperative Activities and rewritten in Branch of Lands on November 3, 1953, and still found to be unsatisfactory, at least as to water use.

November 10, 1953 — Memorandum to Regional Director from Chief of Lands (prepared by Chief, Water Resources Section) transmitted water right records and advised that BLM was then considering draft of agreement. (It seems probable that drafts of agreement of November 4 and the one it superceded, had not reached Water Resources Section. The fact that both drafts are originals indicates that they have not been cleared, or presented to BLM. No copy of BLM draft and cover memo of November 3, 1950, or later draft has been found in NPS files in Washington.)

April 2, 1954 — Cross reference in General File L-1417 to memorandum of 4/2/54 to Director from Regional Director (memo not found) questioning desirability of existing draft of Proclamation (still under review by BLM) for boundary extension because of uranium prospecting on land immediately west of Monument.

August 18, 1954 — Memorandum to Regional Director from Chief, Water Resources Section, concerning contents of Docket 2 advised that Mr. Richey discussed the protest of Application 21087 about August 2, and expected to have protest withdrawn within a few weeks. (Although there is no written record, Mr. Richey told Mr. Dunn that he told BLM that NPS was not interested in further consideration of boundary changes until pattern of uranium prospecting was stabilized.)

November 22, 1954 — The matter of eliminating protest of Application 21087 was referred to Acting Assistant Solicitor Bruce A. Wright by memorandum from Chief of Lands Price.

* November 23, 1954 — Memorandum of November 22, and attachments, referred to Deputy Solicitor Pritz by informal memorandum.

April 14, 1955 — Range Staff Officer Gerald M. Kerr phoned Chief, Water Resources Section, for report on what NPS was doing about proposed agreement.

April 15, 1955 — Mr. Dunn phoned Mr. Wright for report on Solicitor's action on BLM protest of Application 21087.

April 18, 1955 — Results of phone calls of April 14 and 15 reported in memorandum to Assistant Director from Chief, Water Resources Section, with copy to Chief, Division of Cooperative Activities.

June 15, 1955 — Memorandum to Regional Director from Chief, Division of Cooperative Activities, asking if it was still impractical to consider boundary adjustments because of adjacent mining.

July 5, 1955 — Director received memorandum of June 29 to General Superintendent from Acting Regional Director, forwarding memorandum of June 15 with comments including statement that none of proposed Monument additions except 160 acres in Sec. 2, T 24 S, R 21 E, SLM, would be needed if it were not for problem of maintenance of non-Monument road to Fiery Furnace area.

November 30, 1955 — Chief, Water Resources Section phoned Office of Associate Solicitor, Water and Power, for report on progress of resolution of protest, and left message.

April 30, 1956 — Memorandum to Area Administrator from Director, BLM, requested that this dispute between BLM and NPS (over Application 21087) be cleared up if possible.

* May 1, 1956 — Blue memo to Associate Solicitor Fisher from Koontz advised that Range Staff Officer Kerr did not care to take action on protest of Application 21087 without views of new Area Administrator (requested in memorandum of April 30).

* (May 22, 1956 — Follow-up memo to Area Administrator from Range Staff Officer, BLM, for report requested on April 30.

* (June 12, 1956 — Similar follow-up via Air Mail.

* June 5, 1956 — Memo to Area Administrator from State Supervisor, BLM, advising:

a. Protest was filed when Monument additions were being considered.

b. Director, BLM, advises that boundary changes will not be pressed at this time. (No longer true, since July 5, 1955.)

c. NPS appears to have made arrangements for stock watering.

d. State Supervisor will oppose future proposals to enlarge Monument unless permissive use of springs on originally proposed additions is assured to stockmen.

e. Park Service should assume responsibility for controversy between BLM and NPS.

f. State Supervisor is willing to withdraw protest, but believes Area Administrator may wish to do so.

g. NPS has not, to his knowledge, answered BLM objections in writing. (It is correct that NPS advised State Engineer by letter of June 30, 1950, that it would file no formal reply until matter was resolved within the Department of the Interior--to keep Federal controversy out of State jurisdiction.

June 13, 1956 — Memorandum to Director, BLM, from Area Administrator, advising:

a. Memorandum of August 4, 1953, from Mr. Pincus advised Mr. Richey that it was inadvisable to withdraw Protest of Application 21087 without prior execution of BLM-NPS agreement referred to Area Administrator by Director, BLM, with memorandum of February 13, 1952, and approved by Area Administrator by memorandum of February 20, 1952. (Identity of that agreement not determined by this review of files.)

b. Park Service should assume responsibility for controversy between BLM and NPS.

c. Will instruct State Supervisor to withdraw protest if Director, BLM, deems it advisable in light of items a and b.

August 27 or 28, 1956 — Regional Director advised James H. Gadsby, during latter's trip to Region, that recent study of locations for road to Devils Garden area indicated that area originally proposed for addition, could be reduced. (Details not given in Mr. Gadsby's preliminary report from field. Mr. Gadsby subsequently advised Mr. Dunn that Superintendent is supposed to supply plan of new road location and revised proposed plan for boundary changes.)

*Reference to interoffice correspondence within BLM, and within Solicitor's Office, which has not been formally referred to Park Service for inclusion in its files.

APPENDIX B

Excerpts From File on Patent No. 1114047
Homestead Serial No. 058762

Petition for Designation No. 058762 - Signed and testified December 26, 1935, by James M. Turnbow, witnesses: Albert Maxwell and Earl Dalton

1. Claims land fenced and occupied by Turnbow for about 20 years.

2. Salt Wash, running through land, is "very small stream" except following a rainstorm.

3. No attempt to irrigate any portion under Desert Land laws, except about 20 acres were cultivated by a Mr. Wolf about 35 years ago. No attempt to cultivate or irrigate during claimant's occupancy of past 20 years.

4. No notice of water appropriation filed by applicant.

5. About 25 or 30 acres in bottom of wash are periodically flooded and there is heavy growth of native grasses which might be classed as meadow land. All other land covered with brush, grass, weeds and browse with no trees whatsoever.

6. Mr. Wolf made settlement claim on part of the land about 35 years ago, and cultivated not to exceed 30 acres. His improvements and rights were purchased by Thomas Larsen who sold to claimant in 1916. Claimant "did not know until recently it was necessary for me to file petition for designation before as much as 640 acres would be recognized under settlement claim."

7. Claimant lived on land at least 7 or 8 months each year from 1916 to 1935.

8. Kept stock off of land during summer to permit grass to grow. Has normally grazed upwards of 100 cattle in fall, winter and spring (for 5 months with no supplemental feeding), and sometimes fed more than 200 cattle with supplemental feeding. Has supported himself and family for aforesaid 20 years, from livestock business on this land.

Affidavit as to Settlement Claim and Petition for Exclusion of Said Land from Utah Grazing District No. 6 - Executed by James M. Turnbow on December 26, 1935, with said Maxwell and Dalton as Witnesses

1. Is same person who made Homestead Application for E½ Sec. 7 and W½ Sec. 8, T 24 S, R 22 E, SLM.

2. First established residence in May 1916.

3. Exact date Mr. Wolf settled and made claim is not known, but he was in possession when Turnbow moved into Grand County 33 years ago.

4. Said E½ Sec. 7 and W½ Sec. 8 has been fenced by claimant in belief he was entitled to 640 acres.

5. Claimant made several previous attempts to file homestead entry, but was advised that land was unsurveyed, and later, that plat had not been filed.

6. No attempt to file during depression, until Application 052348 was filed February 15, 1935, for:

   Sec. 7 - E½ NE¼ and NE¼ SE¼
   Sec. 8 - S½ NW¼

7. Reduced area claimed on basis that no more than 160 acres would be allowed.

8. Application rejected because land is in grazing district.

9. Petition refiled December 26, 1935, on basis of recent newspaper statement that Executive Order of Withdrawal had been modified.

Stock-Raising Homestead Entry - Original (Based on Settlement Claim) Serial No. 058762 - Executed by Turnbow, with Maxwell and Dalton as Witnesses, on December 26, 1935

1. Claims no spring or water hole on E½ Sec. 7 or W½ Sec. 8.

2. Said land is traversed by Salt Wash Creek, which is small.

Letter of December 31, 1935, to Turnbow from Register, U. S. Land Office

1. Although claimant states there is no spring or water hole, the official plat shows spring in northwest portion Sec. 8.

2. Land is in Grazing District withdrawn November 26, 1934.

3. Modified act of November 26, 1934 limits claim to 160, or 320 acres, only on proof land is more valuable for agriculture than for grazing.

4. Claimant has also filed application for 160 acres under Serial 052348, which has been rejected for same reason, and not appealed.

Appeal of Decision (letter) of December 31, 1935, by James M. Turnbow (Posted 2/17/36)

1. Spring in Sec. 8 is not in claimant's fenced area.

2. County Clerk advised that no appeal needed on Application 052348 and that new application could be filed on modification of Grazing Act.

3. Turnbow claims occupancy for preceding 20 years.

Letter of May 28, 1940, to Superintendent, SWBM from Custodian

1. Advises that J. M. Turnbow had died.

2. Tract only occupied about one month per year, during branding season.

3. The 160 acre tract of little value without grazing rights on adjacent portions of Monument.

Notice of Intent to Make Proof by Susie Turnbow, dated March 24, 1940

Witnesses are: Albert Maxwell
George W. Beeson
Lester Walker
J. M. Westwood

Testimony under Proof (No mention of water developments)

J. S. Westwood - has known Turnbow for 22-23 years and land for 20 years.

Lester Walker (brother-in-law of Susie Turnbow) has know her 30 years, James Turnbow since 1903, and land 24 years.

Statement of September 16, 1938 by James Turnbow

Stock increased from 60 to 200 head between entry and 1938 and to 600 head when Taylor Grazing Act became effective.

Letter of September 30, 1938, to Commissioner, General Land Office from Special Agent C. B. Walker

Report of inspection takes cognizance of Salt Wash Creek, but refers to no water developments.

Letter of August 26, 1941, to Director of Investigations, BLM, from Richard D. Welsh, Special Agent

1. Suggests Welsh found evidence that Wold occupied the tract from about 1890 to 1900 (10 years earlier than other testimony).

2. Could not find evidence of occupancy by James Larsen between 1900 and 1915 or 1916, or of chain of title from Wolf to Larsen to Turnbow.

3. Land so eroded by 1941 that it would be impractical to restore irrigation said to have been initiated by Wolf.

APPENDIX C

Dates of BLM Subdivision Surveys
Arches National Monument

T 23 S, R 20 E, SLM - Subdivided May 22 - June 1, 1908

T 23 S, R 21 E, SLM - Subdivided October 1 - November 20, 1932

T 24 S, R 21 E, SLM - Subdivided October 10 - November 26, 1940

T 24 S, R 22 E, SLM - Subdivided July 26 - September 15, 1928

T 25 S, R 21 E, SLM - Subdivided June 23 - July 23, 1924

Monument Boundary Lines designated October 3, 1940 - May 13, 1941

APPENDIX D

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
Salt Lake City

February 15, 1949

Mr. A. E. Demaray
Associate Director
National Park Service
Washington 25, D. C.

Dear Sir: RE: GENERAL

It appears from your letter dated February 8, that you are the present owners of a tract of land with a stockwatering water right from one Elizondo and that the water right is not covered by an application in this office.

If the right is 60 years old, as you state, then it must have been initiated prior to 1903. If so, it would be classed as a diligence right, there being no court decree nor no record of the right whatsoever, although diligence rights are covered by decrees. The right, if established as stated, is still good, unless it has suffered a nonuse of five years when the water was available.

No one in the State of Utah owns any water. They only own a right to the use of it. When the use ceases, as stated, the right is lost. If the right becomes lost, there is no way that this office can prevent applicants from seeking to reappropriate it. If water is unappropriated, the State Engineer must, under ordinary circumstances, approve the application for its appropriation.

If you have entered a contract or an understanding with the original owners that they may use the water the same as heretofore, but only under limited conditions, then you will have protected the water right through such use, so long as it exists and to the extent of such use. This office cannot guarantee that applications will be rejected on the source if it should be shown that the water or any part of it is unappropriated. You should, therefore, be diligent in seeing that the water is used by your predecessor or by your own agency.

Yours very truly,

(Sgd) Ed. H. Watson

Ed. H. Watson
STATE ENGINEER

00-00-1956: boundary adjustments and water rights

WR Copy

Assistant Director Allen

April 18, 1955

Chief, Water Resources Section

App. 21087

Boundary adjustments and Water Rights, Arches National Monument

Mr. Gerald M. Kerr, Range Staff Officer, B.L.M., phoned me on the afternoon of April 14 to see what progress had been made in this Service in connection with proposed agreement as to grazing interests, boundary adjustments, and their protests of our water rights application No. 21087, to appropriate the waters of a nameless spring in Salt Wash (Docket 2) in Arches National Monument.

Mr. Kerr's correspondence terminates in 1953. The only further correspondence in our files is (1) my exchange of letters with the State Engineer to obtain more time to settle the protest; and (2) a memorandum of November 22, 1954 to Acting Assistant Solicitor Bruce Wright from Mr. Price, submitting pertinent instruments relating to the protest to him for legal consideration.

I phoned Mr. Wright on the morning of April 15, and found that he had referred the water right matter to Associate Solicitor Fritz, on receipt of the records, and was surprised that we had received no reply and instructions. He agreed to check with Mr. Fritz.

Mr. Richey discussed the entire problem with Mr. Pincus and others of the B.L.M. in Denver shortly before his transfer to Lake Mead, last fall. I thought that Mr. Richey gave a memorandum report on that discussion, but Mr. Gadsby and I find none. Mr. Richey did tell me that he had told Mr. Pincus that this Service was not interested in further consideration of Monument expansion because of the recent, encouraging exploration for uranium in the area it was proposed to include in the enlarged Monument. I discussed this matter with Mr. Diederich in December or January, and he seemed to agree that this Service should drop the idea of boundary change - at least until the uranium furor is over. There should be a memorandum statement of policy concerning this matter, either to confirm or qualify Mr. Richey's statements to the B.L.M. in Denver.

Aside from the two aforementioned problems, there also appears to be need for an agreement, or amendment of an existing agreement, between the Park Service and B.L.M. concerning grazing and stock driving in and adjacent to the Monument. The proposed agreement will include two provisions of interest to the Water Resources Section, as follows:

1. Provision for stock watering at aforesaid spring in Salt Wash, and the former Turbrow tract, and other water sources within the Monument when stock is driven through the Monument.

2. The watering of stock at springs, just within the North Monument boundary, including those in NW¼ NW¼ Sec. 24, T. 23 S., R. 20 E., and the NW¼ NW½ Sec. 6, T. 24 S., R. 22 E., while the stock is grazing on allotments outside of the Monument.

I phoned Mr. Kerr again on April 15 and reported what I had found, and told him:

1. The Park Service plans for boundary adjustments would have to be confirmed by Mr. Wirth or Mr. Ben Thompson

2. We must eliminate the B.L.M. protest of application 21087 which makes the State Engineers Staff the tribunal in an inter-bureau controversy which should be settled by the Secretary.

3. There is no intention to deny the two types of stock watering, and application 21087 is to permit rather than deny such use, but that the National Park Service would insist that all necessary rights established in accordance with state water laws for the use of water in the Monument shall be in the name of the United States, to prevent exclusive private interest.

Mr. Kerr agreed with my statements 2 and 3. He then explained that his immediate interest was due to correspondence from his Regional Office concerning new problems relating to the grazing and uranium prospecting. He agreed to refer the matter to this Service by memorandum.

SIGNED

A. van V. Dunn
Chief, Water Resources

Copy to: Mr. Ben Thompson
Mr. Diederich
Mr. Cook
Mr. Dunn

AvVDunn:ts

11-08-1950: memorandum to chief of land planning from nps regarding proposed agreement with bureau of land management (bl

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

In reply refer to:
L3019 ARCH

November 8, 1950

Memorandum

To: Chief of Land Planning

From: Chief, Water Resources Branch

Subject: Livestock Watering Generally, Water Right Application No. 21087 Specifically, and Proposed Agreement with Bureau of Land Management with Regard to Access for Such Purposes at Arches National Monument

The preliminary draft of the agreement which has been submitted with the memorandum of November 3 from Mr. William Zimmerman, Jr., Assistant Director, Bureau of Land Management, seems to need considerable modification.

Covered by Atty in draft at

1. Neither the agreement nor the forwarding memorandum makes any reference to the withdrawal of the protest by the Bureau of Land Management against the National Park Service Water Right Application No. 21087. The Bureau of Land Management should either withdraw its protest before we consider an agreement, as we have requested, or the agreement should provide that the protest will be withdrawn before the agreement becomes effective.

3b

2. The agreement makes no reference to the perfection of such other water rights as may be needed in connection with the stock watering. The agreement should provide that any water rights which may be needed in connection with such stock watering shall be perfected in the name of the United States, in accordance with instructions to be provided by the Director (or Regional Director). It may be easiest for the National Park Service to make the filings, but the necessary water system should be constructed by the permittee only on approval of plans which include ties to section corners and all other data from which to prepare the application.

3a

2a

3

3. Nothing is said about development and establishment of rights to the use of waters of Salt Valley Wash Spring, which is in the area to be added to the Monument. At the conference on October 24, I also gained the impression that the Bureau of Land Management might attempt to have a permittee file on that spring before the area was included in the Monument. Such action would be incompatible with the later administration of the area as part of the Monument.

4. The last sentence on page 1 of the draft of the agreement is equivalent to ceding full use of all springs to the stockmen, or giving them prior claims under any water rights to be perfected by the United States. In all probability the National Park Service cannot now foretell whether it will ever need any of the water of these springs for public human consumption. It is recommended that the period at the end of the sentence be changed to a comma, and that the following clause be added:

2b 5/

"except insofar as part of said water may be needed for preferred human consumption or Monument administration."

2 5/

5. The same sentence implies an unlimited amount of stock watering, but both the spring flow and related range capacity are very limited. Before authorizing stock watering there should be a report on the ecology of the grazing district and the flow of all springs, and the size of the average annual herd should be stated.

2 7/

2c 8/

6. The grazing season should be indicated, and consideration should be given to off-season water storage in case the total annual spring flows should be required to permit both stock and human use of the water.

2a 9/

7. If it becomes desirable to construct stock watering facilities instead of continuing the use of natural pools or streams, or to provide a water supply for human consumption, provision should be made to exclude direct access to the springs thereafter, as a sanitary precaution.

4 10/

8. Paragraph 2, A and B, on page 2, should be reworded to confine the stock to driveways to be defined by the Director (or Regional Director or Superintendent).

6 11/

9. The last two sentences on page 2 need rewording. The preceding paragraph 2, A and B, makes the first sentence superfluous, but the Bureau of Land Management seems to want, and this Service should agree to the statement that paragraph 2, A & B, applies whether the Monument is fenced or not. The last sentence should be modified to provide that all water for stock shall be piped off of the Monument, or to authorized stock lanes by permittees, if so prescribed by the Director at a later date, and the National Park Service should reserve the right to install such pipe and close off the spring areas when desirable.

(S.) A. VAN V. DUNN,

A. van V. Dunn
Chief, Water Resources Branch

Copy to: Mr. Coffman
Mr. Price
Mr. Thompson
Mr. Gerner

AvanVDunn:sh

September 14, 1950

Arches National Monument

Rights of Graziers, in Utah, to water sheep without appropriation, is recognized. See Adams, et al. vs. Portage Irrigation, Reservoir and Power Company, et al. No. 5882 - 72 Pac. Sec. Series, pages 648-656.

The gist of this decision is that long grazing use must be recognized as a public use if no development has been made, but individual appropriations are possible so long as they do not conflict with, or provided they facilitate the public use.

References below are given by Mr. Barton.

A. van V. Dunn
Chief, Water Resources Branch.

Utah

Early use as affecting water rights:

72 P. 2d 648 - Adams v. Portage Irrigation, Reservoir & Power Co.
262 P. 828
176 P. 729

(292 P. 194 - Bountify City v. DeLuca
(72 A.L.R. 657

289 P. 1097

239 P. 479

137 P. (2d) 634

Copy to: Mr. Barton

06-07-1949: memorandum to director from assistant regional director regarding plans for spring use as livestock watering

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Region Three
Santa Fe, New Mexico

June 7, 1949.

MEMORANDUM for the Director.

This refers to Mr. Wirth's memorandum of June 1 regarding title and use of the spring in Section 30, T. 24 S., R. 22 E. SLM, at Arches National Monument.

Mr. Bradley's field notes indicate the spring to be enclosed by a concrete wall, and a trough, roughly 2 feet wide, 1 foot deep, and 60 feet long has been constructed at the spring to catch and hold water for stock use.

We do not have information in this office regarding the number of head of stock that have been watered at the spring. The Superintendent at Arches has been requested to obtain this information and forward it to the Regional Office. We have also requested that he take photographs of the spring, and copies of the photographs, when received, will be sent to your Office together with such information as the Superintendent is able to furnish regarding the development and use of the spring. A copy of my memorandum to Superintendent Wilson is also enclosed.

/s/ John M. Davis

John M. Davis,
Assistant Regional Director.

Enclosure 718.

06-07-1949: memorandum to superintendent from assistant regional director information needed to perfect water rights; 1950

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Region Three
Santa Fe, New Mexico

June 7, 1949.

MEMORANDUM to the Superintendent, Arches.

This refers to my memorandum of May 16 regarding the title and use of a spring in Section 30 T. 24 S., R. 22 E. SLM, Arches National Monument.

In this connection, we have attached a copy of Mr. Wirth's memorandum of June 1 answering, as far as possible, the three questions raised in my memorandum of May 16.

In order to perfect water rights to cover this system constructed by the Grazing Service, the Water Resources Branch in the Director's Office needs additional information. They would like to have, if possible, description of any development which may have existed before 1933. We believe that Ranger Worthington or his father has some first-hand information regarding the construction of the spring and may be able to give you information if the information is not contained in your files. If possible to do so, you should determine how many head of stock have beenwatered at the spring and at what season of the year. Mr. Bradley's field notes and a notation on Sheet 2, Dwg. NM-ARC-5315 show that a concrete box has been constructed around the spring and a concrete trough approximately 2 feet wide, 1 foot deep, and 60 feet long exists at the spring. It would be appreciated if you could furnish pictures of both the enclosure around the spring and the concrete trough. The film could be developed and the prints made in the Regional Office.

SIGNED

John M. Davis,
Assistant Regional Director.

Enclosure 717.

cc: Supt., Arches.

ADDRESS:
THE DIRECTOR, NATIONAL PARK SERVICE

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

JUN - 1 1949

MEMORANDUM for the Regional Director, Region Three.

16

This refers to the memorandum of May 6 from Mr. Davis with regard to title to and use of a spring in Section 30, T. 24 S., R. 22 E., S. L. M., in Arches National Monument. SPR. CAN

The attached Sheet 2 of drawing NM-ARC-5315 shows the spring to be in the NE¼ NW¼ of said Section 30, which was a part of the Windows area of Arches National Monument as established by Proclamation No. 1875 of April 12, 1929. Since the drawing shows a tie to the N¼ corner of Section 30 which was designated as unsurveyed at the time of the Proclamation, we checked with the Bureau of Land Management and found that the section was surveyed in August 1928, but that the plat was not accepted by the Assistant Commissioner until 1932. We also found that the Tract Book does not show any entries in Section 30 except the reservations of 1929 and 1938 for Monument purposes.

In his memorandum of April 7, Mr. Mahan advises that the spring was developed by the Grazing Service in 1933. It is not clear whether there was any previous development by private interests, but we gather that the United States, through the Grazing Service, initiated its claim to all or a part of the water for stock watering purposes in 1933.

A proper answer to the first question is not possible at this time.

In answer to the second question, the United States, through the National Park Service, not only can, but should perfect water rights to cover the water system constructed by the Grazing Service, and the use of the water by stock authorized variously by the Grazing Service and the National Park Service. To permit the Water Resources Branch to proceed with such water right action, please send us a plan or complete description of the water system and, if possible, a description of any development which may have existed before 1933. Also, please advise how many head of stock have been watered, and during what seasons of the year, since the system was constructed by the Grazing Service.

The answer to the third question is that ranchers can help perfect the water right for the United States, if it is decided that such

ranchers shall be permitted to let their stock enter the Monument. This memorandum is not intended to relate to the merits of stock driveways and crossing permits. However, some precedent has been started, and if you decide that stock can be allowed to water at this spring without detriment to the Monument, it is only necessary to follow the instructions on pages 18 and 19 of Field Office Memorandum 563 relating to water rights, when issuing the permit.

(SGD) CONRAD L. WIRTH
Acting Assistant Director.

In duplicate.

05-26-1949: memorandum to regional director from nps regarding cattle grazing on monument lands

WR Copy

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON

ADDRESS:
THE DIRECTOR, NATIONAL PARK SERVICE

26 MAY 1949

Air Mail

MEMORANDUM for the Regional Director, Region Three.

Mr. Richard T. Cardall, Administrative Assistant to Senator Arthur V. Watkins of Utah, advised Mr. Coffman this morning by telephone that the Senator had received word from J. S. Westwood of Moab, Grand County, Utah, that he was experiencing difficulty in obtaining authorization for the continuation of his grazing within Arches National Monument this year.

According to the information received by Senator Watkins, it was his understanding that Mr. Westwood had established grazing privileges under the Taylor Grazing Act prior to the inclusion of his allotment within the monument by the extension of the boundaries in 1938; that an attempt was made this year to obtain a permit for Mr. Westwood outside the monument on the grazing district but the manager of the grazing district was unable to grant this request and the superintendent of the Arches National Monument had refused Mr. Westwood permission to graze his cattle within the monument; and that he had had no difficulty in obtaining range within the monument prior to this year. Mr. Cardall requested prompt action in the matter as "time is the essence" in connection with range for this season's grazing.

In reviewing the files for the background relating to Mr. Westwood's grazing we find the following information in Superintendent Miller's memorandum of June 17, 1941 to Mr. Cahalane:

> "Reference is made to your memorandum of May 28 with respect to the grazing situation at Arches National Monument. Reference to the files concerned with the extension of monument boundaries will disclose agreement to permit certain grazing subject to annual reduction which would result in extinction of grazing rights within a period of ten years." ...
>
> "Mr. Westwood has approximately 500 head of cattle on range in the Big Flat country, 30 miles west of the Arches. He has a small herd of about 50 cattle ranging in the Yellow Cat country adjacent to the Devil's Garden, and this herd ranges in the monument part of the year. Mr. Westwood understands that he will eventually be compelled to discontinue using the monument lands as range for this small herd and plans to confine his grazing to the Big Flat country."

Our search of the files concerned with the extension of the monument boundaries failed to locate the statement of agreement with the cattle grazers referred to in Mr. Miller's letter. Will you please send us a copy thereof.

Acting Director Demaray, in his memorandum of July 7, 1941, for the Superintendent, Southwestern National Monument, wrote as follows:

> "Regarding grazing by cattle owned by Mr. James Westwood, we suggest that if he plans to terminate his grazing on monument lands this summer, we will not require a permit in view of the informal agreement preceding the establishment of the extended boundaries, however, if he plans to continue grazing beyond this summer, he should be issued a permit on the basis of the present agreement between him and your office."

In Mr. Ratcliff's report of March 18, 1943 on the Arches National Monument he states that:

> "Mr. James Westwood, who has had grazing rights for 100 head of cattle on the monument, has never been issued a formal permit, but has been working under an oral agreement made at the time the area was established as a national monument, the plan being a ten percent reduction each year until he is completely outside the monument. He now runs most of his cattle north of the Devil's Garden section, and the only cattle belonging to him that are now on the monument are those that stray onto the area. Since he has moved most of his cattle elsewhere, he probably would not be interested in a permit at this time. If he desires to continue grazing, I would suggest we issue him a three year permit, with the understanding that his grazing rights would expire at the end of the three year term; otherwise he should not be allowed to graze his cattle on the monument, since he was supposed to reduce them 10% each year until his herd was completely eliminated."

We can find no copies of grazing permits issued to Mr. Westwood but we do find annual reports of his grazing 250 head of cattle in the Arches National Monument for a total of 500 AUMs, including such a report for 1948. Were any formal permits issued for such grazing? If so, will you please furnish us a copy of the 1948 permit so that we may see the wording of the special provisions. Also please explain why Mr. Westwood was permitted to increase his grazing over the number grazed in 1941 as reported by Superintendent Miller.

Will you please furnish, as soon as possible, a complete report of all the circumstances so that we may make satisfactory reply to the inquiry from Senator Watkins' office.

We note in the clippings which accompanied your memorandum of December 17 regarding the proposed boundary extensions of Arches National Monument that J. S. and John Westwood had appeared before the commissioners at Moab to protest any addition of lands in Salt Valley if it affected livestock grazing, and were advised that the County had given consent with the explicit understanding that grazing use heretofore in effect would not be interfered with by the Government should the addition be consummated.

Will you please include in your report a statement as to whether there is any established grazing in the proposed addition other than access to the spring noted in the last paragraph of your memorandum. If there is established grazing within that area, please give us full information if such information has not already been furnished. It is possible that you may have submitted such data. If so, please give us a reference to the communication. We are desirous of knowing whether the Westwoods are grazing permittees within the area, and, if so, all the particulars with regard to their privileges and whether their grazing is covered by permits from the Grazing Division of the Bureau of Land Management.

(SGD) A. E. DEMARAY

Acting Director.

In duplicate.

COPY

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

May 16, 1949.

MEMORANDUM for the Director.

This refers to water rights at Arches National Monument.

At the time Mr. Bradley made the boundary survey, Mr. Mahan advised the existence of a "new" spring approximately 900 feet southwest of the quarter corner common to sections 19 and 30 T. 24 S., R. 22 E. A copy of Mr. Mahan's memorandum of April 7 is enclosed for your information.

We have withheld writing regarding this spring until the spring could be located on a map being prepared by Engineer Bradley and until Mr. Ratcliff could visit the area and inspect the facilities at the spring. A copy of Mr. Ratcliff's report covering his recent visit to Arches National Monument will be submitted at an early date. We have enclosed a black line print of Sheet 2 of Dwg. NM-ARC 5315 showing the location of the spring.

In view of the information contained in Mr. Demaray's memorandum of March 23 regarding water right laws in the State of Utah, the following questions are raised:

1. Since our Service has not known of the existence of the spring and the spring is within our boundaries and was within our boundaries prior to the extension of November 25, 1938, can an individual establish a water right through beneficial use even though he would be in trespass in using the spring?

2. Since the spring is within our boundaries at the present time and was within our boundaries prior to the extension and since we have never issued a permit for the use of the spring, could our Service establish beneficial use by issuing a permit for others to use the spring?

3. As this spring is the only water in this vicinity, we would not object to issuing a stock driveway or crossing permit to enable the ranchers to use the spring. If we did this, would such action in any way effect our rights on the spring? The stock watering is usually during the winter and most of the stock is taken to the high country in the La Sal mountains during the summer.

In the absence of a Regional Attorney, we would appreciate your suggestions on what steps, if any, should be taken to protect these water right values.

/s/ John M. Davis
John M. Davis,
Acting Regional Director.

Enclosure 701.
cc: Supt., Arches.

05-13-1949: memorandum to regional forester from nps regarding field survey of spring canyon, fresh water springs

PARTIAL COPY

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

May 13, 1949.

MEMORANDUM for the Regional Forester, Region Three.

The following report covers a field trip to Arches National Monument May 6-8, 1949.

I arrived at Arches National Monument the evening of May 6. The following day, May 7, was spent with Superintendent Wilson and Ranger Worthington checking livestock watering locations and driveways within Arches National Monument.

Spring Canyon Spring.

This spring is located north and east of the Windows section in the NE¼ NW¼ Section 30, T. 24 S., R. 22 E. The spring consists of a concrete intake box and the water flows through a 1" pipe into a trough some 60' long by 2' wide and 1' deep. There is no record in the files concerning this spring but Ranger Worthington who was formerly employed by the Grazing Service stated that from all information he could gather, it was developed by the Grazing Service under the "drought relief" program in 1933-34.

There was very little evidence of livestock watering there. The spring can be reached only by trail and is located in a canyon below the Windows section. Apparently this spring is located inside the original monument boundary as it existed prior to the extension in 1938.

Fresh Water Spring.

This spring is located about 3/4 of a mile from the old Turnbow Cabin in Salt Wash and has been used for livestock watering purposes by sheepmen who have winter range allotments adjoining that section of the monument.

The trail into this spring is over "slickrock" sandstone and no erosion damage results from this use.

Special use permits have been issued for the use of this spring by sheepmen. This has resulted in considerable correspondence concerning the possibility of obtaining water elsewhere. However, the fact remains that there is no other available water in the locality which indicates that we will probably have to continue use of this spring during the winter months.

Salt Wash Spring.

This spring is located in Salt Wash and has been used by Mr. Frank Paxton. If the boundaries of the monument are extended to include the road to the Devil's Garden section, this spring will be included in the monument boundaries and since it is the only water in Salt Valley, Mr. Paxton will no doubt request permission to use the water for his sheep. Ranger Worthington informed me that Mr. Paxton's use of this spring seldom exceeds five (5) days in the fall or early spring and this use does not occur during the travel season when visitors are in that section of the monument.

All three of the above-mentioned springs have been used for a long period of time by the stockmen whose allotments adjoin the monument. They are not located in public use areas and the period of use is between November and April; therefore, I recommend we continue the issuance of special use permits to these men for livestock watering purposes.

Another item is the beneficial use of these waters to retain the water rights.

In a letter to Mr. Demaray dated February 15, 1949, Mr. Ed H. Watson, Utah State Engineer, stated that if the beneficial use of the water lapsed for a period of five years the water right would also lapse and anyone else could apply for it. In view of this, a logical solution would be to continue the use of these springs for stock watering, using due caution to see that the National Park Service water rights are protected.

* * * * * * * * * * * *

There is also a coal-burning water heater in the basement; should any leaks occur this would be exceptionally dangerous.

Superintendent Wilson reported that this situation had been reported previously but no action taken. Some means should be found to repair this installation and put it in standard condition.

Signed: Harold M. Ratcliff,
Forester.

Approved for distribution SIGNED Date: 5-18-49
Acting Regional Director

cc: The Director.
Supt., Arches.

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Arches National Monument
Moab, Utah.

April 7, 1949

MEMORANDUM for the Regional Director, Region Three:

At the time of Mr. Kell's recent visit at this area I discussed with him the use of a spring of water in Spring Canyon in the Windows section, Section 30, T24S, R22E.

I knew of the existence of this spring but had never investigated same and did not know that it had an excellent flow of good water and was developed by the Grazing Service in 1933 for stock watering purposes. It flows a 3/4" stream of water and development included the installation of stock watering troughs. At the time Mr. Edd Provonsha of Moab took over the grazing allotment adjoining the monument in the Windows and Courthouse Towers sections for his cattle in 1945, he advised me of this spring and stated that no doubt there would be considerable drift from that portion of his allotment between the Windows and the Colorado River to this excellent water. I told him that it would be appreciated if he would control this drift as much as possible but realized it would be a tough job to keep them from same without a fence.

Recently, while riding the boundaries with the Musselman's, who are taking over this allotment next year, I visited this spring and found the set-up as mentioned above. I believe, from checking the GLO plat on this township, that this spring was in the monument at the time this development took place, prior to the enlargement in 1938. This will be determined by survey by Mr. Bradley before he leaves the area. Due to the fact that water is at a premium in this country, as far as the stockman is concerned, I would suggest that a permit be issued for a crossing to this water by the permittee who uses this allotment. It is below the Windows, between that section and the Salt Wash, and will not effect any use area. This would necessitate the crossing of Section 30 and the N½ of Section 31 in T24S, R22E. If at some future time the Service might contemplate the use of this water by pumping to the Windows parking area or use at the site, I believe there would be sufficient for this purpose and the balance could be utilized for stock watering, which occurs only in the winter.

This same holds true for the crossing permit issued for access to Freshwater Spring by the permittee on the Bureau of Land Management allotment east of the Devils Garden section. This water is needed by stock during dry periods in the winter. If a development is made at the

Turnbow cabin, and water is needed, I am sure that there is sufficient for this purpose as well as for stock use during the winter.

The use of the Salt Valley Wash spring is amply covered in the new proclamation for boundary revision recently received by this office.

In other words, I would suggest that the Service cooperate with the stockmen who use lands adjoining the monument for winter grazing, by issuing crossing permits to water on monument lands as long as it does not effect any of the scenic portions of the area and as long as the benefiting stockman will reciprocate by seeing to it that there is no trespass beyond the designated driveway.

I believe that in the not too distant future the Service will again be dealing with these stockmen regarding lands containing other scenic features in this section and we will be in a much better position to talk with them if we show that we are willing to cooperate on these matters.

(SIGNED)

Russell L. Mahan
Superintendent.

06-22-1949: responce to memorandum of may 16,1949 regarding history of discovered spring

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Region Three
Santa Fe, New Mexico

June 22, 1949.

MEMORANDUM for the Director.

On June 1, Mr. Wirth wrote to this office in reply to my memorandum of May 16 regarding title and use of a spring at Arches National Monument. This spring is located in Section 30, T. 24 S., R. 22 E., SLM. SPR, Cam

We have received a memorandum from Superintendent Wilson at Arches, and he furnishes the following information from the field:

> "Mr. Dan Winbourn who did the actual construction work on the development of this spring in 1933 for the Grazing Service states that there was no development of the spring prior to this time.
>
> "Ranger Worthington's stock use count at this spring shows 25 head watering from November through April."

The trough is metal and has a wood frame for protection and is supported by wooden posts as shown by the photographs attached.

Our record shows that on November 19, 1948, we issued a crossing permit No. L-33-np-170 to Mr. Ed Provonsha for 138 head of cattle for the season from November to April. A Mr. Musselman has purchased the Provonsha holdings, and we may reasonably expect Mr. Musselman to apply for a crossing and watering permit this fall when his cattle are brought down from the high country in the La Sal Mountains.

When Mr. Musselman purchased the Provonsha holdings, he planned to operate a dude ranch and discussed the operation with Superintendent Mahan before he left Arches. Mr. Musselman and Mr. Mahan rode for 2 or 3 days so Mr. Musselman would be thoroughly familiar with the boundaries of the monument. Mr. Musselman considered the use of the spring as an overnight stop and camp for a pack trip through the monument.

If Mr. Musselman should apply for a crossing and watering permit next fall similar to the one held by Mr. Provonsha, we would be inclined to approve the permit. The spring is one of the few available in that side of the country, and it is so located that it could receive nominal use by cattle without serious damage to the monument.

SIGNED

John M. Davis,
Assistant Regional Director.

Enclosure 739.
cc: Supt., Arches.

06-15-1942: memorandum to superintendent from regional director regarding water rights of adjacent land owners

660-63.7

Custodian, Arches Nat. Mon.,
(through Su ., S.W.Monuments).

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

601 Sheldon Building

June 15, 1942.

MEMORANDUM for the Superintendent,
Southwestern National Monuments:

Reference is made to Mr. Richey's memorandum of June 11, 1942, with regard to the homestead of J. M. and Susie Turnbow at Arches National Monument.

We are writing to the State Engineer to determine whether a water right has been initiated by Mr. or Mrs. Turnbow, and we shall advise you of what we learn.

We do not know what available water sources there are on the homestead, or on federal land adjacent. Whatever they are Mrs. Turnbow has every right to develop those sources on her land, but has no right to develop those on federal land without first obtaining a permit from the National Park Service. As a result, we should like to be kept posted as to what water development she has made or may attempt to make in the future. We suggest, however, that you do not discuss the matter of water with her at all unless she starts it. Any information you can give us now should be from observation.

[illegible] A. DUNN
Hydraulic Engineer.

cc: Director.
Regional Director, Region Three.
Custodian, Arches Nat. Mon.,
(through Supt., S.W.Monuments).

Hank: ain't the good spring just W of her property. Didn't they do some development work on it (cw) admin.

L-54

Region Three
Santa Fe, New Mexico

APR 2 - 1957

Memorandum

To: Director

From: Regional Chief of Lands

Subject: Withdrawal of Protest Application 21087, Salt Valley Seeps, Arches National Monument

As promised several weeks ago, we have finally received photostat copies of Mr. Richman's letter to State Engineer Joseph M. Tracy dated January 16, withdrawing the Protest on the subject Application. Four photostat copies are attached, and the photostat negative has been retained in this office.

JOHN E. KELL

John E. Kell
Regional Chief of Lands

In duplicate
Attachments - 4

Copy to: Acting Supt., SWNM (2)

Matters/Correspondence relating to BLM protest of NPS water right on Spring Canyon Spring

03-15-1957: letter to state engineer from nps regarding withdrawal of bureau of land management (blm) protest

154-L

March 15, 1957

Mr. Joseph N. Tracy
State Engineer
403 State Capitol
Salt Lake City, Utah

Re: Application No. 21087
Arches National Monument

Dear Mr. Tracy:

We have received a copy of the letter of January 16 to you from Val R. Richman, State Supervisor, U. S. Bureau of Land Management, advising that the Bureau of Land Management thereby withdrew its protest of the subject application. We assume that you will now grant the permit in the near future.

We have unofficial information to suggest that part of the grounds for protest might have been eliminated if the "nameless spring in Grand County", in answer to question 6 was better defined as "nameless spring in Spring Canyon, Grand County" which is tributary to Salt Wash. Since the application was filed we have found that there is a separate spring in the headwaters of Salt Wash above the Monument which is locally known as "Salt Wash Spring", and the two springs have been confused by some people. It will be satisfactory if you wish to make reference to Spring Canyon before granting the permit although the section tie clearly places the source in Spring Canyon.

Sincerely yours,

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Regional Director, Region Three
Superintendent, Arches
General Superintendent, Southwestern National Monuments
Mr. Sandy, Solicitor's Office, PARKS
Mr. B. Thompson - Please wait for water right permit before pushing
Mr. Dunn land and boundary matters

AvVDunn:lct

COPY

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
Salt Lake City 14

March 12, 1957

United States of America
National Park Service
Interior Building
Washington 25, D. C.

RE: APPLICATION NO. 21087

Gentlemen:

This letter will serve as notice to the applicant and protestant of the action taken by the State Engineer with respect to the above numbered application relative to its approval.

Application No. 21087 was filed in this office on October 3, 1949, in the name of the United States of America, National Park Service, Interior Building, Washington 25, D. C. The application proposes to appropriate .0011 sec.-ft. of water for stock-watering purposes from an Unnamed Spring, tributary to Salt Wash to Colorado River in Grand County, at a point S. 71°37'W 933 ft. from N¼ Cor. Sec. 30, T24S, R22E, SLB&M. The water is to be conveyed through 1-inch pipe, 33 ft. to a trough where it will be used to supply 150 head of cattle and wildlife in the Arches National Monument.

The Notice to Water Users was published in the Times Independent, Moab, Utah, in five consecutive weekly issues beginning March 23 and ending April 20, 1950, with the protesting period ending May 20, 1950.

On June 10, 1950, a belated affidavit of protest dated June 3, 1950, was filed by United States of America, Bureau of Land Management, wherein it is alleged that the spring mentioned in Application No. 21087 has been used as a public stock-watering facility prior to 1900, and that the water from the source is, therefore, appropriated by diligence right.

No hearing was requested by either the applicant or the protestant.

From the information on the file of Application No. 21087 it appears that the applicant and protestant have made an agreement as to this application, and by letter dated January 16, 1957, and received in this office on January 17, 1957, the protestant, Bureau of Land Management through Val B. Richman, State Supervisor, withdraws their aforesaid protest.

In accordance with this request the protest has been considered as having been withdrawn, and the application so endorsed and, pursuant to this withdrawal, Application No. 21087 has been approved, subject to all prior rights and is returned herewith to the applicant.

Yours truly,

/s/ JOSEPH M. TRACY

Joseph M. Tracy
STATE ENGINEER

cc - U. S. Department of the Interior, Bureau of Land Management, P. O. Box 777
Salt Lake City 10, Utah

W R Copy

In reply refer to:
K-56-2118.18

MAR 1 1957

Memorandum

To: Director, National Park Service

From: Acting Assistant Solicitor, National Parks

Subject: Protest of Federal Water Right Application No. 21087 by Bureau of Land Management, Arches National Monument

This refers to Acting Assistant Director Langley's memorandum November 16, 1956 to this office commenting on the memorandum of June 13, 1956 to the Director, Bureau of Land Management from Area Administrator, Area Two, relating to the protest by that Bureau of Federal claim to water for use in Arches National Monument.

Mr. Langley's memorandum was informally referred to the Bureau of Land Management for its information. We are now in the receipt of a memorandum dated February 25, 1957 from Mr. G. M. Kerr transmitting copies of correspondence from its field representatives which discloses that the Bureau of Land Management has notified the Utah State Engineer that it withdraws objection to National Park Service Application No. 21087 for the appropriation of water from the source known as the Salt Valley Seeps. Copies of all pertinent correspondence are attached.

We trust that the matter has now been disposed of to the satisfaction of the National Park Service.

(SGD.) HARRY K. SANDERS

Harry K. Sanders
Acting Assistant Solicitor
National Parks

Copy to: Lands Branch, NPS (Attn: Mr. Dunn)
Bureau of Land Management (Attn: Mr. G. M. Kerr)

02-25-1957: memorandum to solicitor from director regarding protest of federal water right application 21087

2

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

5.04d

February 25, 1957

Sanders

INTERIOR

SOLICITOR

551

Memorandum

To: Solicitor

Attention: Mr. Harry K. Sanders

From: Director

Subject: Protest of Federal water right application 21087, Arches National Monument, by Bureau of Land Management

Attached is a copy of Area Administrator Nelson's memorandum of February 18 concerning the subject protest, submitting copies of the State Supervisor's memorandum of January 16 to the Area and his letter of the same date to the Utah State Engineer concerning the subject protest.

This correspondence indicates that the conflict in the interests of the Park Service and the Bureau of Land Management in this matter has been removed.

For the Director:

Attachment

Copy to: AO-2
SO-Utah

02-18-1957: memorandum to director from area administrator, area 2 regarding protest of federal water right application 21087

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Area 2
Post Office Box No. 659
Salt Lake City 10, Utah

5.04d

February 18, 1957

RM

Memorandum

To: Director

From: Area Administrator, Area 2

Subject: Protest of Federal Water Right Application 21087
Arches National Monument by Bureau of Land Mgt.

Enclosed is a copy of a memorandum of January 16, 1957, from the Utah State Supervisor which transmitted a copy of his letter of January 16 to the Utah State Engineer which withdrew BLM objections of the Park Service application No. 21087 for the water appropriation of the Salt Valley Seeps.

Since the Bureau had withdrawn its objection to the water appropriation, the proposed cooperative agreement between the two agencies on this matter is now moot. The withdrawal of BLM objections to the proposed water appropriation also nullifies the need for comment on those paragraphs of the Park Service memorandum transmitted and cited in your memorandum of December 20, 1956. Likewise, any future enlargements of the monument which are proposed will be subject to present advertising and public hearing procedures which should protect the interest of the BLM, stockmen, or other public land users.

Neal D. Nelson
Area Administrator

Attachments
Copy to: L&M
" " SO-Utah

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau OF LAND MANAGEMENT
STATE OFFICE
Post Office Box No. 777
Salt Lake City 10, Utah

January 16, 1957

Memorandum

To: Area Administrator, Area 2

From: State Supervisor for Utah

Subject: Protest of Federal Water Right Application No. 21087, Arches National Monument, by Bureau of Land Management

Reference is made to your memorandum of December 27, 1956.

You will find enclosed copies of our notification to the Utah State Engineer formally withdrawing the Bureau of Land Management's protest to the National Park Service water filing at the Arches National Monument.

In the light of developments since the filing of this protest and facts as they now stand, it appears that we have no further objections to the granting of this filing and have withdrawn our protest.

It is recommended that this entire matter be closed.

/s/ Val B. Richman
State Supervisor

Attachment (in dup.).

3

STATE OFFICE
Post Office Box No. 777
Salt Lake City 10, Utah

January 16, 1957

Mr. Joseph M. Tracy
State Engineer
403 State Capitol
Salt Lake City, Utah

Re: Salt Valley Seeps
Application 21067

Dear Sir:

In the matter of Application No. 21067 filed by the United States of America, National Park Service, proposing the appropriation of water from a source known as Salt Valley Seeps, located in Grand County, Utah, and more specifically in the NE¼NW¼ Sec. 30, T. 24 S., R. 22 E., of S.L.B.&M., and the protest of the United States of America, Bureau of Land Management, filed with your office with transmittal letter of H. Byron Mock, Regional Administrator, dated June 9, 1950.

You are notified that the United States Bureau of Land Management hereby withdraws the above identified protest.

Sincerely yours,

Val R. Richman

Val R. Richman
State Supervisor

IN REPLY REFER TO:

5.04d

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Area 2
Post Office Box No. 659
Salt Lake City 10, Utah

June 13, 1956

Memorandum

To: Director

From: Area Administrator, Area 2

Subject: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

By memorandum of April 30 you requested us to review the correspondence in the Area and State office files in Salt Lake relative to application No. 21087 of the National Park Service to appropriate water from a spring located in Section 30, T. 24 S., R. 22 E., S.L.M.

In your memorandum you state that on July 29, 1953, Mr. Richey, who was then with the Park Service, requested Assistant Director Pincus to investigate the dispute between the two agencies. We find in our files a letter dated August 4, 1953, copy attached, in which Mr. Pincus informs Mr. Richey that he does not believe it is advisable for the BLM to withdraw the protest without a memorandum of understanding approved by the two agencies.

We also find that a memorandum of understanding was prepared and submitted to the then Regional Administrator for review. This agreement was referred to the Region by memorandum from your office under date of February 13, 1952.

By memorandum dated February 20, 1952, the Regional Administrator approved this agreement stating: "The argument as drawn appears to provide satisfactory assurance to the Bureau and involved stockmen that availability of water needed to fulfill past established stock watering requirements will be maintained in the future."

This memorandum also contained a statement: "Withdrawal of the protest which we have filed with the Utah State Engineer will be withheld pending formal execution of the agreement and further word from you." There is nothing of record to show that the Park Service has approved this agreement, or answered any of the objections filed by BLM to their appropriation of this water.

The State Supervisor for Utah submitted a report subsequent to the receipt of a copy of your memorandum of April 30. Copy of his memorandum is attached.

In this report he states that he is agreeable to withdrawing this protest, but believes that the Park Service should assume the responsibility for the controversy between the two agencies of the Department.

The range manager for Utah Grazing District No. 9 and local Park Service officials have informed us that the BLM grazing permittees have been granted livestock watering privileges on this spring by the Park Service.

We have requested copies of this permit from Mr. Richey and other Park Service officials but so far as we can determine the Park Service has refused to enter into a memorandum of understanding with BLM or to supply us with any information to show that satisfactory arrangements have been made for livestock permittees who graze adjoining public land to water their livestock at this spring.

The authority to make water filings has been delegated to the State supervisors.

If, after considering the attached correspondence, you deem it advisable we will instruct the State Supervisor to withdraw this protest.

Neal D. Nelson
Area Administrator

Enclosures

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
Post Office Box No. 777
Salt Lake City 10, Utah

January 16, 1957

Mr. Joseph M. Tracy
State Engineer
403 State Capitol
Salt Lake City, Utah

Re: Salt Valley Seeps
Application 21087

Dear Sir:

In the matter of Application No. 21087 filed by the United States of America, National Park Service, proposing the appropriation of water from a source known as Salt Valley Seeps, located in Grand County, Utah, and more specifically in the NE¼NW¼ Sec. 30, T. 24 S., R. 22 E., of S.L.B.&M., and the protest of the United States of America, Bureau of Land Management, filed with your office with transmittal letter of H. Byron Mock, Regional Administrator, dated June 9, 1950.

You are notified that the United States Bureau of Land Management hereby withdraws the above identified protest.

Sincerely yours,

Val B. Richman
State Supervisor

RECEIVED
JAN 17 1957
STATE ENGINEER'S
OFFICE

00-00-0000: memorandum to director from regional chief of lands regarding water right application 21087

WR Copy

L 54

Region Three
Santa Fe, New Mexico

Memorandum

To: Director

From: Regional Chief of Lands

Subject: Water Right Application 21087, Arches National Monument

In partial reply to Mr. Langley's memorandum of November 16, 1956 with three attachments, there is attached a Thermo-Fax copy of the Bureau of Land Management's letter to the State Engineer, dated January 16.

You will note that the protest made by the Bureau of Land Management has now been withdrawn.

I obtained this information from the State Engineer's office, and State Supervisor Val B. Richman apologized for not furnishing copies to this office at the time he withdrew the protest. I discussed the matter in great detail with Mr. Richman before he became State Supervisor. He was under the impression prior to my discussion that the protest was on the spring in Salt Valley Wash (Section 3, T 24 S, R 21 E, S.L.M.). At that time he was surprised to learn that the protest was within the area covered by the first proclamation #1875.

I have obtained one photostat copy which will be reproduced and transmitted to Mr. Dunn for use in the various water right dockets. This is being obtained from the local office of the Bureau of Land Management and will be mailed as soon as received.

John E. Kell
Regional Chief of Lands

In Duplicate

Attachments

Copy to: Supt., Arches Nat. Mon.

01-16-1957: memorandum to state engineer from state supervisor regarding salt valley seeps, application 21087

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
Post Office Box No. 777
Salt Lake City 10, Utah

COPY

January 16, 1957

Mr. Joseph M. Tracy
State Engineer
403 State Capitol
Salt Lake City, Utah

Re: Salt Valley Seeps
Application 21087

Dear Sir:

In the matter of Application No. 21087 filed by the United States of America, National Park Service, proposing the appropriation of water from a source known as Salt Valley Seeps, located in Grand County, Utah, and more specifically in the NE¼NW¼ Sec. 30, T. 24 S., R. 22 E., of S.L.B. & M., and the protest of the United States of America, Bureau of Land Management, filed with your office with transmittal letter of H. Byron Mock, Regional Administrator, dated June 9, 1950.

You are notified that the United States Bureau of Land Management hereby withdraws the above identified protest.

Sincerely yours,

Val B. Richman
State Supervisor

WR Copy

154-L

NOV 16 1956

Memorandum

To: Assistant Solicitor, Parks

From: ACTING Assistant Director, National Park Service

Subject: Protest of Federal Water Right Application 21087 by Bureau of Land Management, Arches National Monument

Returned herewith is the memorandum of June 13 to the Director from the Area Administrator, with attached interoffice correspondence of BLM and the Solicitor's Office. This was handed to the Chief of Lands, NPS, by Mr. Sanders on July 18 with an oral request for suggestions or comments. Also attached in duplicate is a Review Study of Water Rights, Stockdrives and Stockwatering, Arches National Monument, under date of October 22, which Mr. Dunn has prepared as time permitted.

It appears that the Monument enlargement has become an active consideration again, between November 22, 1954, when the subject protest was referred to the Solicitor's Office, and this past spring when Messrs. Anderson and Nelson offered their comments concerning withdrawal of the protest. However, it also appears that the enlargement proposed in 1949 is now obsolete. The unsigned Proclamation and the letter of November 17, 1949, to the President from the Secretary are still held by BLM and should be returned to the National Park Service.

Subject to confirmation by the Monument Superintendent, it also appears that Messrs. Elizondo, Etchamendy, Paxton and Westwood are the sole stockmen who are authorized to use stock driveways and water in the Monument as it now exists. The memorandum of June 4 to the Area Administrator from State Supervisor Wm. H. Anderson indicates that BLM is satisfied with the arrangements which have now been made by the Park Service and those stockmen. It also appears that Application 21087 is a Federal water claim to comply with technical details of the State water laws, and specifically states that it does not constitute a waiver of any other rights, such as diligence rights, which the United States may have to the same water. It is also pointed out in the study that the Proclamations creating the Monument in 1929, and enlarging it in 1938, specifically recognize valid existing rights which would include diligence rights which may have accrued to stockmen.

We believe that any valid rights of the stockmen, individually, through their Association, or through the Division of Grazing, are properly protected. We believe that the memoranda from Messrs. Anderson

and Nelson indicate a willingness to withdraw the protest with such protection, and that the protest should be withdrawn in order to place further negotiations or controversies under the Secretary's jurisdiction instead of that of the State Engineer of Utah.

In his memorandum of June 4, Mr. Anderson points out that the Park Service has never answered the BLM objections to the water right, presumably meaning that no answer to the protest has been filed with the State Engineer. Reference is made on page 2 of Appendix A of the study to a letter of June 30, 1950, to the State Engineer, which stated that no formal answer would be made until misunderstandings were clarified with BLM. Page 3 of that Appendix indicates that the State Engineer indicated a desire to clarify the matter in his letter of July 31, 1953, and agreed to allow further time in his letter of October 21, 1953. A formal reply, based on the facts, will not be in the best interest of the Department. It is hoped that the protest can be withdrawn before the controversy has to be aired before the State Engineer.

It is further noted in the protest that BLM claims that the water system at Spring Canyon Spring was constructed by the Federal Drouth Range Development Service and assigned to the Grazing Service, although on land which had been under the jurisdiction of the Park Service for 4 years, and although the study indicates that it was constructed without the knowledge or permission of the Park Service. It is suggested that certified copies of the records of development and assignment to BLM, and a further assignment of jurisdiction by BLM, should be sent to the Park Service.

The study also indicates that the proposed Monument enlargement would be to gain jurisdiction over a road. The enlargement proposed in 1949 would have included Salt Wash Spring which Mr. Paxton, and possibly others have been using since an early date. It now appears that the relocation of the road may reduce the area which would have to be added to the Monument, and the reduced area might not include Salt Wash Spring. The revision of the Proclamation to enlarge the Monument will require further engineering study. It is suggested that the whole matter of boundary changes and resulting need for an interbureau agreement be deferred until revised plans can be completed by the Park Service.

The study indicates a need for more information from various sources. From our Regional Director we are requesting more information on adjacent grazing allotments, which will probably need the assistance of BLM; a clarification of what Monument land must be, and is used for stock driveways, and who uses them. We are also asking if some of the driveways might not be eliminated if alternative access is possible around the Monument. In addition, the valid status and title to diligence

rights seems to need clarification by your Office, it being Mr. Dunn's idea that such rights are somewhat nebulous if not on patented land or exercised exclusively by one or two stockmen who can produce exclusive successorship interest since before 1903.

(SGD) HENRY LANGLEY

ACTING Assistant Director

In duplicate

Copy to: Regional Director, Region Three, detached
General Superintendent, SWNM, detached
Superintendent, Arches, detached
Mr. Cook, detached
Mr. E. Thompson, detached
Mr. Dunn

AvVDunn:lct 11-1-56

01-16-1957: memorandum to area administrator, area 2 from director regarding protest of federal claim to water

WR Copy
Talbert 6/12
5.04d
COOP. 2
N. P. S.
Arches Natl.Mon.

June 12, 1956

Air Mail

Memorandum

To: Area Administrator, Area 2

From: Director

Subject: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

To date we have not received your report, requested in our memoranda of April 30 and May 22, on the above subject.

Your attention to this matter will be appreciated.

For the Director:

(Sgd) G. M. Kerr

WTalbert

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
Post Office Box No. 777
Salt Lake City 10, Utah

COPY

June 4, 1956

Memorandum

To: Area Administrator, Area 2

From: BLM State Supervisor, Utah

Subject: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

Reference is made to the Director's memorandum of April 30.

We have checked into the matter of this water filing very thoroughly, both as to the records in the State Engineer's office and from information of conditions on the ground submitted by Range Manager Kinnaman. It is apparent that this protest was filed at a time when the National Park Service was considering adding certain public lands to Arches National Monument.

Upon inquiry by this office, the Director has advised us that the National Park Service will not at this time press for the addition to the Monument. It now appears that the Park Service has made arrangements with the livestockmen affected to water their livestock on Monument lands.

The proposed extension to the Arches National Monument was related to the stock water situation in that the addition to the monument would have included several other springs. If the Park Service reopens the proposal to enlarge the Monument, this office will oppose the addition unless the National Park Service agrees to grant permission for stock water for livestock to water on those springs which were within the original lands proposed to be included in the Monument.

In view of the arrangements which have been made for livestock to water within the present Monument boundaries and the fact that

the Park Service will not press for the addition to the Monument, we are now willing to withdraw the protest against the Park Service's water filing on Salt Valley Seep in Sec. 30, T. 24 S., R. 22 E., S. L. B. & M. Since I have authority under existing delegations to make water filings, presumably, I have the authority to withdraw this protest. However, inasmuch as the protest was made by the former regional administrator, perhaps you will want to sign the withdrawal directed to the State Engineer. Please advise me of your desire in this matter.

While we are agreeable to withdrawing this protest, we feel that the National Park Service should assume the responsibility for this controversary between the two agencies of the Department. The Park Service has never, to my knowledge, answered in writing any of our objections to its filing on the water. A memorandum of understanding was prepared wherein the National Park Service merely agreed to permit livestock using public domain to continue to water on Monument lands. It appears that the Park Service verbally refused to enter into this memorandum of understanding but never set forth in writing its objections to it.

We feel that the Director's Office should be apprised of our feelings in the matter.

(sgd) Wm. N. Andersen

Wm. N. Andersen
State Supervisor

5.04d
COOP. 2
NPS
Arches Natl. Mon.

May 22, 1956

Memorandum

To: Area Administrater, Area 2

From: Director

Subject: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

On April 30 a memorandum was directed to you from the Director outlining the history of the subject claim, with the request that you review correspondence in your office and the State Office files and submit a report on the matter.

To date your report has not been received and we would appreciate having your comments as soon as possible.

For the Director:

(Sgd) G. M. Kerr

NTalbert

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Fisher

DATE: May 1, 1956

FROM : D. S. Koontz

SUBJECT: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

Attached is a copy of Director of BLM's letter of April 30 to Area Administrator, Area 2, on the above subject.

Range Staff Officer Kerr has advised me that, after talking to us about this matter, he decided, before making an affirmative finding to the effect that the Area Director should notify the State of his withdrawal of the protest to the Park Service filing, the new Area Administrator of Region 2 should give his views on the matter.

Mr. Saunders has promised to call the letter to Mr. Dunn's attention. A copy of the letter was furnished the Park Service.

Mr. Kerr has promised to notify me as soon as he has received the field report, and if for any reason they decide not to withdraw the protest he will discuss the matter with you and the Park Service before making a final decision.

Please return the papers to me for return to the Park Service.

Koontz

Attachment

Noted Ellis 5/11/56

5.04d

COOPERATION 2
N. P. S.
Arches Nat. Mon.

APR 30 1956

Memorandum

To: Area Administrator, Area 2

From: Director

Subject: Protest of Federal claim to water at Arches National Monument by Bureau of Land Management

Under undisclosed date the National Park Service submitted application No. 21087 to appropriate water for livestock from a spring situated in sec. 30, T. 24 S., R. 22 E., SLB&M. In June 1950 Regional Administrator Mock filed with the State Engineer of Utah a protest in the name of the Bureau of Land Management, Region IV, against the allowance of this application.

Under date of June 27, 1950, the Director wrote Mr. Mock that the application filed by the Park Service on this spring development would obviate future controversies with private claimants concerning continued use of the water; on the other hand, if the protest against the filing was allowed to stand, controversies over alleged private appropriation rights might occur. He suggested that in the circumstances, unless there were other factual data in support of the protest, that it be withdrawn.

Subsequently, after numerous conferences between the Park Service and Bureau of Land Management representatives in Washington, it was suggested that a memorandum of understanding between the Bureau of Land Management and the Park Service relating to the use of the water development and ingress and egress over Arches National Monument lands be prepared. The purpose of the memorandum of understanding was to insure necessary continued use of the water supply by certain qualified stockmen-permittees on adjacent grazing district lands. A draft of the proposed memorandum of understanding, prepared in the Bureau of Land Management, was submitted to the Park Service for review. A copy was also sent to the Region. By memorandum of February 20, 1952 the Region indicated its approval of the memorandum of understanding and stated, however, that withdrawal of the protest filed by the Region would be withheld pending formal execution of the agreement.

The Park Service failed to approve the agreement, but Mr. Richey, who was then with the Park Service, wrote to Assistant Director Pincus under date of July 29, 1953, requesting him to look into the matter of the dispute between the two agencies when he was in Salt Lake City. Mr. Pincus apparently discussed the matter with

Regional people when he was in Salt Lake that summer, but there is no indication in our files of the results of these conferences.

The matter has been referred to the Solicitor's Office by the Park Service, urging that something be done to clear up the dispute between the two agencies. The bringing into the open this dispute between two agencies of the Department is undesirable and I would like to have the matter cleared up if it is possible. Please review the correspondence that is in the Area and State Office files in Salt Lake and let me have your appraisal of the situation. Your early consideration will be appreciated.

A copy of this memorandum is being sent the Solicitor's Office, the National Park Service, and the State Supervisor.

Edward Woozley

Director

GMKerr:nt
4-24-56

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

November 23, 1954

Mr. Fritz.

About a week ago I told you about certain problems with respect to water rights which had been posed to me by Mr. Dunn, Chief of the Water Resources Section, Branch of Lands, National Park Service. As you will recall, the most substantial problem is whether the NPS should presently make filings in connection with several areas in the national park system. I relayed to Mr. Dunn your suggestion that he state the facts with respect to the several instances in a memorandum, and he undertook this task.

I also called to your attention a dispute between the National Park Service and the Bureau of Land Management in connection with a filing in Utah in connection with the Arches National Monument. There is attached a memorandum from Mr. Price on this matter. As I stated, I agree with Mr. Dunn that a dispute between two of our bureaus should be resolved within the Department and not before the Chief Engineer of the State of Utah. I suggested that this matter be sent to the Solicitor's Office in the thought that we ought to be able to bring about a rather prompt resolution of the matter without too much effort.

Bruce Wright

Attachment

WR Copy

In reply refer to:
L54-L

NOV 22 1954

Memorandum

To: A. Bruce Wright, Acting Assistant Solicitor

From: Chief of Lands

Subject: Protest of Federal Claim to Water at Arches National Monument by Bureau of Land Management

As you requested of Mr. Dunn, Chief of our Water Resources Section, we attach a copy of Application 21087 which was filed with the State Engineer of Utah by letter of September 28, 1949, the notice published in compliance with the State Water Laws, and a protest of the appropriation filed in June 1950 by the Regional Administrator of the Bureau of Land Management. Also attached are a letter from the State Engineer and our reply, and a memorandum to Mr. Pincus and his reply, all in 1953.

During the past summer, Mr. Richey again discussed the matter with representatives of the Bureau of Land Management in Salt Lake City, possibly including Mr. Pincus, and with representatives of our Region Three Office in Santa Fe. At that time it was decided that boundary changes were not desirable at this time because of the uranium exploration in the vicinity, and the matter boils down to a problem of eliminating the Federal protest of the Federal water right application. Mr. Richey also reported that Mr. Pincus or Mr. Mock had agreed to withdraw the protest. Mr. Richey intended to write a confirming memorandum to the Bureau of Land Management just before he was transferred to Lake Mead, but we find no copy of such a memorandum.

We should like to settle the matter before the State Engineer revives it.

SIGNED

Jackson E. Price
Chief of Lands

Attachments 7

Copy to: Mr. Dunn

AvVDunn:lct 11-22-54

WR Copy

In reply refer to:
L5h-L

November 10, 1953

Memorandum

To: Regional Director, Region Three

From: Chief of Lands

Subject: Water Rights, Arches National Monument

Attached for the records are three copies of a letter of October 21 from the State Engineer of Utah concerning the protest of Application No. 21087, for the appropriation of waters in Spring Canyon. This letter is in reply to our letter of October 4 of which you have received copies. The water right docket to cover this claim will be made up later after the permit is granted.

Also, for the same purpose, are attached three copies of the State Engineer's reply of October 19 to my letter of October 14 inquiring as to possible filings on the spring in Sec. 3, T. 24 S., R. 21 E., in the proposed Monument extension. This inquiry, and the reply, were to determine that the Bureau of Land Management or its permittees were not perfecting rights while the negotiations were in progress.

A draft of an agreement under which the water rights matters should be settled is now being considered by the Bureau of Land Management.

SIGNED

Charles A. Richey
Chief of Lands

In triplicate

Attachments 6

Copy to: Mr. Dunn

AvanVDunn:sh

WR Copy

COPY

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

October 21, 1953

Mr. Thomas J. Allen
Assistant Director
United States Department
of the Interior
National Park Service,
Washington 25, D. C.

Dear Sir: RE: APPLICATION NO. 21087

Reference is made to your letter dated October 14, 1953, relative to Application No. 21087, which proposes to appropriate .0011 sec.-ft. of water from a nameless spring in Grand County at a point S. 71;37'W. 933 ft. from N¼ Cor. Sec. 30, T24S, R22E, SL&M for stock-watering purposes.

Since efforts are being made to settle the matter, this office will withhold action on the application pending further notice from the interested parties.

It is hoped that a solution can be worked out.

Yours truly,

/s/ Joseph M. Tracy

Joseph M. Tracy
STATE ENGINEER.

JN/ig

cc - Kelso P. Newman, Regional Chief
Division of Land Management
P.O. Box 659
Salt Lake City, Utah

WR Copy

COPY

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

October 19, 1953

Your File No. L54-L

Mr. A. van V. Dunn, Chief
Water Resources Branch
National Park Service
Washington 25, D. C.

Dear Sir: RE: GENERAL

Answering your letter of October 14th, I find there are no filings of record in the State Engineer's office in the area described in your letter.

The only water rights that may exist in this area may be diligence or use rights, initiated prior to 1903, of which this office has no record.

Very truly yours,

/s/ Joseph M. Tracy

Joseph M. Tracy
STATE ENGINEER

LCM:m

WR Copy

In reply refer to:
L54-L

OCT 14 1953

Mr. Joseph M. Tracy
State Engineer
Salt Lake City, Utah

Subject: Application No. 21087

Dear Mr. Tracy:

In your letter of July 31, with copies to the Bureau of Land Management and the Superintendent of Arches National Monument, you requested information on the progress in settling the protest of Application No. 21087 by the Bureau of Land Management. We can only assure you that the protracted efforts to settle the matter are still in progress. We hope to obtain agreement during the winter.

The application was filed to make the use of water comply with the State water laws, and to establish Federal title in trust for the public, including stockmen who are authorized to use lands in Arches National Monument and the adjacent Grazing District, and to prevent any exclusive appropriation by any permittee authorized to use the Federally constructed water system from time to time. The motives of the six stockmen represented by the Bureau of Land Management are not clear. They are not even specifically authorized to drive their stock through the Monument, as are Messrs. Elizandro, Westwood, and Paxton.

We are attempting to clarify these matters and hope to work out a solution this winter. We regret that the matter has gone so long.

Sincerely yours,

(SGD) THOMAS J. ALLEN

Thomas J. Allen
Assistant Director

Copy to: Bureau of Land Management (2), with 2 copies each of Mr. Tracy's letter of July 31 and Mr. Pincus' letter of August 4
Regional Director, Region Three (3), with 3 copies each of Mr. Tracy's and Mr. Pincus' letters
Mr. Dunn, with 1 copy each of Mr. Tracy's and Mr. Pincus' letters

AvanVDunn:CAR:sh

L3019-L

October 12, 1953

Chief of Lands

Chief, Water Resources Branch

Proposed Memorandum of Understanding Between Bureau of Land Management and National Park Service Concerning Uses of Land and Water by Livestock, Arches National Monument

The subject draft, on which Mr. Diederich commented on October 9, is neither fish nor fowl.

Spring No. 1, Salt Wash Spring (?), is in the area west of the Monument which will be included in a proposed Proclamation. In the conference of October 27, 1950, the late Milton Reed expressed the hope that stockmen's rights to the water would be settled before the area was included in the Monument, so far as the right might be used as base property for grazing allotments. I would not be surprised to find that the water has been appropriated by private interests since 1950, but we have no knowledge of what the BLM or stockmen have done in the past three years.

Spring No. 2, Fresh Water Spring, has been allotted to Emmett Elizandro under Special Use Permit I-33np-180 for the period of November 1, 1949, to April 30, 1954, to water 2000 sheep, but the location of the spring is said to be in the SW¼SW¼ Sec. 5, while the SUP relates to the NW¼NW¼ Sec. 6, T. 24 S., R. 22E. Elizandro also previously had interests covered by Part 1 of SUP I-33np-250 issued to James S. Westwood for the period November 1, 1949 to April 30, 1950, the land being in Secs. 7 and 8 of the same township and range. Westwood was authorized to water 100 head of cattle and Elizandro was permitted to water 1900 sheep.

Spring No. 3, Spring Canyon Spring, is the nameless spring covered by NPS water right filing No. 21087, which has been protested by the Bureau of Land Management on behalf of the stockmen. In the conference of October 27, 1950, it was agreed that the BLM would try to have the protest withdrawn at the time use was covered by the subject agreement, but the agreement is silent on the subject. Meantime, by letter of August 4, 1953, to you, Assistant Director Pincus states that withdrawal will be difficult because of the attitude of the stockmen, although he regrets that "two Federal agencies are washing their linen before the State Engineer," and suggests that the matter be settled by a memorandum of understanding--which the subject draft does not do. I have also deferred a reply to the letter of July 31 from the State Engineer, asking for report on the progress of settlement, because I hate to say there is none (answer being prepared today).

In addition, I believe that SUP 14-10-333-50 to Frank Paxton authorized the use of the NW¼NW¼ Sec. 24, T. 23 S., R. 20 E., from February 1 to May 15, 1953, and in previous years, because water was available for his 200 sheep, but the last permit omits reference to water. I suppose the permit will be renewed for the same period of 1954 and later years unless the subject agreement is revised to cover the matter.

It seems to me that we should practically start from scratch to find out what the situation at each spring area now is, before drafting an agreement. The protested Water Right Application 21087 specifies that the right is in part to provide water for the stock of the permittees, and that no excuse existed for protest. However, we might start with a simple memorandum of agreement that the NPS has no intention of denying water to stockmen authorized to use the Monument area, but all water shall be equally available to all such permittees and the public, and water rights shall be perfected in the name of the United States in accordance with State water laws and water right procedure of the NPS, and the BLM hereby withdraws its protest of Application No. 21087 and will so notify the State Engineer, with copy to the NPS. In no case should an agreement be restricted to specific sources of water. A separate agreement concerning springs on land to be added to the Monument will have to be deferred until we know the score.

(SGD.) A. VAN V. DUNN

A. van V. Dunn
Chief, Water Resources Branch

AvanVDunn:sh

WR Copy

In reply refer to:
L54-L

August 18, 1954

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Water Right Application 21087, Docket 2, Arches NM

By memorandum of October 15, 1948, we sent you two assemblies of what was then Deed No. 5, Arches National Monument. This assembly was subsequently renumbered Docket 2. The "original" assembly was sent to the Superintendent on November 14, 1951, when it was decided that the original water right records should be in the areas to which they are appurtenant. If the Superintendent did not destroy the first assembly which was distributed in 1948, that assembly should be sent to the Superintendent of the Southwest National Monuments, whose office has been reactivated.

The assemblies now contain only the land status records, and under Part II-Perfection of Water Rights: (1) Statement of October 15, 1948; (2) Letter of October 19, 1948 from the State Engineer; (3) Letter of February 8, 1949 to State Engineer from Mr. Demaray; and (4) The State Engineer's reply of February 15, 1949. Attached are three copies of the published notice of appropriation under Application 21087, an affidavit of use, and a protest by H. Byron Mock of the Bureau of Land Management, each copy marked as to intended recipient. Please file the attachments above the existing contents of Part II of Docket 2.

The application will not be distributed until accepted, and covered by permit. Mr. Richey discussed the matter with representatives of the Bureau of Land Management about August 2, and we hope to have the protest withdrawn in a few more weeks.

The number of the Application, 21087, should be indicated at the proper place on the tab of all assembly folders.

(SGD.) A. VAN V. DUNN.
A. van V. Dunn
Chief, Water Resources Section

In duplicate

Attachments 3

√Copy to: Mr. Dunn

AvVDunn:let

C
O
P
Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLORADO-UTAH REGION (IV)
Post Office Box No. 659
Salt Lake City 10, Utah

August 4, 1953

Mr. Charles A. Richey
Chief of Lands
National Park Service
Washington 25, D. C.

Dear Chuck:

I found your file and memorandum with respect to the water right application on Arches National Monument when I got to Salt Lake. Unfortunately, Byron Mock is not here. However, I did discuss the matter with several of the people in our office and I have read our regional file in connection with the situation.

I believe that you are right that it is unfortunate to have two Federal agencies washing their linen before the State engineer. I am sorry that in my brief stay here I will not be able to do anything more definitive about the matter than what I am about to say. My impression at this time is that in view of the action already taken by BLM and the time which has elapsed I don't believe that we can withdraw our protest over night without adverse repercussions for both BLM and the Park Service.

I expect to do everything I can to see whether we cannot straighten this matter out. In the meantime I would like to ask you to look into the status of a proposed memorandum of understanding between NPS and BLM with respect to the water right application in question. According to the regional file this memorandum was transmitted to NPS on November 3, 1950, and while the memorandum has been approved by our field people here, there is no indication in the field file of any action by NPS. This does not mean that action may not have been taken since, of course, the field file may not be complete.

As I stated above, I would like to go into this matter further with you when I return to Washington, but in the meantime you may perhaps be able to clarify the NPS position on (1) whether or not the best way of solving the present impasseis by a memorandum of understanding, and (2) whether or not the draft which was sent to NPS in 1950 is agreeable to your Service in its present or modified form.

why do we need a treaty within the dept.? Or is it limited in scope?

The family and I are enjoying our trip very much. We enjoyed the Badlands National Monument and had a swell time in Yellowstone.

Best regards.

Sincerely yours,

/s/ Bill

William Pincus
Assistant Director

P.S. I am returning as per your request the papers which you sent me with your memorandum.

C O P Y

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

July 31, 1953

United States Department of the Interior
National Park Service
Washington 25, D. C.

Gentlemen: RE: APPLICATION NO. 21087

Reference is made to your letter dated June 30, 1950, relative to Application No. 21087, which proposes to appropriate .0011 sec.-ft. of water from a Nameless spring in Grand County at a point S. 71°37'W. 933 ft. from N¼ Cor. Sec. 30, T24S, R22E, SLB&M, for stock-watering purposes.

From the information available, it appears that it may be possible for the Bureau of Land Management and the National Park Service to reach an agreement with respect to this application.

Kindly notify this office of any progress - such that action may be taken, and the application may be properly disposed of.

Yours truly,

/s/ Joseph M. Tracy

Joseph M. Tracy
STATE ENGINEER.

JN/ig

cc - United States of America
Bureau of LandManagement
c/o H. Byron Mock, Regional Administrator
Box 659
Salt Lake City, Utah

cc - Superintendent, Arches National Monument
Moab, Utah

07-29-1953: memorandum to assistant director from chief of lands regarding protest of federal water right application 21087

C O P Y

July 29, 1953

Air Mail

Memorandum

To: Assistant Director Pincus
c/o Regional Administrator, BLM, Salt Lake City

From: Chief of Lands, National Park Service

Subject: Protest of Federal Water Right Application 21087,
Arches National Monument

Before you departed Washington, a matter came up relating to the subject water right application which I tried to discuss with you by telephone, but you were away and I had to depart for some of our eastern park areas before you returned. Anyway, the matter relates to a protest filed by my good friend H. Byron Mock, Regional Administrator of BLM in Salt Lake City. I told Mr. Woozley's secretary that I would send the matter on to you in Salt Lake so that you could talk it over with Byron, since I did not have an opportunity to discuss it with you before your departure.

In this connection, there are attached copies of the subject application filed with the State Engineer of Utah on September 28, 1949, the map NM-ARC-5315, indicating the adjacent Monument boundaries, and a copy of the protest of June 1950, which was filed by Regional Administrator Mock, presumably in behalf of BLM grazing permittees. Also attached is a copy of our memorandum of February 21, 1947, to the Secretary, outlining the approved policy for acquisition of needed water rights in National Park System areas, together with the reply from the Department dated March 24, 1947.

Going back to the protest, upon receipt of it this Service attempted to arrange for its withdrawal on the ground that any controversy between the two Bureaus should be settled by them, or by the Secretary, and not by the State Engineer. Negotiations, however, became involved and have not been consummated because the late Milton C. Reed attempted to tie them in to an exchange of lands, and rights to another spring on lands to be added to the Monument; and with entirely unrelated matters concerning grazing and addition of the Valley of Fire area, Nevada, to Lake Mead Recreation area.

The Service was going to send this matter to the Secretary for settlement but I prevailed upon the interested parties to wait and see if we could not work it out through discussion with representatives of your Bureau. I know that Byron is an entirely reasonable fellow and I believe that he has misunderstood our intent which is purely within the channel of existing Service policy. For a period of nearly 20 years we have hewed very closely to the line of the Service, perfecting all of its water rights in the particular State under its water laws. Arches is no exception and we feel very strongly that this particular application should be perfected in the name of the United States. It does not mean, as indicated in the attached policy statement, that the water cannot and will not be made available to permittees under existing policies governing grazing and stock driveways.

In this particular case, there is no ground for protest by any Federal agency. The water right will be Federal property and not that of any agency. The water is, and has been, on Federal Monument lands since the Windows section of the area was established. The water system was constructed by a Federal agency, and is only available to the public and grazing interests in accordance with regulations governing the Monument administration, and permits for grazing and stock watering now issued cooperatively by this Service and the Division of Grazing, BLM. The application is filed specifically to cover use under such permits.

The following historical information should be helpful: The map shows that the spring is in the Windows section of the Monument, which was established by Proclamation of 1929, after the land was first surveyed in 1928. The particular stock watering facilities and diversion works were constructed by the grazing service in 1933 or '34. Part of that time the stock drank at a natural spring, and there was no manmade development by which any appropriation could be made under the State water laws. Moreover, prior to 1928, when the public land was first surveyed, the stockmen used the land at the spring at the sufferance of the United States. With the withdrawal of the land by Proclamation of April 12, 1929 (46 Stat. 2988), any entries were denied. Finally, there is no record of any permit granted to the Soil Conservation Service by the National Park Service to authorize the construction of the stock watering facilities.

As mentioned above, it has been the procedure of the National Park Service to comply with State water laws in connection with the appropriation of water, and for more than a decade to perfect all water rights of permittees in the name of the United States. The stock now using this spring does so under permit issued by BLM in cooperation with this Service, in order that such use may be integrated with grazing on the adjacent grazing district. Accordingly, we believe that application No. 21087 is ample to protect the stockmen while they have authority to use the Monument land, and will protect them as well as the United States by preventing anyone of them from establishing exclusive rights to the water.

It seems particularly important at this time to eliminate the protest and obtain the permit and certificate that will follow. It is now almost three years since the protest was filed, and the lack of diligence in settling the matter offers ground for the State Engineer to cancel the application. As to the necessity for making such filing, it seems clear that since the passage of the appropriation act for the Department of Justice two years ago (Public Law 49, 82nd Congress), it is mandatory that the United States comply with the State water laws. Bills now before Congress would spell out that requirement more fully.

The protest, evidently, was filed on behalf of permittees. It is the opinion of the Legal Division of this Service that the establishment of the Windows section of the Monument terminated any rights to specific privileges which the stockmen may have enjoyed while the land was part of the public domain. There was a meeting of stockmen to consider extension of the Monument before it was made. Their consideration was favorable and grazing preferences on Monument lands were to be eliminated over a specified period.

I regret that this is so lengthy but I wanted to give you the information and history of the particular case. I should very much appreciate your talking this matter over with Byron and advising me of your joint conclusions. I hope that they will be favorable to the withdrawal of the protest. This matter is being sent to you personally as I hope we can "wash our dirty linen on the back porch" without the necessity of airing it in the Secretary's office.

I should appreciate the return of the attached (copy of application, protest, and map) together with your and Byron's comments.

Hope you are having a swell trip and taking the occasion to visit some of the parks along the route.

(SGD) CHARLES A. RICHEY

Charles A. Richey
Chief of Lands

Attachments 5

Copy to: Mr. Richey (2)

In reply refer to:
L54 ARCH-L

May 22, 1953

Chief of Lands

Chief, Water Resources Branch

Protest of Federal Water Right Application 21087, Arches National Monument

Attached are a copy of the subject application as filed with the State Engineer of Utah on September 28, 1949, the map, NM-ARC-5315, with adjacent Monument boundaries, and a copy of a protest of June 1950 which was filed by the Regional Administrator of the Bureau of Land Management.

On receipt of the protest, the National Park Service attempted to arrange for withdrawal of the protest by the Bureau of Land Management, on the ground that any controversy between the two bureaus should be settled by them, or by the Secretary, and not by the State Engineer. Negotiations became involved, and have not been consummated because the late Milton C. Reed attempted to tie them into an exchange of land, and rights to another spring on land to be added to the Monument; and to entirely irrelevant matters relating to grazing and the addition of the Valley of Fire area, in Nevada, at Lake Mead. I believe the only way to settle the matter is through top level interbureau administrative negotiation, or through the Secretary.

There is no ground for protest by any Federal agency. The water right will be Federal property and not that of any agency. The water is, and has been on Federal Monument land since the Windows section was established. The water system was constructed by a Federal agency, and is only available to the public and grazing interests in accordance with regulations governing the Monument administration, and permits for grazing and stock watering, now issued cooperatively by this Service and the Division of Grazing, BLM. The application, as filed, was specifically to cover use under such permits.

The following historical information should be helpful.

The map shows that the spring is in The Windows section of the Monument which was established by Proclamation of 1929, after the land was first surveyed in 1928. The particular stock watering facilities and diversion works were constructed by the Grazing Service in 1933 or 1934. Prior to that time, the stock drank at the natural spring, and there was no man-made development by which an appropriation could be made under the State water laws. Moreover, prior to 1928, when the public land was first surveyed, the stockmen used the land at the spring at the sufferance of the United States. With the withdrawal of the land by

Proclamation of April 12, 1929 (46 Stat. 2988) any entries were denied. Finally, we have no record of any permit granted to the Soil Conservation Service by the National Park Service to authorize the construction of the stock watering facilities.

For more than 16 years, it has been the procedure of the National Park Service to comply with the State laws in connection with the appropriation of water, and for the last decade to perfect all water rights for permittees in the name of the United States. The stock now using the spring does so under permit issued by the Bureau of Land Management in cooperation with this Service, in order that such use may be integrated with grazing on the adjacent grazing district. Accordingly, we believe that Application No. 21087 is ample to protect the stockmen while they have authority to use the Monument land, and will protect them, as well as the United States, by preventing any one of them from establishing exclusive rights to the water.

It seems particularly important to eliminate the protest and obtain the permit and certificate which will follow, at this time. It has been two and three-quarters years since the protest was filed, and the lack of diligence in settling the matter offers grounds for the State Engineer to cancel the application. As to the necessity for making such filing, it seems clear that since the passage of the appropriation act for the Department of Justice last year (Public Law 495 - 82nd Congress), it is mandatory that the United States comply with the State water laws. Bills now before Congress would spell out that requirement more fully.

The Regional Administrator has apparently protested on behalf of the permittees. It is the opinion of the Chief Counsel's Office of the National Park Service that the establishment of The Windows Section of the Monument terminated any right to special privileges which the stockmen may have enjoyed while the land was part of the public domain. The procedure relating to Federal reservation of title to water was covered by memorandum of February 21, 1947, to the Secretary from Mr. Drury, and the reply of March 24, 1947, from Mr. Warner W. Gardner, Acting Chief, Coordination Committee.

(SGD.) A. VAN V. DUNN.

A. van V. Dunn
Chief, Water Resources Branch

AvanVDunn:sh

10-27-1950: memorandum to director from nps regarding conference with blm about grazing and water rights

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

In reply refer to:
L3019 LAME

October 27, 1950

Memorandum

To: The Director

From: Chief, Water Resources Branch

Subject: Conference with Bureau of Land Management Concerning Grazing and Water Rights, Lake Mead National Recreational Area and Arches National Monument

The meeting was called at 2:00 p.m. on October 24 with the following present:

Representing the National Park Service

Harry K. Sanders, Attorney
George A. Walker, Forestry Division
Stewart M. Woodward, Chief, Branch of Reservoir Development and Management, Recreational Planning Division
Leo J. Diederich, Acting Chief of Land Planning
A. van V. Dunn, Chief, Water Resources Branch, Land Planning Division
Merritt Barton, Attorney (who was called in for the second half)

Representing the Bureau of Land Management

Gerald N. Kerr, Chief of Division of Grazing
Milton W. Reid, Assistant Chief of Division of Grazing
James A. Lanigan, Assistant Chief Counsel

The first half of the conference was devoted to consideration of the interbureau agreement relating to grazing in Lake Mead National Recreational Area. The following points were resolved, with the idea of obtaining a single agreement to supersede all which are now in force.

1. That the draft of the agreement between the Bureau of Land Management and the National Park Service, to supersede those of 1943 and 1944, was nominally satisfactory.

2. That the draft would be expanded to include grazing on the Valley of Fire as well as Lake Mead National Recreational Area.

3. That the pending agreement be expanded to include desirable features of the agreement of October 13, 1936, between the National Park Service and the Bureau of Reclamation, but omitting participation of the Biological Survey (now the Fish and Wildlife Service), and would supersede that agreement.

4. That the pending agreement would include the features of, and supersede the agreement of November 11, 1937, between the National Park Service and Office of Indian Affairs, if possible.

5. That the map to accompany the pending agreement regarding the administrative limits of the Parker Dam and Hoover Dam sections of Lake Mead National Recreational Area would be revised to include the Valley of Fire area.

6. That the grazing agreement when completed would include a place for approval of the Bureau of Reclamation.

In connection with Arches National Monument and Water Right Application No. 21087, it was mutually agreed:

1. That an agreement would be drawn relating to stock driveways, stock watering, and grazing. The Bureau of Land Management agreed to prepare the preliminary draft, to include its wishes, for review here, and subsequent reference to the field.

2. The Bureau of Land Management would withdraw its protest of Water Right Application No. 21087 which the National Park Service has filed.

The National Park Service suggested that the protest should be withdrawn first in order to eliminate the state jurisdiction over the interbureau controversy, but the Bureau of Land Management seems to feel that it cannot attain the support of its field officials without prior understanding as to stock watering, stock driveways, and grazing. Mr. Lanigan also implied that there might be further protests by individual local stockmen if the Bureau of Land Management protest were withdrawn.

(SGD.) A. VAN V. DUNN.

A. van V. Dunn
Chief, Water Resources Branch

Copy to: Mr. Sanders
Mr. Walker
Mr. Woodward
Mr. Diederich
Mr. Wirth

AvanVDunn:sh

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

In reply refer to:
L3019 ARCH

OCT 23 1950

Memorandum

To: Director, Bureau of Land Management

From: Acting Assistant Director Cook, National Park Service

Subject: Water Right Application 21087, Filed by the National Park Service for the Appropriation of Waters for Livestock Watering, Arches National Monument

We believe that the matter should be approached by a withdrawal of your Bureau's protest against the application by this Service. Otherwise, we are in the anomalous position of having a State official acting as referee between two bureaus in the same Department.

There are several reasons why the amendment of our water right application as suggested in your memorandum of October 11 would not be satisfactory to this Service.

In the first place, you have referred to a diligence right in the third paragraph of your memorandum. There is no question about the State laws governing vested rights established prior to March 12, 1903, but any right, to be considered as an appropriation, is dependent on the actual construction of a water system and the physical taking of water. No appropriative water right or priority accrues through the public use of water from natural streams or springs without such construction. The State Engineer has advised us definitely that water cannot be appropriated without such construction. The same was true before 1903. Accordingly, we do not believe that any valid appropriative right attaches to any of the springs and water holes in Arches National Monument. The use appears to have been a legitimate public use, which should be provided for by subsequent appropriators, which is one of our objectives.

In the last paragraph of page 2 you advise that the stock watering development was made under the FERA Drought Relief Program of 1933 and 1934 and turned over to the Grazing Service in 1935 or 1936, but the land on which the stock watering development was made has been under the National Park Service jurisdiction since the Proclamation of April 12, 1929 (46 Stat. 2988) being part of the Windows Section of the Original Monument.

It is our contention that any development made within the Monument is made in accordance with the privileges granted by the National Park Service and that any purported transfer of such reserved land from one agency to another, or from one person to another, is understood to be in subordination to the permanent status of the land as part of the National Monument. This policy has been followed in connection with all permits granted for many years. In this particular case, we might add that the development seems to have been made without the formal approval of the Director.

In the third place, it would be impossible to amend the permit to grant permanent rights of access to the local stockmen since, in this instance, this Service is only authorized to grant access privileges by revocable permit and which privileges may therefore be withdrawn at any time. Furthermore, to grant such a right would be equivalent to perfecting the right in the name of the local stockmen, thus establishing the private interests that we are trying to prevent.

Finally, your suggested amendment goes beyond the scope of a water right in prescribing limitations on the Federal jurisdiction over its lands and brings up matters of fencing and right of way which should be treated independently.

We agree that our previous system of granting individual permits to various stockmen who drive their cattle through the Monument, either to reach their grazing allotments or to obtain water, is needlessly cumbersome. It will probably be desirable to arrange an interbureau agreement to cover the general privileges granted in order that the District Grazier may have a guide for use in administering the range. However, it is not the policy of the National Park Service to grant continuing privileges to successors in interest. The permits have been granted to date in recognition of former owners of the land or those who have further recognized interests which existed when the Monument was established or enlarged. It is our hope ultimately to eliminate grazing from all national parks and monuments (not applicable to national recreational areas). We believe that most of the privileges should terminate when the present permittees cease to carry on their business in the area.

We hope that you will take steps to cancel the protest of the water right application as one step to eliminate the lack of interbureau harmony. Meantime, we will be glad to consider the

boundary changes and grazing problems as a separate matter which we are sure will be worked out satisfactorily. We shall be pleased to meet with your Mr. Reid, as you suggest, to consider the problems in greater detail.

(SGD) L. F. Cook

Acting Assistant Director

Copy to: Regional Director, Region Three (2) with two copies of incoming memorandum of October 11
Mr. Coffman) each with copy of
Mr. Diederich) incoming memorandum
Mr. Gerner) of October 11
Mr. Dunn)

AvanVDunn:MB:sh

COPY

In reply refer to:

ADL
1338437

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

RM-MWR
COOPERATION
Natl. Park Serv.
Arches National
Monument

OCT 11 1950

Memorandum

Send to Arches N. M.
for ...
By Jones Date 11-6

To: Director, National Park Service

From: Director, Bureau of Land Management

Subject: Livestock Watering, Water Right Application 21087, Arches National Monument

Reference is made to Acting Director Tolson's memorandum of August 31, and other correspondence in connection with the perfection of water rights in Arches National Monument.

We have received a further report from our Regional Administrator in Region IV with reference to the protest filed on the water right application.

We desire to cooperate fully with your Service in this and all other matters. Because there appears to be more involved in the instant case than the water right application we are anxious to be sure that all aspects of the problem are considered. The exclusion of livestock from this spring and other waters on the monument and the proposed extension to the monument would render unuseable nearly 5,500 acres of Bureau of Land Management administered range land which are isolated by the monument boundary on the north and west, and the box canyon of the Colorado River on the south. The livestock operators in this area have claimed and substantiated the existence of a diligence right to these waters, established through a use initiated prior to 1903. A diligence right is recognized under the Utah Water Code if uninterrupted beneficial use of the water has been made since prior to March 12, 1903 (date of establishment of the Office of State Engineer).

The problem is not only a question of water rights, but involves also ingress and egress over the monument lands. The action of the Region does not question the National Park Service application insofar as any water over and above the quantity covered by existing diligence rights is concerned. Use is sought as in the past for water needed to fulfill stock-watering requirements as protected by existing diligence rights.

In Associate Director Demaray's memorandum of June 13 to your Regional Director, Region III, copy of which was furnished us with your memorandum of August 31, 1950, it is stated:

> "So far as our policy is concerned with regard to the continuing use of water, we think it inadvisable to make any commitment for any long period of time. It may be stated, however, that we have no intention of terminating any privileges now being granted from year to year by permit.
>
> "If or when the Monument is fenced, it may be necessary to reconsider our arrangements with the stockmen, either arranging for stock driveways or piping water to some area where it will be accessible to the stock, subject, of course, to any paramount needs of the United States in connection with the administration and operation of Arches National Monument."

In view of this memorandum I believe our regional people should get together on the ground and work out a memorandum of understanding which would cover not only the use of this spring and trailing across the monument to grazing district allotments, but also the use and possibly the piping out of this water and other waters on the monument and the proposed extension, to the monument boundary. It is also noted that you plan to try to exchange some State lands from the monument. This matter could also be worked out at the regional level.

In the meantime I would like your reaction to a suggestion to amend your application for water right, as follows:

> "This stock watering development was made under the FERA Drought Relief Program of 1933 and 1934 and turned over to the Grazing Service in 1935 or '36, the spring being located on what was then part of the Windows Section of Arches National Monument. Since that time, livestock permitted on grazing district allotments to the east of the monument have been permitted to cross the monument to reach their allotments and to water at said spring. The Park Service will allow the continuation of this livestock crossing use of the monument lands and use of this spring unless the monument is fenced, in which event stock driveways will be established and, if necessary, the water will be piped to an area where it will be accessible to livestock. This application is filed with the view to establishing Federal rights to the diversion and use of the water in connection with the related use of monument lands under Federal permit.

"Nothing in this application, or the subsequent perfection of rights, is intended to constitute a waiver of other rights which the United States may have to use of this, or any other water on Arches National Monument."

If you think it desirable, Mr. Reid, of our Range Management Division, can meet with personnel from your Service and prepare a draft of memorandum of understanding, which then could be submitted to our respective field offices for final preparation and return to our respective Washington offices.

/s/ Roscoe E. Bell
Associate Director

06-30-1950: letter to state engineer from acting director on deferring of response to protest

ARCHES.

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

In reply refer to:
L54 ARCH

JUN 30 1950

Mr. Harold A. Linke
State Engineer
Salt Lake City, Utah

My dear Mr. Linke:

We have received your letter of June 16 with copy of protest by the Bureau of Land Management of our Application No. 21087 for the appropriation of water in Arches National Monument.

There seems to have been some misunderstanding of the purpose of the Federal application, and the matter has been discussed by representatives of the Bureau of Land Management and the National Park Service here in Washington. Mr. Mock has been supplied with additional information and requested to reconsider his protest. Accordingly, we are deferring any formal reply to the protest until interbureau accord is reached.

Sincerely yours,

(SGD) HILLORY A. TOLSON

Hillory A. Tolson
Acting Director

Copy to: Bureau of Land Management - Attention Mr. Kerr
Regional Director, Region Three (2), with 2 copies each of memorandum of June 27 for Mr. Mock from Mr. Clawson, letter of June 16 from the State Engineer, and protest by the Bureau of Land Management



06-16-1950: letter to nps from state engineer on responding to protest

WR Copy L54ARCH

RECEIVED
Chief Clerk's Office
NATIONAL PARK SERVICE
1950 JUN 20 AM 9:52

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY, UTAH

HAROLD A. LINKE
STATE ENGINEER

Mr. Denny has a copy

June 16, 1950

United States of America
National Park Service
Interior Building
Washington 25, D. C.

Gentlemen: RE: APPLICATION NO. 21087

Enclosed is a copy of a protest that has been filed against the granting of Application No. 21087 - which application proposes to appropriate .0011 sec.-ft. of water from a Nameless Spring in Grand County, at a point S. 71°37'W. 933 ft. from N¼ Cor. Sec. 30, T24S, R22E, SLB&M, for stock-watering purposes. Also enclosed is a copy of affidavit of use, which sets forth that the water described in the application has been in constant use for stock-watering purposes since prior to 1900.

It is noted that the protest was not filed within the time allowed. Nevertheless, the State Engineer may and should consider all available evidence relating to past use of the water before making any decision approving or rejecting an application. If you desire to answer this protest, you should submit your answer in affidavit form, with duplicate copy, within 30 days from this date, or on or before July 16, 1950.

It may be that you will desire to amend your application to provide that the water will be made available to satisfy all existing rights, and thus lay a foundation for the withdrawal of the protest. There appears to be no reason why the applicant would be adversely affected by the amendment since if the application is approved, it will be approved subject to all existing rights.

The application may be returned to you for amendment on your request, or you may authorize this office, in writing, to make such amendment, as you deem desirable.

Yours truly,

H. A. Linke

Harold A. Linke
STATE ENGINEER

CNH/ig
Enc:Copy of Protest
Copy of Affidavit of Use

06-13-1950: memorandum to regional director from associate director regarding livestock watering

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

In reply refer to:
L3019 ARCH

JUN 13 1950

Memorandum

To: Regional Director, Region Three

From: Associate Director

Subject: Livestock Watering, Arches National Monument

In your memorandum of May 9 you recommend that the Advisory Board, Grand Grazing District, and the Bureau of Land Management be given written assurance that water from the spring at Arches will be made available to the stockmen on adjacent allotments at such times as water is not available elsewhere. In the accompanying memorandum to the Regional Forester, Mr. Ratcliff points out that there has been some concern over our application to the State Engineer for the appropriation of waters of Spring Canyon Spring.

The Advisory Board of the Grand Grazing District seems to have confused the cause and effect. Special use permits for stock watering or grazing permits when granted provide access to water by which the permittee could establish private rights to the use of such water unless prohibited in the permit or stopped by protest to the State Engineer by the United States. Accordingly, we have attempted to have the clause inserted in all permits reserving the Federal right to perfect such water rights as may be needed in connection with the stock watering in the name of the United States. This is a precaution for the protection of both the National Park Service and the individual permittees where several are dependent on the same source of water supply.

Under the State water laws, it is necessary to construct some form of water system, whether it be only a trough fed by pipe or ditch from a spring, or an extensive development, before any water right can be perfected. If a system is installed, the State water code provides further that priority of use shall be established in compliance with the regulations relating to application, permit, proof, and final license.

Accordingly, we have filed the one application for the Spring Canyon Spring Water System, and, incidentally, we cannot file, or at least perfect, any other right unless some physical

improvements are put in, either by the permittees or the United States. Accordingly, so long as the stock watering is done from the natural water holes, we have no intentions of making further fillings.

So far as our policy is concerned with regard to the continuing use of water, we think it inadvisable to make any commitment for any long period of time. It may be stated, however, that we have no intentions of terminating any privileges now being granted from year to year by permit.

If or when the Monument is fenced, it may be necessary to reconsider our arrangements with the stockmen, either arranging for stock driveways or piping water to some area where it will be accessible to the stock, subject, of course, to any paramount needs of the United States in connection with the administration and operation of Arches National Monument.

(SGD) A. E. DEMARAY

Associate Director

In duplicate

Copy to: Mr. Coffman
Mr. Richey
Mr. Dunn

AvanVDunn:sh

06-20-1950: memorandum to blm from associate director regarding water right application 21087

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

In reply refer to:
L3019 ARCH

COPY

June 20, 1950

Memorandum

To: Director, Bureau of Land Management

From: Associate Director, National Park Service

Subject: Water Right Application 21087 for the Appropriation of Waters at Arches National Monument

Attached is a copy of a letter of June 9 from H. V. van den Veer, Acting Regional Administrator, Bureau of Land Management, Salt Lake City, advising that he is protesting the above-designated water right application which the National Park Service has filed with the State Engineer.

We are having Mr. A. van V. Dunn, Chief of our Water Resources Branch, present this memorandum to Mr. Kerr in accordance with a telephone conversation which they had. Mr. Dunn will also show him a copy of the water right application which designates the United States as the claimant and indicates that the water is being appropriated for stock watering purposes in connection with privileges granted stockmen to cross Monument land to reach their allotments on the adjacent grazing district.

It is the policy of the National Park Service to perfect all water rights, where water rights may be needed, under the state water laws in the name of the United States for information purposes and to include a statement to indicate that such informatory filings which may or may not be required of the United States do not constitute a waiver of any rights which the United States has as the owner of the land. The water right is perfected as a precaution, as it frequently eliminates several attempts by private individuals to perfect rights when they have access to the water and the necessary improvements are there.

Accordingly, it is requested that you advise the Regional Administrator that everything in the filing is entirely in accordance with all agreements and permits by which the stockmen cross the Monument, and request that he withdraw any protest which he may have filed with the State Engineer.

/s/ A. E. DEMARAY

Associate Director

Attachment

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Colorado-Utah Region (IV)
Box 659
Salt Lake City 9, Utah

June 9, 1950

Mr. Newton B. Drury, Director
National Park Service
New Interior Building
Washington 25, D.C.

Dear Mr. Drury:

It has been brought to the attention of this office through a notice to water users recently appearing in the Grand County, Utah, chronicle, that the National Park Service has filed an application with the Utah State Engineer, which proposes to appropriate water from a source described as the Salt Valley Seeps and located in the above-mentioned county.

This stock-watering facility, which has been mentioned in previous exchanges of correspondence in connection with the proposed extension to the Arches National Monument, was developed under the Federal Drouth Range Development Administration during the period from November 1934 to August 1936, and, in accordance with the provisions of that program, was transferred upon completion to the former Grazing Service for future control, maintenance, and operation. Use of this spring for stock-watering purposes in its natural state dates back to several years before the turn of the century.

Upon the request, and on behalf of livestock operators to whom the continued and unlimited future availability of this important range resource is a matter of vital concern, we have today filed a protest with the Utah State Engineer relative to the approval of this application. Our district range manager indicates that field officials of your Service have offered a proposal whereby the existing privileges relative to this spring will be preserved through the issuance of year-to-year special use permits. It appears that long existing public interest and rights in this facility would be adversely affected by the imposition of such limitations.

An attempt will be made to discuss the matter further with your Mr. Tillotson at the next meeting of the Colorado River-Great Basin Field Committee at Glenwood Springs, Colorado, on June 28-30. After a review of the circumstances, it is hoped that an understanding may be reached whereby the pending application might be amended and our protest withdrawn.

Sincerely yours,

/s/ H. BYRON MOCK
Regional Administrator
By H. F. Van den Veer Acting

06-09-1950: court document: in the matter of application no. 21087 filed by the nps proposing the appropriation of water from salt

COPY

IN THE OFFICE OF THE STATE ENGINEER

STATE OF UTAH

In the matter of Application No. 21087 filed by the United States of America, National Park Service, proposing the appropriation of water from a source known as Salt Valley Seeps, located in Grand County, Utah, and more specifically in the NE¼NW¼ Sec. 30, T. 24 S., R. 22 E., of S. L. B. and M.	Protest of United States of America, Bureau of Land Management, Region IV, on behalf of livestock operators who are licensed by said Bureau to graze livestock on Federal range lands serviced by stock-watering facility in question

The United States of America, by H. Byron Mock, Regional Administrator, Colorado-Utah Region, Bureau of Land Management, Department of the Interior, P. O. Box No. 659, Salt Lake City, Utah, protests the granting of the application referred to in the foregoing title on the following grounds:

1. This spring has been used uninterruptedly as a public stock-watering facility since prior to the year 1900, thereby establishing a diligence right for various livestock operators and their successors in interest, for whose benefit and on whose behalf the United States of America, Bureau of Land Management protests granting of such application.

2. During the period from 1934 to 1936, further development work was done and improvements made at this facility by the Federal Drouth Range Development Service, at a cost of $716.48, and in accordance with the provisions of that program, title to the entire improvement was transferred to the former Grazing Service, now a component agency of the present Bureau of Land Management, for future control, maintenance, and administration.

3. The applicant indicates that existing watering privileges relative to this spring will be preserved by issuance of year-to-year special use permits. Such a proposal is rejected by the protestant on the grounds that if offers no degree of security, as such privileges might be subject to cancellation at any time if approval of the application were granted.

4. The Bureau of Land Management stands ready to withdraw its protest upon amendment of the said application whereby continued and

unlimited future availability of said spring waters will be assured to the Bureau of Land Management and to the livestock operators licensed by it to graze livestock on the Federal range lands serviced by these waters in the past.

I, H. Byron Mock, Regional Administrator, Colorado-Urah Region, Bureau of Land Management, United States Department of the Interior, state that I am the duly authorized representative of the Bureau of Land Management in the Colorado-Utah Region, and that I am duly authorized to file this protest.

(Sgd) H. Byron Mock
Regional Administrator

Subscribed and sworn to before me this _____ day of June, 1950.

NOTARY PUBLIC

My commission expires:

AFFIDAVIT OF USE

We, the undersigned, do solemnly swear that we are well acquainted with that live water known as Salt Valley Spring, located in the NE¼NW¼ of Section 30, Township 24 South, Range 22 East more particularly described as being located South 71° 37' West, 933 feet from North quarter corner of Section 30, Township 24 South, Range 22 East, and that the above described water has been in constant use by livestock since the year of 1900 and prior to that time.

Signed:

/s/ Earl Dalton

/s/ Tom Murphy

/s/ G. O. Patterson

/s/ Albert Maxwell

/s/ Lester Walker

/s/ R. L. Holyoak

Subscribed and sworn to before me this 8th day of May 1950, at Utah State of Utah

/s/ Carroll J. Meador

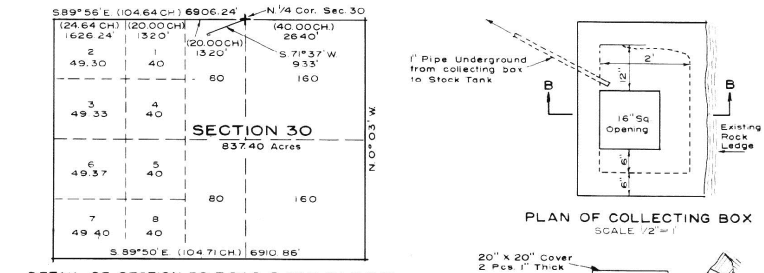
Notary Public
Residing at

My commission expires Dec. 16, 1953

00-00-0000: photograph of livestock watering tank

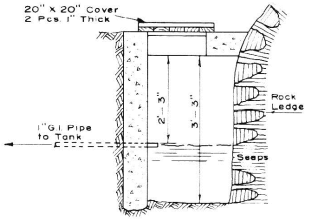


View of Metal Water Trough in Section 30,T.24 S., R. 22E. SLM., Arches National Monument. Tank is approximately 1 foot deep, two feet wide, and 60 feet long. Tank is supported on wooden posts, 2"x6" side rails for protection.

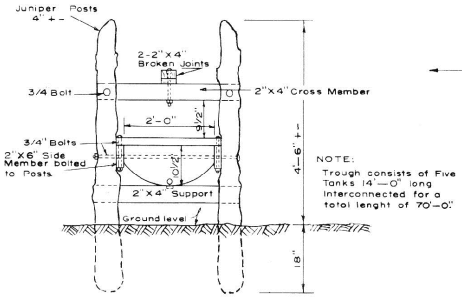


DETAIL OF SECTION 30, T. 24 S. R 22E. S.L.B. & M.
FROM B.L.M. PLAT ACCEPTED JUNE 1, 1932.
SCALE 1" = 2000'

PLAN OF COLLECTING BOX
SCALE 1/2" = 1'

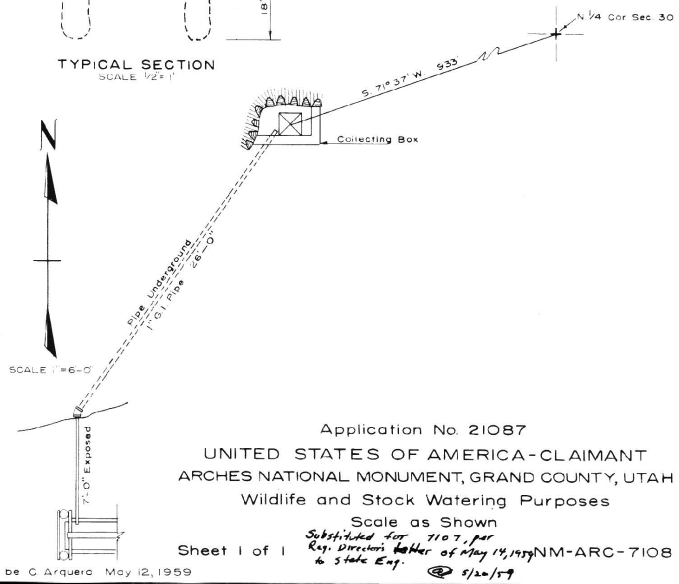


SECTION "BB"
SCALE 1/2" = 1'

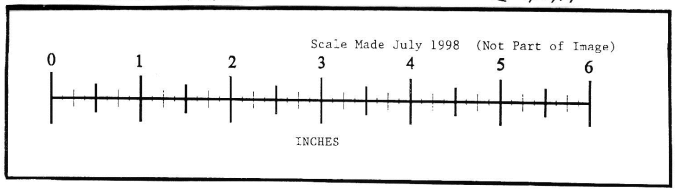


NOTE:
Trough consists of Five Tanks 14'-0" long interconnected for a total lenght of 70'-0"

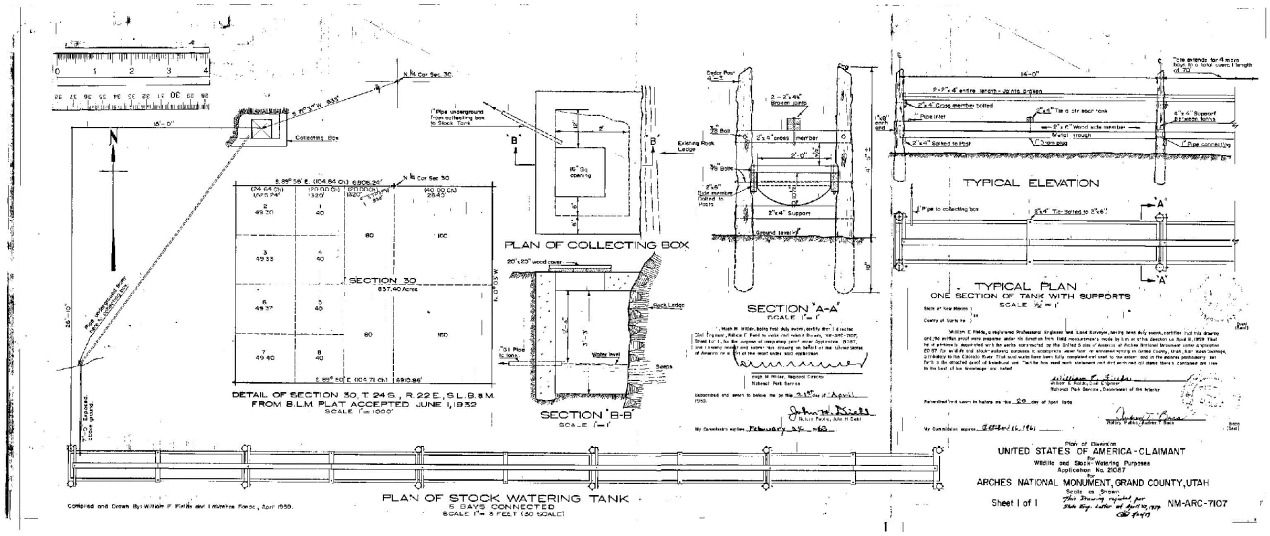
TYPICAL SECTION
SCALE 1/2" = 1'



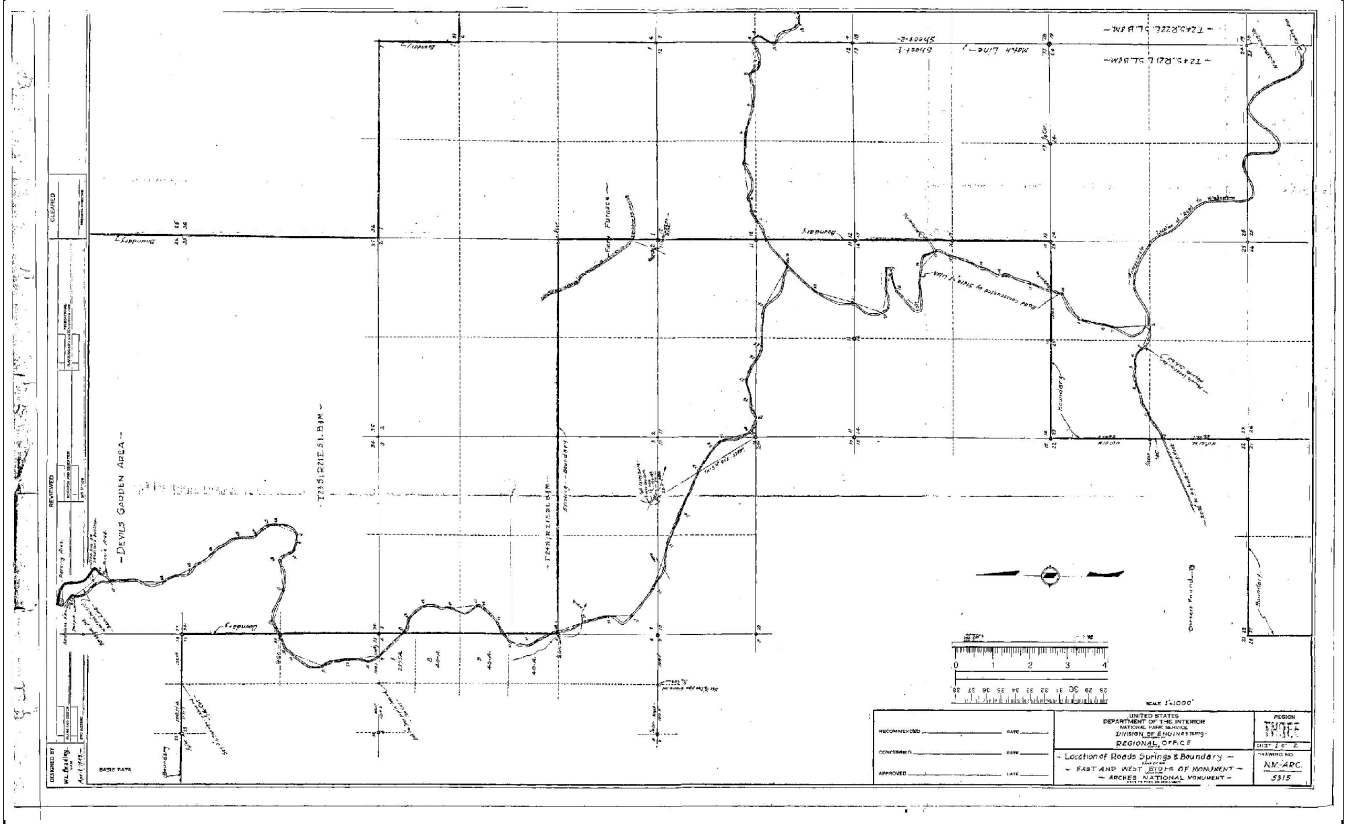
Application No. 21087
UNITED STATES OF AMERICA - CLAIMANT
ARCHES NATIONAL MONUMENT, GRAND COUNTY, UTAH
Wildlife and Stock Watering Purposes
Scale as Shown
Sheet 1 of 1
Substituted for 7107, per Reg. Director's letter of May 14, 1959 to State Eng. 5/20/59
NM-ARC-7108
Drawn be C Arquero May 12, 1959



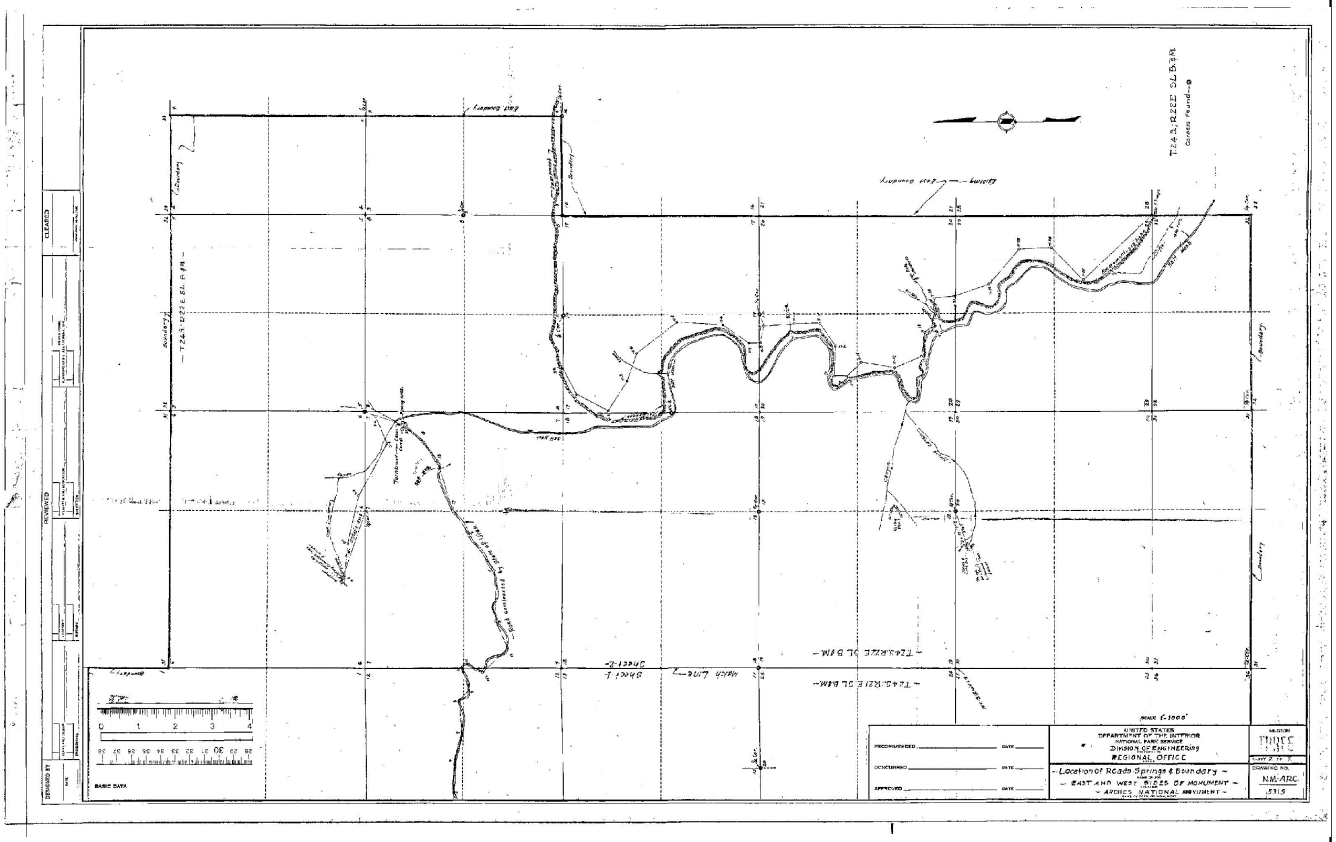
04-21-1959: plan of livestock watering tank



00-00-1959: map of locations of roads, springs, and boundaries



00-00-0000: map of locations of roads, springs, and boundaries



Docket Information

Number of Documents in Docket 179

Documents Dated from 4/24/1942 to 10/28/1991

Docket Compiled: 6/13/2016