WATER-RIGHT DOCKET

Fort Bowie National Historic Site

Docket No: 3

APACHE SPRINGS

Preliminary Docket Information

00-00-0000: conversation log w/ crockett & swan

Conversation Log w/ Crockett & Swan

Date/Time	Discussion
1/2/92 : 1545	Crockett will provide (fax) proposed language to resolve protests on 1/13/92.
1/13/92 (fax)	Crockett faxes proposed language to Hansen/Swan (See FOBO Docket #1)
1/17/92	Swan reviewed proposed changes to agreement - call Crockett to discuss (no contact)
2/2/92 : 1035	Swan calls Hansen - agreement looks fine - Hansen to follow up w/ Crockett.
2/3/92 (fax)	Swan faxes proposed & modified agreement to Hansen & Crockett w/ correction to proposed letter to DWR.
2/21/92 : 0900	Crockett has reviewed language - looks reasonable. Will discuss w/ Carlos (his firm) and determine if protest can be dropped.
8/6/93 : 1000	Crockett will follow up on protest w/ client.
3/25/94 : 1038	Not there - Secretary will have him call (Crockett)
3/28/94 : 1215	Crockett recommended to Carlos that HYL sign agreement. Will respond to the agreement (to Hansen) by 4/1/94.
10/3/95 : 1030	Conf. call w/ Swan (SOL) & Ronstadt (Attorney - HYL) - Will incorporate Maya Language into Permits and HYL will drop protests. Ignored pre-1919 question. Ronstadt - Is Mine Tunnel & Graphite Spr the same spring ? - NO Looking into it
11/2/95: Voice Box	Swan called - saw Ronstadt - Carlos said he would work on FOBO letter next week. He said we could prep. letter from HYL to DWR and have Bill send to Carlos for submittal to DWR

382 4003

Prep. from WRH Day Timer Notes

WATER RESOURCES/WATER RIGHTS DOCKET (FILE) INFORMATION DATE: March 25, 1979

DOCKET (FILE) TITLE FOBO/AWR docket #1, Apache Springs

REGION Western AREA Fort Bowie National Historic Site

SITE Apache Springs

STATE Arizona COUNTY Cochise DOCKET NO AWR #1

LOCATION W½ SW¼ SW¼ NE¼, Sec. 12, T15S, R28E

REGIONAL BASIN LOCAL BASIN

ACQUIRED BY

APPLICATION PERMIT CERTIFICATE

ACTION DUE PRIORITY RESERVATION

QUANTITY USED 10 gpm USE Stockwatering

STATUS Active SOURCE Surface Water

REMARKS Hydrologic Unit #15040006, court action pending

NARRATIVE:

As a part of the private land acquisition within Fort Bowie NHS, pursuant to the Act of August 30, 1964, (78 Stat. 681), Earl J. Neel conveyed 240 acres to the US, reserving the right to use the water from Apache Springs along with a ten foot wide right-of-way for a pipeling to a point east of the Park. In 1969, Neel and the US executed an agreement for the purpose of restoring Apache Spring to its natural state. The agreement specified the Neel relinquish his right to use the spring as well as his easement, and in return the US would provide Neel with 10 gpm. At the time of the agreement the flow from the spring had dropped to about 1½-2 gpm. Neel then transferred his property east of the Park (the Shaffer place) to Apache Springs Cattle Company, including the Apache Springs Water and the pipeline easement. Eventually Elijah Cardon and his brothers became the principals involved with the property.

At the time the Cardons took over the Shaffer ranch, water was delivered to the property from the Mine Tunnel sources east of Apache Spring. The Cardons desired to expand their operation in the area and to do so would have required more water than they were recieving under the Neel Agreement. After several futile attempts to get the U.S. to increase the flow of water to their property the Cardons attempted to use the road running over their property to the Fort (and used by Park Service personnel) as leverage. Again the US refused to capitulate, so in 1976 the Cardons filed an action for a declaration of rights to the Apache Springs area. The Cardons asserted that the US had breached the Neel agreement by its failure to rehabilitate Apache Spring for stckwatering and domestic purposes against the terms of the agreement. The suit also asserted that the agreement with Neel included the Mine Tunnel sources as well as Apache Springs, and that the Cardons had a valid easement and exclusive right to take water form all sources on the tract. The Cardons also asked the court to enjoin further use of the road by the US. The government waived its sovereign immunity in this case and is asserting that there was no breach of the agreement and that the Cardons are entitled only to that flow of water that would be availabe from Apache Spring. The US also disputed the tresnass claim on the grounds the access was actually a public road. The action is currently pending.

(SEE UPDATE ATTACHED) for details of settlement

Outstanding Protests
~~BIA San Carlos Project~~
- HVL

Compiled by T. Kern (1979)

Approved by

WATER RESOURCES/WATER RIGHTS DOC (FILE)INFORMATION DATE: March 16, 1983

DOCKET (FILE) TITLE FOBO/AWR docket #1, Apache Springs

REGION Western AREA Fort Bowie National Historic Site

SITE Apache Springs

STATE Arizona COUNTY Cochise DOCKET NO AWR #1

LOCATION W½ SW¼ SW¼ NE¼, Sec. 12, T15S, R28E

REGIONAL BASIN Colorado LOCAL BASIN Gila

ACQUIRED BY Private Acquisition, Pursuant to the Act of August 30, 1964 (78 Stat 681)

APPLICATION PERMIT CERTIFICATE

ACTION DUE PRIORITY RESERVATION

QUANTITY USED: 10 gpm USE Stockwatering

STATUS Active SOURCE Surface Water

REMARKS Hydrologic Unit #1504006 Court action settled thru Stipulated Agreement

NARRATIVE:

On February 20, 1981, the basics for the proposed settlement were jointly derived at Fort Bowie by Mr. J. Hill, Justice Attornev stationed at Denver, Superintendent Scott, Acting Supt W. Hoy, and W. Werrell, WRO's Division of Water Resources. The NPS felt that the best approach to the water rights suit would be to reach an out of court agreement. For example, if the NPS was successful in the suit Maya would still retain Apache Spring for stockwatering and a right-of-way through the ruins. Therefore, since Maya had no property in the vicinity of Apache Spring, BLM was obligated to provide water to grazing permittees (i.e. Maya), then it was necessary to offer Maya an alternative source of water, here, from the Mine Tunnel Source.

Dr. Mac Collum, Maya Apartments, was contacted to ascertain if he was willing to stipulate to a settlement. He was generally agreeable and participated in the settlement input process. Finally, both sides agreed that it would be in their best interest to settle out of court and avoid the already prolix litigation. This action was also prompted by the Court Order of June 10, 1982, mandating the parties to settle by July 16, 1982, or file a proposed pretrial order with the Court no later than August 5, 1982.

In conclusion, the Settlement Agreement was signed by Dr. M.. MacCollum, representing Maya Apartments, on July 12, 1982, and by Mr. Donald M. Spalding, Acting Regional Director, on October 8, 1982. Subsequently , the US executed a quitclaim deed to Maya for ½ of the water rights from each Mine Tunnel source, and ; Maya executed two quitclaim deeds to the U.S., one for ½ of the water rights from each Mine Tunnel source, the other quitclaim deed conveyed its pipeline right-of-way. The United States District Court, for the District of Arizona, on October 12, 1982, filed a Stipulation for Dismissal & Order with prejudice and without costs to each party.

Note : On March 21, 1983 a final Distribution of all the essential material which helped culminate the settlement was forwarded, for inclusion into FOBO Alien Water Rigths docket #1, to the Superintendent of CHIR, and copies with enclosures were submitted, by c.c.'s, to the General Superintendent of SOAR and to WASO, Divisfon of Air and Water .

Note : All the quitclaim deeds were duly recorded. The original quitclaim deed from the US to Maya was recorded and sent to Dr. MacCollum, and the two quitclaim deeds from Maya to the US were recorded with the originals filed w/ Division of Lands WRO.

Compiled by R. Tapia (1983)

Approved by William D. Reed, Hydrologist Page 1 of 1

United States Department of the Interior

OFFICE OF THE SOLICITOR
Phoenix Field Office
One Renaissance Square
Two North Central
Suite 1130
Phoenix, Arizona 85004-2383

September 11, 1995

Mr. Joe B. Stuart
Surface Water Rights Unit
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004-3903

Re: Applications to Appropriate Water 33-90513 (Mine Tunnel Spring) and 33-95369 (Apache Spring); Fort Bowie National Monument

Dear Mr. Stuart:

This is in response to your letter to the National Park Service dated July 26, 1995 concerning the above-referenced applications. We are working with the Park Service and the protestant in an effort to resolve this matter without a hearing. However, our attention has been diverted on a number of other issues, such as the CAP litigation, and therefore it has been difficult to give this matter the attention it deserves.

I am in contact with the protestant's attorney, Carlos Ronstadt, to see if the protests may be withdrawn. I hope that within the next several weeks we will know whether a hearing will be necessary. I appreciate very much your patience.

Sincerely,

William H. Swan
Field Solicitor

WHS:dmg

cc: Bill Hansen, NPS, Ft. Collins, CO

ARIZONA DEPARTMENT OF WATER RESOURCES
500 North Third Street, Phoenix, Arizona 85004-3903
Telephone (602) 417-2470
Fax (602) 417-2401

July 26, 1995

FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

Mr. Bill Hansen
National Park Service
1201 Oakridge Drive
Fort Collins, CO 80525

Re: Applications for Permit to Appropriate Public Water Nos.
33-90513 (Mine Tunnel Spring) and 33-95369 (Apache Spring); Fort Bowie

Dear Mr. Hansen:

Enclosed is a copy of a letter I have sent to the counsel representing HYL Ranch, the protestant against the two referenced applications. As stated in the letter, I am reviewing protested applications for forwarding to the Department of Water Resources' Hearing Officer for disposition.

I would like, and I am certain both parties would agree, to avoid the unnecessary burden and expense of holding a hearing to resolve this matter. An agreement had already been drafted, in which both parties held to an equitable resolution of the matter regarding access and use of the water out of the springs.

As I have asked the protestant in my letter, I am now asking the National Park Service to resolve this matter.

Yours truly,

Joe B. Stuart
Surface Water Rights Unit

JBS:pr

enclosure

ARIZONA DEPARTMENT OF WATER RESOURCES
Surface Water Rights Unit
500 N. 3rd. Street, Phoenix, Arizona 85004-3903
Telephone (602) 417-2470
Fax (602) 417-2422

FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

June 21, 1995

COPY

Mr. Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004-0001

Re: Applications for Permit to Appropriate Public Water,
Nos. 33-90513 (Mine Tunnel Spring) and 33-95369 (Apache Spring);
National Park Service, Fort Bowie Monument

Dear Mr. Crockett:

I am reviewing the two referenced files, which are protested by your client HYL Ranch, for forwarding to the Department's Hearing Officer for disposition and resolution. I note your letter of June 8, 1994, directed to me, in which you state HYL Ranch has suggested a possible settlement of the protest. Over a year has passed now since your letter.

The question at hand is the access to the water and its use by your client. A settlement was drafted, a copy of which is in file, but was never signed. The Department is concerned that this matter prevailed far too long, given the relatively simple solution to this problem.

As you may be aware, recent legislation enacted into law on March 17th provides that the beneficial user of water located on Federal lands shall hold the water right. This may prove beneficial to your client in that the concern for access and use of the water would be addressed directly by law.

I will be forwarding a copy of this letter to the National Park Service. The Department of Water Resources is urging that both parties resolve this matter at the earliest opportunity. The unnecessary burden and expense of a hearing could be prevented if both parties will address this matter now.

Yours truly,

Joe B. Stuart, Manager
Surface Water Rights Unit

JBS:hs

Bill,

As requested I have tried to summarize below the issue regarding the protests of Application for Permit to Appropriate Public Water, Nos. 33-90513, Mine Tunnel Spring, and 33-95369, Apache Spring for Fort Bowie National Monument.

As you probably recall, Crockett faxed you and I a draft letter to Joe Stuart dated 1/13/92 which proposed language to settle the protests for both Apache and Mine Tunnel Springs. We both reviewed the language and made the following changes on page 2: Second sentence of paragraph three - we do not acknowledge that the NPS is obligated to satisfy HYL's water needs before we are entitled to water from Apache Springs - the 1982 Maya agreement does not state this. Third sentence of paragraph three - Insert "for the purposes identified in the NPS application and" in item (1) after ...issued to the NPS for. The remainder of the document appeared satisfactory.

At that time you had some concerns about their mention of pre-1919 water rights and felt it might be beneficial to both parties if we addressed HYL's concerns in a supplemental agreement to the 1982 Maya Agreement. In response, you prepared a draft Agreement which was sent to Crockett on 2/3/92. No response was ever received from Crockett.

It appears to me that Carlos is concerned about assigning HYL's pre-1919 water rights to the NPS. I do not understand this. On page 2 of his 5/19/94 letter to Owen (attached) he states that "it is an invalid attempt to assign a portion of a pre-1919 water right to the Park Service for use on lands on which such waters historically were not used before 1919". It is my interpretation that the NPS was assigned a share of both Apache and Mine Tunnel Springs in the 1982 Maya Agreement by the predecessor-in-interest to HYL, despite the date of first use. HYL does not receive any proprietary use of the waters by filing a pre-1919 water right in my opinion. In fact, by signing the supplemental agreement, HYL receives assurances that the NPS will not protest their pre-1919 right which may or may not have been abandoned over the years. Do you understand his concern?

I also do not understand Carlos's concerns about HYL forfeiting or abandoning its water rights by "it willingness to relinquish to the Park Service a portion of the waters that its predecessors-in-interest appropriated from Mine Tunnel Spring and Apache Spring". I do not believe HYL forfeits or abandons its water rights by assigning its pre-1919 water rights to the NPS. In fact, the 1982 Maya Agreement does not differentiate between pre- and post-1919 water rights - it only distributes water to the two parties. Do you understand his concern?

I have tried to call Carlos and we keep missing each other. I believe it would be best if you talked to him and tried to resolve the issue. Please call me if you have any questions or need any information. Thanks for your help.

Bill Hansen

OPTIONAL FORM 99 (7-90) Post 5/10/94 8/9/95

FAX TRANSMITTAL # of pages ► 20

To Bill Swan	From Bill Hansen
Dept./Agency SOL - Phoenix	Phone # (303) 225-3532
Fax # 602 379-4127	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Snell & Wilmer
LAW OFFICES

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Phoenix, Arizona 85004-0001
(602) 382-6000
Fax: (602) 382-6070

PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
SALT LAKE CITY, UTAH

June 8, 1994

Mr. Joe B. Stuart, Manager
Surface Water Rights Systems
Arizona Department of Water Resources
15 South Fifteenth Avenue
Phoenix, Arizona 85007

Re: National Park Service Application for Permit to Appropriate Public Water Nos. 33-90513 (Mine Tunnel Spring) and 33-95369 (Apache Spring)

Dear Joe:

On May 19, 1994, Carlos Ronstadt responded by letter to your letter dated April 21, 1994, inquiring as to the status of efforts by the HYL Ranch and the National Park Service to resolve HYL's protests over the above-referenced applications. As set forth in Mr. Ronstadt's letter, we have responded to the April 7, 1994, letter you received from Owen Williams of the National Park Service, and we are presently attempting to negotiate a resolution of the protests short of a hearing.

By letter to the National Park Service, we have suggested a possible settlement of the HYL protests. Once we have received a response from the National Park Service, we will be better able to assess the necessity of a hearing.

If you have additional questions, please contact me at 382-6234.

Sincerely yours,

SNELL & WILMER

Jeffrey W. Crockett

JZC:gdb
cc: James E. Warne, Jr., HYL Ranch
Carlos Ronstadt, Esq.
Owen R. Williams, NPS
Bill Hanson, NPS

PHX4:CROCKEJ / 4045043.

Member: LEX MUNDI, an international association of independent law firms with members in the United States and 60 countries throughout the world.

Snell & Wilmer
LAW OFFICES

One Arizona Center
Phoenix, Arizona 85004-0001
(602) 382-6000
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PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
SALT LAKE CITY, UTAH

Carlos D. Ronstadt (602) 382-6355

May 19, 1994

Mr. Joe B. Stuart, Manager
Surface Water Rights Systems
Arizona Department of Water Resources
15 South Fifteenth Avenue
Phoenix, Arizona 85007

Re: Applications for Permit to Appropriate Public Water: Nos. 33-90513, Mine Tunnel Spring, and 33-95369, Apache Spring

Dear Joe:

I am sending you this short letter to tell you that I have sent a response to the April 7, 1994, letter addressed to you from Owen R. Williams, Chief, Water Rights Branch, National Park Service in Ft. Collins, Colorado.

As you know, I do not routinely copy your department with documents that evidence the course of negotiations between an applicant for a permit to appropriate water, and those who file protests to the granting of the same. Thus, at this time, I do not intend to copy you with any of the correspondence pertinent to the resolution of the protests to the above-referenced applications that were filed by my client, HYL Ranch Properties and Jim Warne, Jr. Like you, however, I hope that this matter can be resolved short of a hearing.

As always, I will keep you advised as to the status of this matter.

Sincerely yours,

SNELL & WILMER



Carlos D. Ronstadt

CDR:gdb
cc: James E. Warne, Jr.
Owen R. Williams

PHX4:RONSTAC / 4043446.

NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
WATER RIGHTS BRANCH
FORT COLLINS, COLORADO
FAX #: (303) 225-9965
VERIFICATION #: (303) 225-3506

DATE 5/24/94

TO
NAME Bill Swan **GROUP** SOL

CITY, STATE _____ **MAIL CODE** _____

OFFICE PHONE _____

FAX NUMBER 602 379-4127 **VERIFICATION** _____

FROM
NAME Bill Hansen **GROUP** NPS

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 3

SPECIAL INSTRUCTIONS Bill -- Letter from Ronstac as discussed on the phone. Please review & call me. What is Carlos's concern about pre-1919 rights - do you understand them? Can we settle the protest using the 1/13/92 language? Bill

CONFIDENTIALITY NOTICE
This facsimile transmission (and/or documents accompanying it) may contain confidential information belonging to the sender. The information is intended only for the use of the individual or entry name above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange the return of the document.

Receipt Verified By _____ Date _____ Time _____

Snell & Wilmer
LAW OFFICES

One Arizona Center
Phoenix, Arizona 85004-0001
(602) 382-6000
Fax: (602) 382-6070

PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
SALT LAKE CITY, UTAH

Carlos D. Ronstadt (602) 382-6355

May 19, 1994

Mr. Owen R. Williams
Chief, Water Rights Branch
United States Department of Interior
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

Re: Applications for Permit to Appropriate Public Water: Nos. 33-90513, Mine Tunnel Spring, and 33-95369, Apache Spring

Dear Mr. Williams:

This will acknowledge the receipt of a copy of your letter dated April 7, 1994, to Joe B. Stuart, Manager, Surface Water Rights Systems, Arizona Department of Water Resources ("DWR"), about the above-referenced application. As you may remember, in that letter, you asked DWR to resolve the protests filed by my client, HYL Ranch Properties ("HYL Ranch"), to the granting of the above-referenced applications by DWR. With your letter to Stuart, you also enclosed draft correspondence and a draft agreement ("Supplemental Agreement") to supplement the terms of an earlier agreement dated October 8, 1982, between the Park Service and Maya Apartments, the predecessor-in-interest to HYL Ranch Properties. Neither the draft correspondence or the draft Supplemental Agreement had been approved by my client.

Over the past few days, I have reviewed these drafts and copies of the applications, protests and related water rights filed by both the Park Service and HYL Ranch. I would be willing to recommend to my client that it agree to the resolution of its protests in the manner outlined in the unsigned letter to Joe Stuart, dated January 13, 1992, as drafted by Jeffrey W. Crockett, also of this law firm.

At this point in time, however, I am not certain that HYL Ranch and the U.S. Park Service should enter into any Supplemental

PHX4:RONSTAC / 4043462.

Williams protest?

Snell & Wilmer

Agreement to clarify, amend or otherwise supplement the terms of the October 8, 1982, agreement between Maya Apartments and the Park Service. I have reviewed the Supplemental Agreement and, in my judgment, it is an invalid attempt to assign a portion of a pre-1919 water right to the Park Service for use on lands on which such waters historically were not used before 1919. This legal technicality should not interfere with the relative rights of HYL Ranch and the Park Service, as set forth in the October 8, 1982, agreement. It would, however, create a substantial risk that the pre-1919 water right claim asserted by HYL Ranch will be lost through forfeiture or abandonment in light of its willingness to relinquish to the Park Service a portion of the waters that its predecessors-in-interest appropriated from Mine Tunnel Spring and Apache Spring. I do not believe that either HYL Ranch or the Park Service should have any desire to address this type of argument.

In any event, please review the supplemental agreement that was attached to your letter to Joe Stuart, and then call me with your thoughts about the need for such a document. I look forward to hearing from you soon.

Sincerely yours,

SNELL & WILMER

Carlos D. Ronstadt

CAR:gdb
cc: Jim Warne

PHX4:RONSTAC / 4043462.

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1581
Fax (602) 542-3383

COPY

April 21, 1994

FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

Mr. Jeffrey W. Crockett
Snell and Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073-3100

Re: Applications for Permit to Appropriate Public Water;
No. 33-90513, Mine Tunnel Spring, and No. 33-95369, Apache Spring;
National Park Service, Bowie Monument

Dear Mr. Crockett:

Enclosed for your reference is a copy of a letter I have received from the National Park Service regarding the two referenced appropriations applications protested by your client, Hyl Ranches. In their letter to me the National Park Service is requesting that the Department resolve these outstanding protests.

Before beginning any hearing process, which would be costly and time consuming for all parties concerned, I would like to give you and your client the opportunity to conclude this matter on terms apparently agreed to by both parties, as evidenced by draft documents, copies of which are also included.

I am encouraged that at least both parties have been attempting resolution. The Department would appreciate any effort you could devote to resolving this matter as soon as possible. In order to proceed with due diligence in this matter, I am requesting that you provide to me in writing within 30 days from the date of receipt of this letter yours and your client's thoughts or other considerations as to resolving this matter.

Your immediate attention to this matter would be appreciated.

Yours truly,

Joe B. Stuart, Manager
Surface Water Rights Section
Operations Division
Tel. (602) 542-1581

JBS:hs
enclosures
c: National Park Service

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525

IN REPLY REFER TO:

April 7, 1994

L54(479)
FOBO/Water Rights

Mr. Joe B. Stuart
Manager, Surface Water Right Systems
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Re: Applications for Permit to Appropriate Public Water, Nos. 33-90513, Mine Tunnel Spring, and 33-95369, Apache Spring

Dear Mr. Stuart:

As you know, the above referenced applications are still under protest. Since your letter dated August 14, 1991, the National Park Service (NPS) has tried to resolve the protests with Jeff Crockett, attorney with the firm of Snell and Wilmer, representing the HYL Ranch Properties (HYL), the protestant.

As suggested in your letter, Bill Hansen, of my staff, in consultation with Bill Swan, Office of the Solicitor, contacted Crockett and verbally agreed (in a phone conversation on January 2, 1991) to prepare language which would include the terms agreed to in a October 8, 1982 "Agreement Concerning Water Rights to the Mine Tunnel Water Sources and Related Matters" between Maya Apartment (predecessor in interest to HYL) and the NPS.

This resulted in the proposed language found in the enclosed draft letter to Joe B. Stuart from Jeffrey W. Crockett. Bill Swan reviewed the language and prepared a Draft Agreement Between the National Park Service and HYL (enclosed Draft dated February 2, 1992). Based upon subsequent conversations between Crockett and Hansen on February 21, 1992, August 6, 1993, and March 28, 1994, it is our understanding that Crockett has recommended that HYL sign the agreement prepared by Swan.

To date, the NPS has not received a written response from Crockett or HYL regarding the Draft Agreement. As indicated above, we have diligently contacted HYL in an attempt to resolve these protests. It is our preference that this matter be resolved through the proposed Agreement. However, given the amount of time the NPS has invested in resolving

this matter and the lack of progress, the NPS is requesting that the Arizona Department of Water Resources (ADWR) settle these protests as proposed in your letter dated August 14, 1991.

If you have any questions regarding documentation of our efforts or our request that ADWR resolve the protest please contact Bill Hansen at (303) 225-3532.

Owen R. Williams
Chief, Water Rights Branch

Enclosures

cc: FOBO - Anderson
SOAR - Davis
WR - Kolipinski
SOL - Swan
Jeff Crockett

NATIONAL PARK SERVICE

WATER RESOURCES DIVISION

WATER RIGHTS BRANCH

FORT COLLINS, COLORADO

FAX NUMBER: (303) 493-1441 ext. 27

VERIFICATION NUMBER: (303) 493-1441

DATE: 2/10/92

FROM: Bill Hansen — GROUP: Water Rights Branch

TO: Mietek Kolipinski — GROUP: WASO / WR

CITY, STATE: San Fran — MAIL CODE: _____

OFFICE PHONE: 415-744-3959

FAX NUMBER: 415-744-3932 — VERIFICATION: yes

sent @ 11:50 A.M.

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 6

SPECIAL INSTRUCTIONS:

* Phone Conversation w/ Mietek (2/10/92) @ 1500: Agreement looks fine. Reg. Director appropriate signee. Send in memo for signature when done.

Receipt verified by: Bernadette Time: 12:34 2/10/92

NATIONAL PARK SERVICE

WATER RESOURCES DIVISION

WATER RIGHTS BRANCH

FORT COLLINS, COLORADO

FAX NUMBER: (303) 493-1441 ext. 27

VERIFICATION NUMBER: (303) 493-1441

DATE: 2/7/92

FROM: Bill Hansen — GROUP: Water Rights Branch

TO: Miatek Kolipinski — GROUP: WR

CITY, STATE: _____ — MAIL CODE: _____

OFFICE PHONE: (415) 744-3959

FAX NUMBER: (415) 744-3932 — VERIFICATION: yes

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 7

SPECIAL INSTRUCTIONS:

Miatek - Here is the draft agreement re: water rights at Ft. Bowie. Please call me w/ comments. Is the Reg. Dir. the appropriate person to sign the agreement??

Bill

sent 2:19pm 2/7

Receipt verified by: Bernadette Time: 2:49

02-03-1992: fax to nps from office of the solicitor regarding comments on the proposed agreement

FEB-03-1992 13:31 FROM TO 8-303-4931441 P.01

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
PHOENIX FIELD OFFICE
One Renaissance Square
Two North Central Avenue
Suite 500
Phoenix, Arizona 85004

COMM. (602) 379-4756
(602) 379-4127
FTS: 261-4756
FAX: 261-4127

FAXOGRAM

DATE: 2/3, 1992 # OF PAGES: 6 (includes coversheet)

TO: Bill Hansen
National Park Service

FROM: Bill Swan

MESSAGE:
Give me your comments on the proposed agreement. I'm sending to you what I sent to Jeff Crockett.

SENT BY: Bill Swan

02-03-1992: fax to nps from office of the solicitor regarding comments on the proposed agreement

FEB-03-1992 13:32 FROM TO 8-303-4931441 P.02

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
PHOENIX FIELD OFFICE
One Renaissance Square
Two North Central Avenue
Suite 500
Phoenix, Arizona 85004

COMM. (602) 379-4756
(602) 379-4127
FTS: 261-4756
FAX: 261-4127

FAXOGRAM

DATE: 2/3/92, 1992 # OF PAGES: 5 (includes coversheet)

TO: Jeff Crockett

FROM: Bill Swan

MESSAGE: Please provide your comments on the Attached draft agreement. Also, I am FAXing the correction we'd like to see in your letter to OWR. Thanks.

SENT BY: Bill Swan

1: Agreement

DRAFT

AGREEMENT
Between the National Park Service
And HYL Ranch Properties

1. This agreement is between the National Park Service, through the Regional Director of the Western Region, and HYL Ranch Properties, through James Warne.

2. The purpose of this agreement is to supplement and clarify the agreement dated October 8, 1982, between the National Park Service and Maya Apartments, the predecessor in interest to HYL Ranch Properties, and to resolve certain matters concerning water rights claims by HYL and water rights applications by the National Park Service.

3. HYL has filed pre-1919 priority claims to the subject springs on the basis of historical beneficial use. HYL desires to maintain those claims, in a manner consistent with the 1982 Maya Apartments agreement, and therefore desires to have the National Park Service agree to not oppose or otherwise challenge those water rights claims.

4. The National Park Service has filed water right applications with the Department of Water Resources (DWR) for the subject springs (referred to in the 1982 Maya Apartments agreement as Apache Springs and Mine Tunnel water sources). The National Park Service desires to have HYL withdraw its protests against the subject water right applications so that DWR may approve the applications.

Accordingly, the parties agree as follows:

5. The National Park Service and HYL agree that the 1982 Maya Apartments agreement remains in full force and effect,

except as amended and clarified herein, and that the parties are bound by that agreement in regard to the subject water sources.

6. So as to facilitate the validity of the HYL pre-1919 priority date claims, the National Park Service and HYL agree that the 1982 Maya Apartments agreement shall be construed to include an assignment by HYL to the National Park Service of any interest HYL has, under the pre-1919 claims, to that portion of the water sources committed to the National Park Service in the 1982 Maya Apartments agreement. HYL agrees that its water right adjudication claims shall be amended to reflect that the National Park Service and HYL will be co-claimants for those water right claims, all in accordance with the terms of the 1982 Maya Apartments agreement.

7. The National Park Service agrees that it will not take action to oppose or challenge the pre-1919 claims of HYL to the water sources addressed in the 1982 Maya Apartments agreement. When the National Park Service becomes a co-claimant with HYL as to the pre-1919 claims, HYL agrees to provide to the National Park Service whatever evidence it has to support those claims, including evidence on matters such as the continuous nature of use and the type of use. The agreement of the National Park Service in this paragraph shall not be construed to bind the United States government in its entirety.

8. HYL agrees that it will withdraw, within 15 days of the date of this agreement, the protests HYL has submitted against the applications to appropriate water under state law

filed by the National Park Service on the subject water sources. To the extent necessary, HYL agrees to cooperate to assist the National Park Service in having the subject water rights applications approved by the Arizona Department of Water Resources (DWR). Both parties recognize that the National Park Service will attempt to have the subject water right applications approved even though it may at the same time seek to perfect its portions of the pre-1919 claims originally advanced by HYL. If the pre-1919 claims are eventually recognized in a judicial proceeding, the National Park Service may take action to nullify any water rights certificates granted by DWR, if such action is deemed appropriate by the National Park Service and DWR.

NATIONAL PARK SERVICE

Date: _____ By _____
Regional Director
Western Region NPS

HYL RANCH PROPERTIES

Date: _____ By _____
James Warne
General Partner

in interest of HYL) filed Adjudication Claim No. 39-62005 for the 19.4 acre-feet on October 21, 1985.

On October 8, 1982, the NPS and the Maya Apartments (predecessor in interest to HYL) entered into an agreement wherein the Maya Apartments was limited to the withdrawal of "that amount of Apache Spring water needed to sustain the number of livestock as permitted under the terms of the Bureau of Land Management/National Park Service grazing allotment with the carrying capacity as determined by the Bureau of Land Management." The right to use the remainder of the water from Apache Spring belongs to the United States.

The NPS has acknowledged that it is bound by the Maya Agreement to provide that quantity of Apache Spring Water necessary to sustain the HYL livestock permitted by the BLM. The NPS has also acknowledged that it must satisfy this obligation to HYL before it is entitled to any water from Apache Spring. Therefore, we would recommend to HYL that it withdraw its protest of Application to Appropriate Public Waters No. 33-95369 if the permit issued by the Department: (1) states that it is issued to the NPS for and on behalf of the grazing permit allottees; and (2) specifically references the relevant language of the Maya Agreement, stating as follows:

> Pursuant to the provisions of the "Agreement Concerning Water Rights to the Mine Tunnel Water Sources and Related Matters" between the NPS and the Maya Apartments dated October 8, 1982, HYL Ranch Properties or any subsequent grazing permit allottee shall be entitled to that amount of Apache Spring water needed to sustain the number of livestock permitted under the terms of the Bureau of Land Management/National Park Service grazing allotment with the carrying capacity as determined by the Bureau of Land Management.

the purposes identified in the NPS application

Department of the Interior
Office of the Solicitor
Phoenix Field Office
One Renaissance Square
Two North Central Avenue,
Suite 500
Phoenix, AZ 85004

COMM.: # (602) 379-4756
FTS: # 8-261-4756
FAX: # Comm. 379-4127

Date: 1/14/92

To: Bill Hansen
NPS - Ft. Collins, Colo.

From: Bill Swan

[✓] for your information
[ ] retention
[ ] further disposition
[ ] necessary action
[ ] comment
[ ] as requested
[ ] return

Message:

Snell & Wilmer
382-6000

SNELL&WILMER TEL:602-257-7864 Jan 13,92 15:58 No.043 P.01

4⁰⁰
Time In

LAW OFFICES
SNELL & WILMER

Time Out

3100 Valley Bank Center
Phoenix, Arizona 85073-3100
(602) 257-7211

FACSIMILE REQUEST FORM

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE

TO:	FACSIMILE NUMBER:
1. BILL SWAN	379-4127
2. BILL HANSEN	379-4127
3.	
4.	
5.	

FROM: JEFF CROCKETT

CONFIRMATION NUMBER (IF REQUIRED): 379-4756

NUMBER OF PAGES: 5 **(INCLUDING COVER PAGE)**

REMARKS:

IF YOU HAVE NOT PROPERLY RECEIVED THE FACSIMILE
PLEASE CALL US AT (602) 495-2136
OUR FAX NUMBER IS (602) 257-7864

DATE 1/13/92 **CLIENT MATTER NUMBER** 95004.0005

REQUESTER/ATTORNEY JWC **EXTENSION** 5947

PLEASE RETURN TO: JEFF CROCKETT (NAME) 30W (LOCATION)

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVELEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

DRAFT

January 13, 1992

Direct Line: 257-5947

Mr. Joe B. Stuart
Section Manager, Operations
ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

Re: National Park Service Applications for Permits to Appropriate Public Water Nos. 33-90513 (Mine Tunnel Springs) and 33-95369 (Apache Spring)

Dear Mr. Stuart:

As you know, our firm represents Mr. James Warne, Jr., and his company, HYL Ranch Properties (collectively "HYL"), in their protest of the above-referenced applications to appropriate public water filed by the National Park Service ("NPS"). On August 14, 1991, you sent me a letter recommending that HYL's protests be resolved by incorporating the terms of a 1982 agreement known as the Maya Agreement into any permits issued to the NPS by the Department. I have discussed your proposal with HYL and the NPS and I believe that both are agreeable to your recommended solution, provided that the permits include the terms set forth below.

Apache Spring (33-95369)

On June 28, 1979, Cardon Investments (predecessor in interest to HYL) filed Pre-1919 Claim No. 36-24155 for 19.4 acre-feet of water from Apache Spring to be used for stockwatering and domestic purposes on the HYL Ranch. The claimed priority date is 1900. Subsequent to the filing of the pre-1919 claim, M.S. MacCollum (another predecessor

in interest of HYL) filed Adjudication Claim No. 39-62005 for the 19.4 acre-feet on October 21, 1985.

On October 8, 1982, the NPS and the Maya Apartments (predecessor in interest to HYL) entered into an agreement wherein the Maya Apartments was limited to the withdrawal of "that amount of Apache Spring water needed to sustain the number of livestock as permitted under the terms of the Bureau of Land Management/National Park Service grazing allotment with the carrying capacity as determined by the Bureau of Land Management." The right to use the remainder of the water from Apache Spring belongs to the United States.

The NPS has acknowledged that it is bound by the Maya Agreement to provide that quantity of Apache Spring Water necessary to sustain the HYL livestock permitted by the BLM. The NPS has also acknowledged that it must satisfy this obligation to HYL before it is entitled to any water from Apache Spring. Therefore, we would recommend to HYL that it withdraw its protest of Application to Appropriate Public Waters No. 33-95369 if the permit issued by the Department: (1) states that it is issued to the NPS for and on behalf of the grazing permit allottees; and (2) specifically references the relevant language of the Maya Agreement, stating as follows:

> Pursuant to the provisions of the "Agreement Concerning Water Rights to the Mine Tunnel Water Sources and Related Matters" between the NPS and the Maya Apartments dated October 8, 1982, HYL Ranch Properties or any subsequent grazing permit allottee shall be entitled to that amount of Apache Spring water needed to sustain the number of livestock permitted under the terms of the Bureau of Land Management/National Park Service grazing allotment with the carrying capacity as determined by the Bureau of Land Management.

Mine Tunnel Springs (33-90513)

On June 28, 1979, Cardon Investments (prececessor in interest to HYL) filed Pre-1919 Claim No. 36-24153 for 6.5 acre-feet of water from the Lower Mine Tunnel Spring and Claim No. 36-24154 for 6.5 acre-feet of water from Upper Mine Tunnel Spring. (Water from Upper Mine Tunnel Spring is commingled with water from Lower Mine Tunnel Spring and is piped to the HYL Ranch headquarters for domestic and stockwatering uses). Subsequent to the filing of these two pre-1919 claims, M.S. MacCollum (another predecessor in interest to HYL) filed Adjudication Claim No. 39-61999 for waters from the two Mine Tunnel Springs on October 21, 1983.

As set forth above, the NPS and the Maya Apartments entered into a water agreement wherein the parties agree to "share equally in the use and right to use each of the two Mine Tunnel water sources." The NPS acknowledges that it is bound by the Maya Agreement to divide the water from the Mine Tunnel Springs with HYL equally up to the amount of the NPS' share. The NPS is limited under the terms of its Application to Appropriate Public Water No. 33-90513 to a maximum annual withdrawal of 1,313,180 gallons per year. Therefore, HYL and the NPS divide the water equally from the two Mine Tunnel Springs up to the point that the NPS has received its full entitlement of 1,313,180 gallons, at which point the NPS has no further interest or right to water from the Mine Tunnel Springs.

Therefore, we would recommend to HYL that it withdraw its protest of Application to Appropriate No. 33-90513 if the permit issued by the Department: (1) includes HYL as a co-permittee; and (2) specifically references the relevant terms of the Maya Agreement, stating as follows:

> Pursuant to the terms of the "Agreement Concerning Water Rights to the Mine Tunnel Water Sources and Related Matters" between the NPS and the Maya Apartments dated October 8, 1982, the NPS and HYL agree to share the water from the Mine Tunnel Springs equally,

but in no event shall the NPS' withdrawal of water exceed 1,313,180 gallons per annum.

I have provided a draft copy of this letter to Mr. Bill Hansen of the NPS and I believe that he is agreeable to the terms set forth herein. Therefore, if the Department will include these terms in any permits issued to the NPS, we will recommend to HYL that it withdraw its protest of the two Applications to Appropriate Public Waters. If the terms set forth herein are not included in the issued permits, HYL will not withdraw its protests.

As always, if you have any questions regarding the matters discussed herein, please contact me at the direct line listed above.

Very truly yours,

SNELL & WILMER

Jeffrey W. Crockett

cc: Mr. James Warne, Jr., HYL Ranch Properties
Mr. Bill Hansen, National Park Service

2877M

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1553
Fax (602 256-0506

FIFE SYMINGTON
Governor

ELIZABETH ANN RIEKE
Director

January 23, 1992

Mr. Bill Hansen
National Park Service
301 South Howes Street
Fort Collins, Colorado 80521

Re: Application for Permit to Appropriate Public Water No. 33-95369

Dear Mr. Hansen:

Enclosed please find a copy of a letter withdrawing the protest submitted by the San Carlos Irrigation Project against the referenced application.

However, there is one remaining protest still outstanding against the referenced application.

The Department is still requiring a resolution of the protest and would appreciate your cooperation in this matter. A reminder that a copy of any correspondence to the protestant must also be sent to the Department for inclusion in the official record.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:mg

Enclosure

cc: San Carlos Irrigation Project

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
SAN CARLOS IRRIGATION PROJECT
P.O. Box 250
Coolidge, Arizona 85228

RECEIVED
JAN 15 1992
OPERATIONS DIV.

IN REPLY REFER TO:

JAN 13 1992

Mr. Joe B. Stuart, Manager
Surface Water Division/Adjudication
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Subject: Application for Permit to Appropriate
Public Waters No. 33-95369

Dear Mr. Stuart:

By letter of June 13, 1990, the San Carlos Irrigation Project filed a protest to the subject application. We have discussed the application with a representative of the National Park Service and our understanding is that the application is for instream flow of 0.015 cubic feet per second average monthly flow and a consumptive use of about 1 acre-feet per year. We do not view the instream flow amount, 10.4 acre-feet per year, as a consumptive use amount.

It is also our understanding that the application by the National Park Service is to perfect an existing water use under Arizona State law rather than an application for a "new" water use.

Based on these understandings, the San Carlos Irrigation Project hereby withdraws its protest to the subject application.

Sincerely,

Acting Project Engineer

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1553
Fax (602 256-0506

August 14, 1991

FIFE SYMINGTON
Governor

ELIZABETH ANN RIEKE
Director

Mr. Bill Hansen
National Park Service
301 S. Howes Street
Fort Collins, Colorado 80521

Re: Applications for Permit to Appropriate Public Water,
Nos. 33-90513, Mine Tunnel Spr., and 33-95369, Apache Spr.

Dear Bill:

The two referenced applications are still under protest status. I just received correspondence from the firm of Snell and Wilmer, representing the HYL Ranch, reaffirming their protest against your application for Mine Tunnel Spring.

In reviewing these two files, I see that a 1982 agreement between the National Park Service and the predecessors-in-interest of HYL Ranch, namely Maya Apartments, stipulated to the use of the waters of both springs. I am enclosing a copy of the agreement for your reference.

I would like to see both parties proceed with due diligence in resolving this matter. To this extent, I am offering to include in the issued permits for these applications the terms agreed to by both parties in 1982. Specifically for Mine Tunnel Spring the permit could state that the limit of National Park Service's appropriation out of the spring would never exceed one-half the available flow, but in no instance would the appropriation exceed 1,313,180 gallons per annum, even if more water were available. For Apache Spring, the permit could state the agreement's provisions of allowing sufficient water to flow to the two referenced stockponds or watering troughs to meet the needs of the cattle allowed to graze on the allotment under terms of the carrying capacity of the specific range, as determined by the Bureau of Land Management.

I realize that you must forward this letter on to the Field Solicitor for consideration, but I would like to see a conclusion of this matter as soon as possible. The existence of a prior agreement on the use of the waters from the two springs does provide grounds for resolving this conflict.

I urge your utmost cooperation in responding to my suggestion.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:asm

Enclosure

United States Department of the Interior

NATIONAL PARK SERVICE
Chiricahua National Monument
Dos Cabezas Route Box 6500
Willcox, Arizona 85643

IN REPLY REFER TO:

L54

June 10, 1991

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

(602) 542-1581
FAX 256-0506

Dear Mr. Stuart:

In reply to your letter of May 16, 1991 to Bill Hansen, National Park Service, Fort Collins, I have enclosed the requested Affidavit of Posting Notice. It is for Apache Spring in Fort Bowie National Historic Site, regarding Application for Permit to Appropriate Public Water No. 33-95369.

If you have any questions please contact Resource Management Specialist Dick Anderson at (602) 824-3560.

Walter Saenger
Acting Superintendent

Enclosure

cc:
Owen Williams,
Branch Chief, Water Rights Branch, Water Resources Division
Kathy Davis,
Resource Management Specialist, Southern Arizona Group
Mietek Kolipinski,
Water Resources Coordinator, Western Regional Office

ARIZO DEPARTMENT OF WATER RES. .RCES
15 South 15th Avenue
Phoenix, Arizona 85007

AFFIDAVIT OF POSTING NOTICE

STATE OF ARIZONA)
) ss.
County of COCHISE)

APPLICATION TO APPROPRIATE NO. 33-95369

William S. Litzinger, being first duly sworn, states that two copies of the Notice of Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-95369, a copy of which is hereto attached, were posted on the 28TH day of JANUARY, 19 91, at:

1. BOWIE, ARIZONA POST OFFICE.

2. CHIRICAHUA NATIONAL MONUMENT VISITOR CENTER.

Each of the notices was posted in a conspicuous place in the locality to be affected by the proposed appropriation of water and remained posted for thirty consecutive days ending on the 28TH day of MARCH, 19 91.

William S. Litzinger
Affiant

Subscribed and sworn to before me this 10 day of June, 19 91.

Dorothy C. Scrivner
Notary Public

My commission expires:
Feb 14, 1992

DWR 33-08-8/88

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

NOTICE OF APPLICATION TO APPROPRIATE WATER

On the 3rd day of October, 19 89, National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102

filed Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-95369.
The application states:

1. Source of water Apache Spring, a tributary of the San Simon River, a tributary of the Gila River.

2. Proposed use and amount 388,950 gallons per annum for stockwatering, 10.4 acre feet per annum for recreation (based on a 0.015 cubic feet per second average monthly flow.), and 6,510 gallons per annum for wildlife.

3. Point of diversion SW¼ SW¼ NE¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

4. Place(s) of use SW¼ SW¼ NE¼ and SW¼ SE¼ NW¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

5. Description of dam and reservoir N/A.

Other:
SEE MAP ON REVERSE SIDE

Any person whose water rights may be affected may, within sixty days of the issuance of this Notice, file a written protest to the application with the Arizona Department of Water Resources, 15 South 15th Avenue, Phoenix, Arizona 85007. The protesting party shall send a copy of the protest to the applicant. The protest shall state:

1. The name and address of the protesting party.
2. The location of the protesting party's point of diversion of water.
3. The grounds for protest.
4. That a copy of the protest has been mailed or delivered to the applicant.

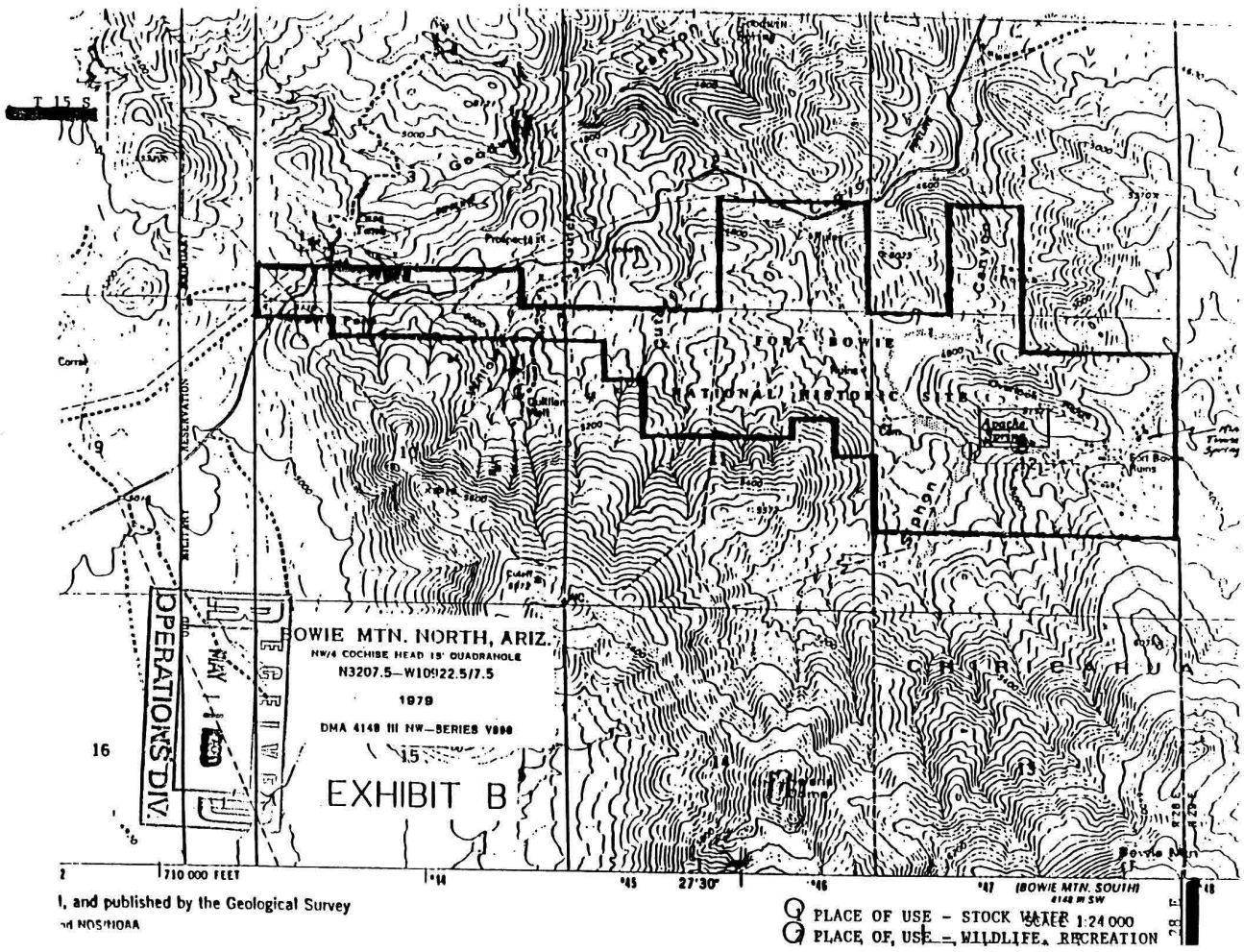
Issued this 16th day of May, 19 90.

as

DWR-32-35 8/88 - 125-7705

ARIZONA DEPARTMENT OF WATER

00-00-0000: map of bowie mtn. north arizona



May 30, 1991

L54(479)
FOBO/Water Rights

Memorandum

To: Dick Anderson, Resource Management Specialist, Fort Bowie National Historic Site

From: Dan McGlothlin, Hydrologist, Water Rights Branch

Subject: Affidavit for Posting Notice

Per our telephone conversation of May 29, 1991, enclosed are the letters from the Arizona Department of Water Resources and affidavits.

If you have any questions, please call me at (303) 493-1441.

Dan McGlothlin

Attachments

cc: 479 - Hansen

FNP:DMCGLOTHLIN:jt:(303)493-1441:05/30/91:WP51:A:JANICE:ARIZMEMO

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1553
Fax (602) 256-0506

FIFE SYMINGTON
Governor

ELIZABETH ANN RIEKE
Director

May 16, 1991

Bill Hansen
National Park Service
301 South Howes Street
Fort Collins, Colorado 80521

RE: Application for Permit to Appropriate Public Water
No. 33-95369 (Apache Spgs)

Dear Mr. Hansen:

The Public Water Code requires that the two Notices of Application for Permit to Appropriate Public Water be posted in conspicuous public places for thirty (30) consecutive days. At the end of the posting period, the Affidavit of Posting Notice must be completed and filed with the Department of Water Resources. The Affidavit must be properly executed, notarized and filed before an application may be considered for final review and issuance of a permit.

Our records show that as of this date the Affidavit has not been filed. If the completed Affidavit of Posting Notice is not received by the Department within thirty (30) days from the date of this letter, I will recommend that the referenced application be rejected for failure to proceed with due diligence.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:im

Certified Mail No. P-153 269 975

A ZONA DEPARTMENT OF WATER ..SOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

AFFIDAVIT OF POSTING NOTICE

STATE OF ARIZONA)
) **ss.**
County of _____)

APPLICATION TO APPROPRIATE

NO. _____

_____ , being first duly sworn, states that two copies of the Notice of Application for a Permit to Appropriate Public Water of the State of Arizona No. _____, a copy of which is hereto attached, were posted on the _____ day of _____, 19 _____, at:

1. _____

_____

_____

2. _____

_____

_____

Each of the notices was posted in a conspicuous place in the locality to be affected by the proposed appropriation of water and remained posted for thirty consecutive days ending on the _____ day of _____, 19 _____.

_____
Affiant

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____
Notary Public

My commission expires:

_____

DWR 33-08-8/88

December 20, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

National Park Service
Western Regional Office
Fort Bowie National Historical Site
450 Golden Gate Avenue
San Francisco, California 94102

Re: Application for a Permit to Appropriate Public Water
No. 33-95369

Dear Sirs:

The Public Water Code requires that the two Notices of Application for Permit to Appropriate Public Water be posted in conspicuous public places for thirty (30) consecutive days. At the end of the posting period, the Affidavit of Posting Notice must be completed and filed with the Department of Water Resources. The Affidavit must be properly executed, notarized and filed before an application may be considered for final review and issuance of a permit.

Our records show that as of this date the Affidavit has not been filed. If the completed Affidavit of Posting Notice is not received by the Department within thirty (30) days from the date of receipt of this letter, I will recommend that the referenced application be rejected for failure to proceed with due diligence.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Certified Mail No. P-509 418 032

Received an extension of time to file the Affidavit from Joe Stuart on 1/24/91.
WRH

Extension from Stuart ASAP. Dirk Anderson (FOBO) confirmed that he would post Notice (1/25/91)
WRH

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

Bureau of Indian Affairs
RECEIVED
MAY 17 1990
San Carlos Irrigation Project
Coolidge, Arizona

NOTICE OF APPLICATION TO APPROPRIATE WATER

On the 3rd day of October, 19 89, National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102

filed Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-95369.
The application states:

1. Source of water Apache Spring, a tributary of the San Simon River, a tributary of the Gila River.

2. Proposed use and amount 388,950 gallons per annum for stockwatering, 10.4 acre feet per annum for recreation (based on a 0.015 cubic feet per second average monthly flow.), and 6,510 gallons per annum for wildlife.

3. Point of diversion SW¼ SW¼ NE¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

4. Place(s) of use SW¼ SW¼ NE¼ and SW¼ SE¼ NW¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

5. Description of dam and reservoir N/A.

Other:
SEE MAP ON REVERSE SIDE

Any person whose water rights may be affected may, within sixty days of the issuance of this Notice, file a written protest to the application with the Arizona Department of Water Resources, 15 South 15th Avenue, Phoenix, Arizona 85007. The protesting party shall send a copy of the protest to the applicant. The protest shall state:

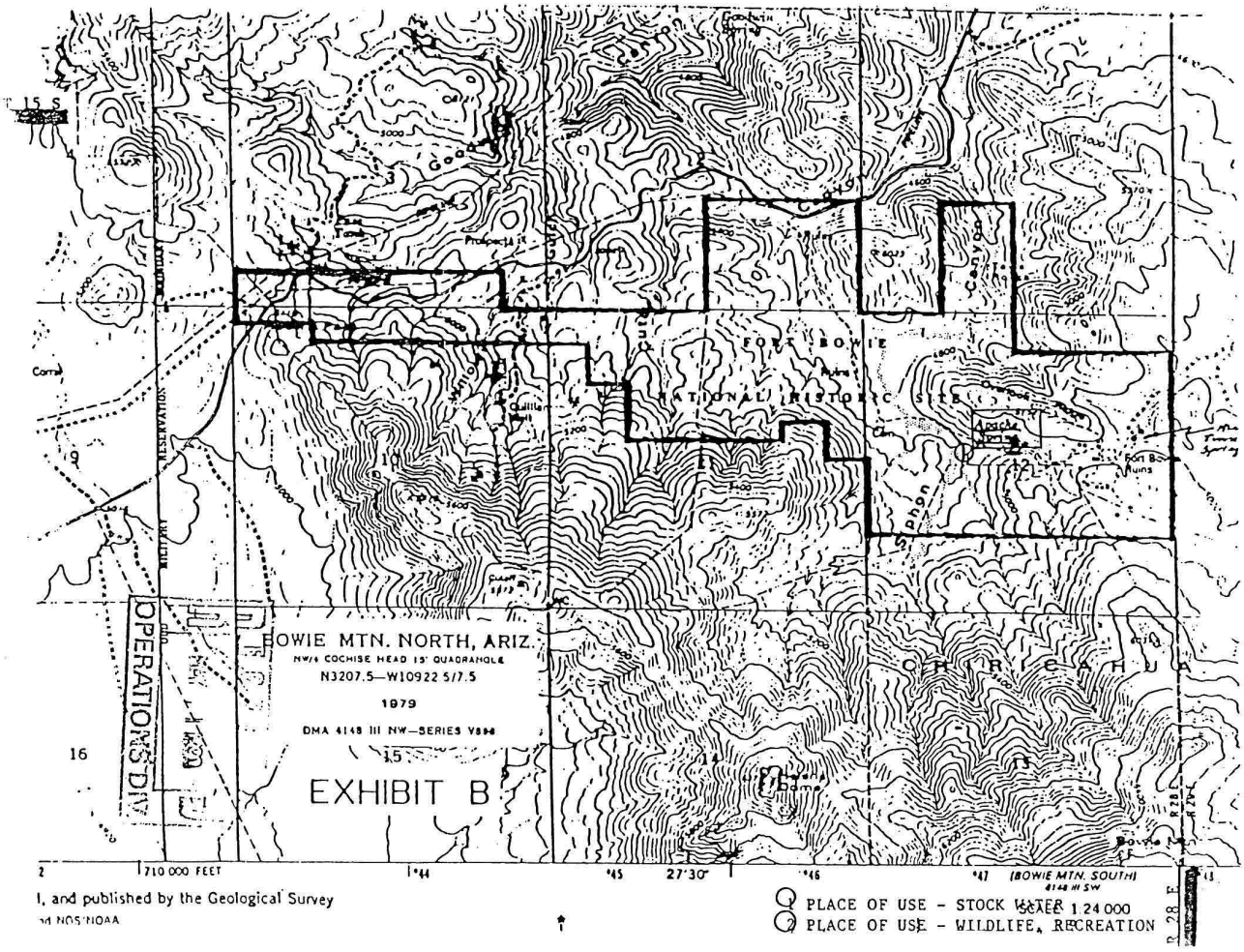
1. The name and address of the protesting party.
2. The location of the protesting party's point of diversion of water.
3. The grounds for protest.
4. That a copy of the protest has been mailed or delivered to the applicant.

RECEIVED
JUN 21 1990
BIA-SCIS BOX

Issued this 16th day of May, 19 90.

as

00-00-0000: map of bowie mtn. north arizona



ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

July 6, 1990

National Park Service
Western Regional Office
Fort Bowie National Historical Site
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Public Water
No. 33-95369

Dear Sirs:

Enclosed please find a copy of a protest of the referenced application submitted by Snell & Wilmer on behalf of HYL Ranch Properties.

The Department of Water Resources can not take any action towards the issuance of a permit until the protest has been resolved. You may wish to file a written response to the protest within thirty (30) days from the date of this letter. Should you elect to do this, please send the original and one copy to this Department and furnish a copy to the protestant.

Essentially, it is up to you to negotiate with the protestant for a resolution of the issues of protest. It has been our experience that sometimes a direct contact with the protestant, explaining in person the nature and extent of your application, will resolve the issues raised by the protestant. In this connection, we do not presume to advise you.

Your negotiation may include an agreement to modify your application. It is important that you send a copy of any correspondence, memorandum of telephone calls or meetings, or copies of agreements to the Department of Water Resources for inclusion in the referenced file.

Any modifications to the application or a withdrawal of the protest must be submitted to the Department of Water Resources in writing by the appropriate party.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Enclosures

cc: Snell & Wilmer

Snell & Wilmer
LAW OFFICES

3100 Valley Bank Center
Phoenix, Arizona 85073-3100
(602) 257-7211
Fax: (602) 257-7864

PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA

Direct Line: 257-5947
June 22, 1990

Mr. Joe B. Stuart, Manager
Surface Water Rights System
Department of Water Resources
15 South Fifteenth Avenue
Phoenix, Arizona 85007

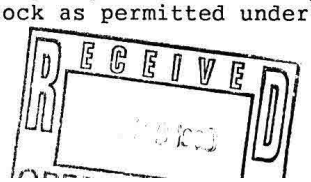
Re: Protest of Application to Appropriate Water No. 33-95369 (amended), as filed by The National Park Service on Apache Spring

Dear Joe:

As you may know from our filings in the Gila River adjudication, our law firm represents HYL Ranch Properties ("HYL"). James E. Warne, Jr., is the general partner of HYL. At the request of Mr. Warne and HYL, we hereby protest the above-referenced Application as filed by the National Park Service ("Park Service").

The Park Service Application seeks a permit to appropriate waters flowing from Apache Spring which is located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter of Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona. Waters from this spring are utilized by our client pursuant to pre-1919 Water Right No. 36-24155, which is of record with the Department of Water Resources. Thus, both the Park Service Application No. 33-95369 and HYL's Right No. 36-24155 claim water diverted from this spring.

In October of 1982, the predecessor in interest to HYL, Maya Apartments, signed an agreement (the "Maya Agreement") with the Park Service concerning, among other things, water rights on the Apache Spring. The Maya Agreement states that Maya and its assigns are entitled to that amount of Apache Spring water necessary to "sustain the number of livestock as permitted under the terms of the Bureau of Land



Snell & Wilmer

Management/National Park Service grazing allotment with the carrying capacity as determined by the Bureau of Land Management." Any remainder of the water is controlled by the United States. The Maya Agreement does not affect the pre-1919 water right vested in HYL, but only allocates the distribution of water that flows from the spring. If the Park Service Application No. 33-95369 is granted, water from Apache Spring should be apportioned pursuant to the terms of the Maya Agreement, with priority for the needs of HYL.

To the extent, however, that the Park Service Application conflicts with HYL's rights as set forth in the Maya Agreement, and as claimed in Water Right No. 36-24155, the Park Service Application must be denied under A.R.S. § 45-153.A. because the proposed use conflicts with HYL's vested water rights. HYL's Right No. 36-24155 is based upon a pre-1919 water right establishing the use of 19.4 acre-feet annually from Apache Spring for stock watering and domestic use. Claim of Right No. 36-24155 identifies the Southeast Quarter of the Southwest Quarter of Section 12, Township 15 South, Range 28 East as the point of use. The Park Service Application would interfere with essential and vested rights to water HYL livestock in Section 12.

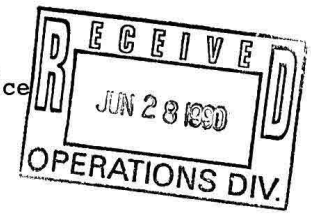
As always in these matters, we ask that you make our protest a matter of record, and notify us of further proceedings in this matter. In addition, we request copies of any responses, correspondence, or other documents that may be filed by the Park Service.

Very truly yours,

SNELL & WILMER

Jeffrey W. Crockett

JWC/CR/plf
Enclosure
cc: James E. Warne, Jr.
National Park Service
7640J



Fort Bowie
Apache Spri

Unnamed Was
Tributary t
Siphon Cany

EXHIBIT C



MAY 1 1990
OPERATIONS DIV.

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Looking Southeast, up the wash, showing Apache Spring Development. Collection spring box is shown at top of wash. Water is piped from the collection box to the dam (in foreground). Immediately upstream of the dam a "T" is situated in the pipeline, and a valve (located in the top of the dam) is located just below the "T." Another pipeline extends from the "T" to the two stock watering tanks shown in other photos. This pipeline is hidden behind rocks to the right of the photo. By control of the valve opening, some water is "backed up" in the pipeline and thus diverted at the "T" to flow throughout the pipeline to the stock watering tanks. This amount of water is sufficient to keep the tanks barely overflowing at all times. Some water flows past the valve and flows out the end of the pipeline at the dam. This water provides for wildlife and for visitor interpretive purposes of this historic spring. The dam does not pond any water -- the reach upstream of the dam is completely silted in.

SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT

BOARD OF DIRECTORS:

J. MICHAEL URTON, PRESIDENT
C.R. "BOBBY" SKOUSEN, SECRETARY
MICKEY A. CLARK
STEVEN M. DALEY
JOHN H. DERMER
HOWARD HOLLAND
JACK A. ROBERTS
ED R. WILDERMUTH

P. O. BOX 218
COOLIDGE, ARIZONA 85228

DOUGLAS D. MASON
GENERAL MANAGER

HUGH A. FERGUSON
ASSISTANT MANAGER

TELEPHONE
(602) 723-5408

July 5, 1990

Mr. Joe B. Stuart, Manager
Surface Water Rights Systems
Arizona Department of
Water Resources
15 S. 15th Avenue
Phoenix AZ 85007

Re: Protest of San Carlos Irrigation and Drainage District to Notice of Application to Appropriate Water - No. 33-95369
Apache Springs

Gentlemen:

The San Carlos Irrigation District would like to withdraw our protest on the Apache Springs application by the National Park Service. We have discussed it with representatives from the Park Service and feel that they are just confirming water rights that were existing in the area stream flows and wish to withdraw our protest at this time.

If you have any questions, please contact me.

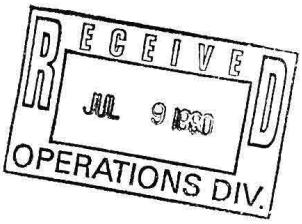
Sincerely,

Douglas D Mason

Douglas D. Mason
General Manager

DDM:mja

cc: National Park Service
Henry Dodge
Riney B. Salmon II



07-06-1990: letter to san carlos irrigation and drainage district from arizona department of water resources regarding application fo



ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

July 6, 1990

San Carlos Irrigation and Drainage District
Douglas Mason, General Manager
P. O. Box 218
Coolidge, Arizona 85228

RE: Application for a Permit to Appropriate Public Water
No. 33-95369

Dear Mr. Mason:

Enclosed is a copy of the response by Owen R. Williams on behalf of the National Park Service to your protest of the referenced application.

Please review the response to your protest carefully and determine if Mr. Williams has provided sufficient information to assure you that your claimed water right will not be adversely impacted by the referenced application.

Whatever your decision, please inform the Department in writing, providing an original and one copy, with a copy of your letter to the National Park Service.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Enclosures

cc: Mr. Williams, National Park Service

United States Department of the Interior
NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
301 SOUTH HOWES ST., ROOM 335
FT. COLLINS, COLORADO 80521

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
L54(479)
WR/Water Rights

July 2, 1990

Mr. Joe B. Stuart, Manager
Surface Water Rights Systems
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, AZ 85007

RE: Protest of San Carlos Irrigation and Drainage District to Notice of Application to Appropriate Water No. 33-95369

Dear Mr. Stuart:

The National Park Service (NPS) wishes to respond to the above captioned protest to Application for Permit to Appropriate Public Water No. 33-95369. As stated in your May 29 letter to the Western Regional Office, the National Park Service has taken steps to resolve this matter with the protestant San Carlos Irrigation and Drainage District. For the reasons stated below, we believe that there is no longer a substantive basis for the protest and that the State of Arizona should proceed with the issuance of the permit.

On June 29, 1990, the Water Resources Division (WRD) contacted Douglas D. Mason, General Manager for the San Carlos Irrigation and Drainage District (SCIDD), to discuss the specific concerns SCIDD has for this application.

Details of the application were discussed with Mr. Mason including location of this diversion with respect to the Gila River, amount and beneficial use of the water applied for and type of diversion. Also discussed was the fact that this application simply legitimizes a diversion that has existed, without a recorded right, for many years. Since the National Park Service acquired Apache Spring site in 1966, flows from this spring been integral to the operation of Ft. Bowie National Historical Site.

With these facts, Mr. Mason agreed that a continuation of the SCIDD protest was unnecessary. Therefore, he would submit a request to DWR for a withdrawal. He indicated that a letter to DWR requesting such is forthcoming. Having reached this agreement, further action by the National Park Service regarding this protest appears unwarranted.

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JUL - 5 1990
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If this is not the case and further action is needed, or you need additional information, please contact Dan McGlothlin or me at (303) 221-8336 or (303) 221-8301, respectively.

Sincerely,

Owen R. Williams, Chief
Water Rights Branch

cc: WR - Kolipinski
FOBO - Superintendent
SOL - SWR - Mihan, Phoenix - Swan

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JUL - 5 1990
OPERATIONS DIV.

10-03-1989: application for permit to appropriate public water of the state of arizona: amended no. 33-95369

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

AMENDED

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATER OF THE STATE OF ARIZONA

NO. 33-95369

FILED October 3, 1989

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

Address 450 Golden Gate Ave., San Francisco, CA 94102

2. Type of source and name, if any, Apache Spring

a tributary of San Simon on the Upper Gila watershed.
do not complete

3. Use of Water

A. Domestic
1. No. of Persons _____ 2. No. of Families _____

B. Municipal
1. Population to be served _____
2. Estimate of future population and water requirements _____

C. Irrigation
1. Location of the irrigated acreage

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

2. Number of acres to be irrigated _____

3. Describe type of crop to be irrigated _____

D. Stockwatering
1. Kind of stock CATTLE 2. No of stock 175

E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and the uses to which the power will be applied. Attach documents as necessary.

F. Mining
1. Kind of mining claims _____

2. Methods of supplying and using water _____

G. Recreation
1. Character of area to be used Historical pertinenceof the spring to the original settlement

H. Wildlife
1. Kind of wildlife Deer, Javalina, small mammals and birds

2. Character of area to be served Preservation and maintenance of habitat

I. Groundwater Recharge _____

J. Storage & Recovery _____

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MAY 1 1990
OPERATIONS DIV.

4. Amount of water

Use	Amount	Measure	Months of Use
~~STOCK~~	388,950	gallons per annum	Year Long
RECREATION	0.015	cubic feet per second	Average Monthly
~~WILDLIFE~~	6,510	gallons per annum	Year Long

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OCT 3 1989

DWR-33-01A-(Rev. 9/88) — IPS 3700

5. Legal description of point of diversion: County Cochise
SW ¼ SW ¼ NE ¼ Section 12 Township 15 ~~X~~S Range 28 E~~X~~W-G&SRB&

6. Legal description of place of use: County Cochise
SW ¼ ~~SE~~ ¼ ~~NW~~ ¼ Section ~~12~~ Township 15 ~~X~~S Range 28 E~~X~~W-G&SRB&
SW ¼ SW ¼ ~~NE~~ ¼ Section 12 Township 15 ~~X~~S Range 28 E~~X~~W-G&SRB&

7. Description of method(s) by which water will be put to beneficial use: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
CONCRETE SPRINGBOX LOCATED IN CHANNEL WITH GATED PIPELINE TO POINTS OF USE

8. Storage of water N/A
   A. Name of reservoir _____
   B. Dam specifications: Height _____ feet
   C. Reservoir behind dam
      1. Maximum storage volume at spillway crest _____ acre feet
      2. Capacity for each foot in depth in cubic feet _____

9. Construction of works will begin within COMPLETED after approv
of this application, will be completed within _____ thereafte
and the water will be applied to the proposed use(s) no later than _____

10. Name of owner of the land U.S. of America, National Park Service, c/o Ft. Bowie Nat'l Hist Sit
Does the applicant have legal access to the point of diversion and place(s) of use? Yes X No _____
if no, explain _____

11. Is the water to be used supplementally with other water(s)? Yes ____ No X
If "Yes" identify other waters or water rights, and explain below:

12. Additional comments An agreement concerning water use for Apache Spring was reached by the National Park Service and Maya Apartments on October 8, 1982 (Exhibit A) in settlement of CIV 76-202-TUC-RMB, District Court of Arizona. PHOTOGRAPH OF DEVELOPED SPRING SITE (EXHIBIT C)

13. Attach filing fee of $25.00

14. Attach a United States Geological Survey quad map with point of diversion and place(s) of use clearly marked on map. (Exhib
(EXHIBIT B)

DATED this 9th day of May 1990

O.R. Williams
Applicant

OWEN R. WILLIAMS, CHIEF, WATER RIGHTS BRANCH, ON BEHALF OF THE NPS

June 26, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

National Park Service
Western Regional Office
Fort Bowie National Historical Site
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Public Water
No. 33-95369

Dear Sirs:

Enclosed please find a copy of a protest of the referenced application submitted by the San Carlos Irrigation Project.

The Department of Water Resources can not take any action towards the issuance of a permit until the protest has been resolved. You may wish to file a written response to the protest within thirty (30) days from the date of this letter. Should you elect to do this, please send the original and one copy to this Department and furnish a copy to the protestant.

Essentially, it is up to you to negotiate with the protestant for a resolution of the issues of protest. It has been our experience that sometimes a direct contact with the protestant, explaining in person the nature and extent of your application, will resolve the issues raised by the protestant. In this connection, we do not presume to advise you.

Your negotiation may include an agreement to modify your application. It is important that you send a copy of any correspondence, memorandum of telephone calls or meetings, or copies of agreements to the Department of Water Resources for inclusion in the referenced file.

Any modifications to the application or a withdrawal of the protest must be submitted to the Department of Water Resources in writing by the appropriate party.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Enclosures

cc: San Carlos Irrigation Project

Never rec'd letter w/drawing protest WRH 9/11/91

Tom Newman confirmed that BIA would drop protest in a phone conversation w/ Hansen on 1/28/90 WRH

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
SAN CARLOS IRRIGATION PROJECT
P.O. Box 250
Coolidge, Arizona 85228

IN REPLY REFER TO:
(602) 723-5439

June 13, 1990

RECEIVED
JUN - 1 1990
OPERATIONS DIV.

Mr. Richard A. Gessner
Chief, Records Section
Arizona Department of Water Resources
99 East Virginia, Suite 100
Phoenix, Arizona 85004

Dear Mr. Gessner:

Reference is made to Application No. 33-95369, filed by the National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102, a permit to appropriate public water of the State of Arizona and/or construct a reservoir and store water for beneficial use. The source of water supply is the Apache Spring, a tributary of the San Simon River, and a tributary of the Gila River. The proposed use and amount applied for is 388,950 gallons per annum for stockwatering, 10.4 acre feet per annum for recreation (based on a 0.015 cubic feet per second average monthly flow), and 6,510 gallons per annum for wildlife. The point of diversion is SW 1/4, SW 1/4, NE 1/4, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

If this Application is approved it would deprive the Indian and Non-Indian water users of the San Carlos Irrigation Project, Bureau of Indian Affairs, water that has been used on certain of the Indian lands from immemorial time. This is evidenced by the United States District Court in the Decree entered June 29, 1935 known as Globe Equity No. 59 (Gila Decree).

Waters of the Gila River and it's tributaries have long been over appropriated and in most water years the irrigation water is in extremely short supply and much of the Project lands must remain idle because of the insufficient water supply.

It is believed that the approval of this Application would result in the diminution of water of the Gila River and thus

the rights of the San Carlos Irrigation Project water users would be adversely affected.

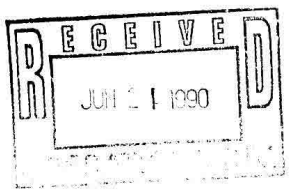
Waters of the Gila River and it's tributaries are delivered directly to Project lands located in Townships 3, 4, 5, 6, and 7 South, and Ranges 4, 5, 6, 7, 8, 9 and 10 East, and to reservation lands lying in Townships 1 and 2 South, Ranges 1 and 2 East. All such waters are delivered to the described lands to the extent of all such water available. All deliveries are for irrigation purposes. The points of diversion are located in the NW 1/4 of Section 8, Township 4 South, Range 11 East (Ashurst-Hayden Dam), near the southwest corner of Section 7, Township 4 South, Range 7 East (Olberg Dam); in Section 25, Township 2 South, Range 2 East (Upper Gila Crossing Dam); and in Section 16, Township 2 South, Range 2 East (Lower Gila Crossing Dam).

In the event that the application is not denied, the San Carlos Irrigation Project requests a hearing to present evidence in support of its protest of the subject Application to appropriate water.

Sincerely,

Project Engineer

Enclosure



ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

Bureau of Indian Affairs
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MAY 17 1990
San Carlos Irrigation Project
Coolidge, Arizona

NOTICE OF APPLICATION TO APPROPRIATE WATER

On the 3rd day of October, 19 89, National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102

filed Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-95369.
The application states:

1. Source of water Apache Spring, a tributary of the San Simon River, a tributary of the Gila River.

2. Proposed use and amount 388,950 gallons per annum for stockwatering, 10.4 acre feet per annum for recreation (based on a 0.015 cubic feet per second average monthly flow.), and 6,510 gallons per annum for wildlife.

3. Point of diversion SW¼ SW¼ NE¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

4. Place(s) of use SW¼ SW¼ NE¼ and SW¼ SE¼ NW¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.

5. Description of dam and reservoir N/A.

Other:
SEE MAP ON REVERSE SIDE

Any person whose water rights may be affected may, within sixty days of the issuance of this Notice, file a written protest to the application with the Arizona Department of Water Resources, 15 South 15th Avenue, Phoenix, Arizona 85007. The protesting party shall send a copy of the protest to the applicant. The protest shall state:

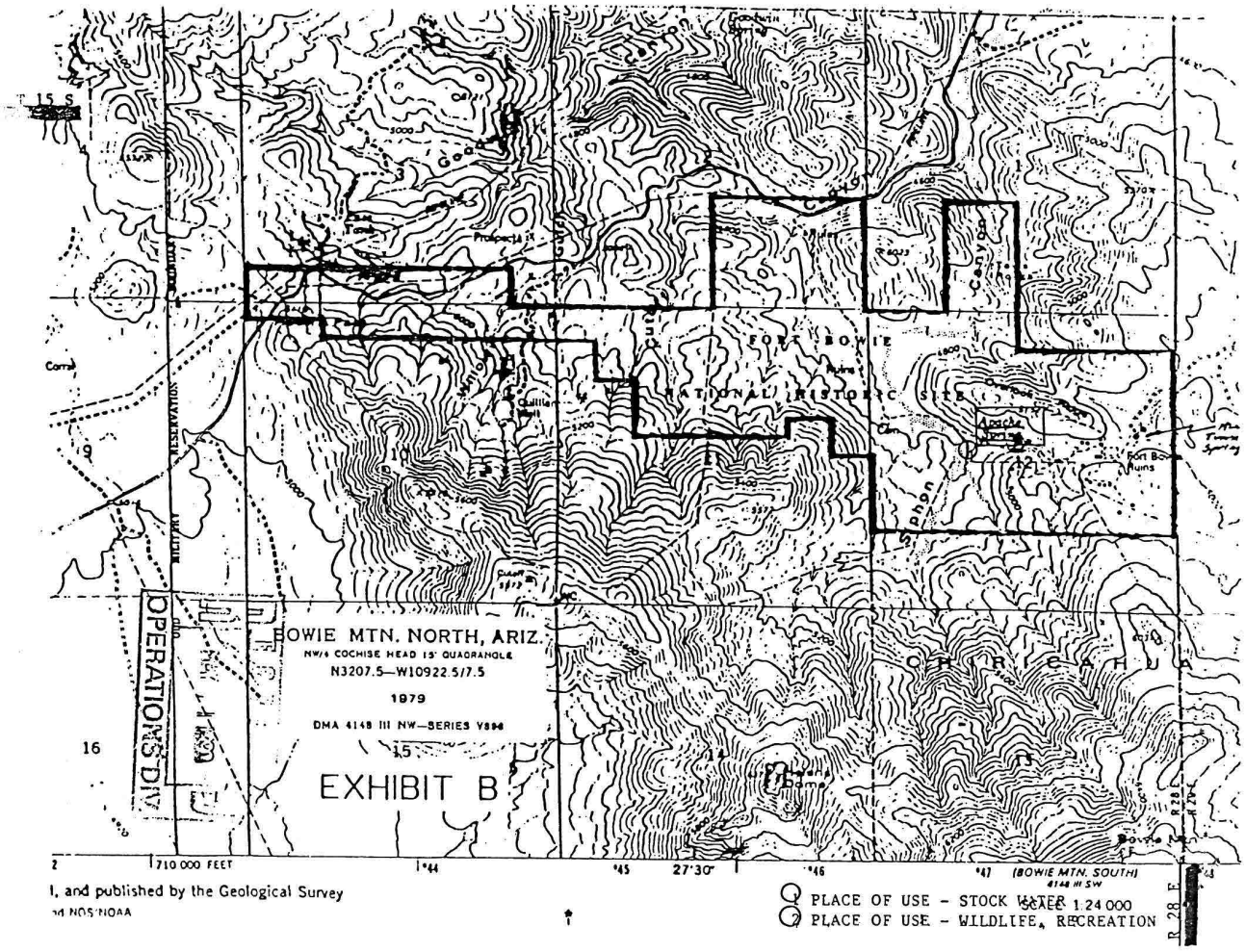
1. The name and address of the protesting party.
2. The location of the protesting party's point of diversion of water.
3. The grounds for protest.
4. That a copy of the protest has been mailed or delivered to the applicant.

RECEIVED
JUN 21 1990
ARIZONA DWR

Issued this 16th day of May, 19 90.

as

00-00-0000: map of bowie mtn. north, arizona



United States Department of the Interior
NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:



L54(WR-RN)

June 14, 1990

Memorandum

To: Owen Williams, Chief, Water Rights Branch, Fort Collins

From: Associate Regional Director, Resources Management and Planning

Subject: Apache Spring Water Rights

We would appreciate your help in responding to Arizona Department of Water Resources (ADWR) about a protest by San Carlos Irrigation and Drainage District (SCIDD) against National Park Service's application to appropriate water at Apache Spring in Fort Bowie National Historic Site.

Enclosed for reference in your analysis of this protest are the following:

1. Memorandum, dated June 9, from David E. Moore, Superintendent of Fort Bowie NHS to Regional Director, WR requesting help in this issue.

2. Letter from Joe B. Stuart, ADWR, notifying NPS about the protest, and asking for resolution within 30 days of the letter, dated May 29, 1990.

3. Letter, dated May 17, from SCIDD to ADWR which protests the NPS application to appropriate water at Apache Springs.

Please respond directly to ADWR or, if more appropriate, prepare a draft for signature by Regional Director, Stanley Albright.

Thank you for assisting us with this issue; we continue to be thankful for the excellent support your office gives us in water rights matters.

cc: Supt. Chiricahua NM & Fort Bowie, NHS w/out enc.
General Supt., SOAR w/out enc.

United States Department of the Interior

NATIONAL PARK SERVICE
Chiricahua National Monument
Dos Cabezas Route Box 6500
Willcox, Arizona 85643

IN REPLY REFER TO:

L54

June 8, 1990

Memorandum

To: Regional Director, Western Region
Attention: M. Kolipinski

Through: General Superintendent, Southern Arizona Group

From: Superintendent, Chiricahua National Monument
Fort Bowie National Historic Site

Subject: Apache Springs Water Rights

Enclosed is a letter from the Arizona Department of Water Resources, and the protest of San Carlos Irrigation and Drainage District to Notice of Application to Appropriate Water-No. 33-95369. I am also enclosing a letter from Fort Collins (5/9/90) along with the application to Arizona Department of Water Resources for the water rights to Apache Springs.

I talked to you yesterday on the telephone, and I believe that these are the only documents you need from the park to take care of this matter. If you need any additional information from us, please give me a call.

David E. Moore

May 29, 1990

#62

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

National Park Service
Western Regional Office
Fort Bowie National Historical Site
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Public Water
No. 33-95369

Dear Sirs:

Enclosed please find a copy of a protest of the referenced application submitted by the San Carlos Irrigation and Drainage District.

The Department of Water Resources will not take any action towards the issuance of a permit until the protest has been resolved. You may wish to file a written response to the protest within thirty (30) days from the date of this letter. Should you elect to do this, please send the original and one copy to this Department and furnish a copy to the protestant.

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Your negotiation may include an agreement to modify your application. It is important that you send a copy of any correspondence, memorandum of telephone calls or meetings, or copies of agreements to the Department of Water Resources for inclusion in the referenced file.

Any modifications to the application or a withdrawal of the protest must be submitted to the Department of Water Resources in writing by the appropriate party.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Enclosures

cc: San Carlos Irrigation and Drainage District

SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT

BOARD OF DIRECTORS:

J. MICHAEL URTON, PRESIDENT
C.R. "BOBBY" SKOUSEN, SECRETARY
MICKEY A. CLARK
STEVEN M. DALEY
JOHN H. DERMER
HOWARD HOLLAND
JACK A. ROBERTS
ED R. WILDERMUTH

P. O. BOX 218
COOLIDGE, ARIZONA 85228

DOUGLAS D. MASON
GENERAL MANAGER

HUGH A. FERGUSON
ASSISTANT MANAGER

TELEPHONE
(602) 723-5408

May 17, 1990

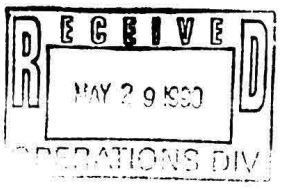
Arizona Department of
Water Resources
15 S. 15th Avenue
Phoenix AZ 85007

Re: Protest of San Carlos Irrigation and Drainage District to Notice of Application to Appropriate Water - No. 33-95369

Gentlemen:

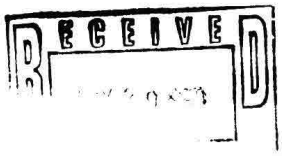
Protest is hereby made on behalf of the San Carlos Irrigation and Drainage District, to the Notice of Application to Appropriate Water for National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102 to appropriate water for Apache Spring, a tributary of the San Simon River, a tributary of the Gila River.

This protest is made upon the grounds that the waters of the Gila River and its tributaries sufficient for the irrigation of all of the lands within the San Carlos Irrigation and Drainage District, together with all of the other lands within the San Carlos Federal Irrigation Project, have been appropriated and the rights thereto vested as of the various dates and in the amounts set forth and adjudicated in United States of America v. Gila Valley Irrigation District, et al., in Cause No. 59 Globe Equity in the United States District Court for the District of Arizona, commonly known as the Gila Decree, which was entered June 29, 1935. Further, the rights of the District's landowners and others, as a part of the San Carlos Federal Irrigation Project, to the use and storage of water from the Gila River have been secured pursuant to the Act of May 18, 1916,



entitled the Indian Appropriation Act for the Fiscal Year Ending June 30, 1917, 39 Stat. L. 123-130; the Act of June 7, 1924, commonly known as the San Carlos Project Act, 43 Stat. 475-476; and the Landowners Agreement with the Secretary of the Interior; San Carlos Project: Act of June 7, 1924. In addition, if not otherwise covered hereinabove, the District's landowners and others claim the right to divert from the normal and flood waters, as well as the appropriable subflow waters of the Gila River, in an amount up to the diversionary capacity of the Florence-Casa Grande Canal at Ashurst-Hayden Dam and the pumping capacity of the Project's wells for use upon District and Project lands and storage in Picacho Reservoir; the diversionary capacity of the San Tan Canal at Sacaton Diversion Dam near Olberg for use on Project lands and the diversionary capacity of the Diversion Dam at Gila Crossing for use upon the decreed lands situated within the Gila River Indian Reservation.

All of the aforesaid waters of the Gila River and its tributaries, excepting those diverted at Gila Crossing, are stored and diverted by the San Carlos Federal Irrigation Project and placed to beneficial use principally for agricultural purposes upon approximately 50,000 acres of land within the San Carlos Irrigation and Drainage District situated in Pinal County, Arizona, and approximately 50,456 acres of land within the Gila River Indian Reservation in Pinal County, Arizona, which together comprise the San Carlos Federal Irrigation Project. That said water is stored in San Carlos Reservoir and in Picacho Reservoir and diverted for beneficial use from the Gila River at Ashurst-Hayden Diversion Dam situated in the northwest quarter (NW 1/4) of Section 8, Township 4 South, Range 11 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.



Request is hereby made that in the event the Department does anything other than deny the subject Application that a formal hearing be held on the Application and that the San Carlos Irrigation and Drainage District be given due notice thereof and permitted to appear at such time and present such evidence as may be appropriate in support of our protest.

Sincerely,

Douglas D Mason

Douglas D. Mason
General Manager

DDM:mja

cc: National Park Service
Henry Dodge
Riney B. Salmon II

RECEIVED
MAY 29 1990



ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

May 16, 1990

National Park Service
Western Regional Office
Owen R. Williams, Water Rights Branch
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Pubic Water
No. 33-95369

Dear Mr. Williams:

Enclosed are two copies of the Notice of Posting and Affidavit of Posting Notice for the referenced application.

The Notices must be posted within twenty days from the date of issuance appearing at the bottom thereof in two conspicuous public places and must remain posted continuously for thirty days. We suggest that one Notice be posted in the post office where those who reside in the locality of the proposed appropriation receive mail.

At the conclusion of the thirty day posting period, the Affidavit of Posting Notice, with one copy of the Notice of Posting attached, must be completed, notarized and filed with the Department of Water Resources for the referenced application.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

Enclosures

See Note Next Page

AR ONA DEPARTMENT OF WATER R OURCES
15 South 15th Avenue
Phoenix, Arizona 85007

NOTICE OF APPLICATION TO APPROPRIATE WATER

On the 3rd day of October, 19 89, National Park Service, Western Regional Office, Fort Bowie National Historical Site, 450 Golden Gate Avenue, San Francisco, California 94102

filed Application for a Permit to Appropriate Public Water of the State of Arizona No. 33-95369. The application states:

1. Source of water Apache Spring, a tributary of the San Simon River, a tributary of the Gila River.
2. Proposed use and amount 388,950 gallons per annum for stockwatering, 10.4 acre feet per annum for recreation (based on a 0.015 cubic feet per second average monthly flow.), and 6,510 gallons per annum for wildlife.
3. Point of diversion SW¼ SW¼ NE¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.
4. Place(s) of use SW¼ SW¼ NE¼ and SW¼ SE¼ NW¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Base and Meridian, Cochise County, Arizona.
5. Description of dam and reservoir N/A.

Other:
SEE MAP ON REVERSE SIDE

Any person whose water rights may be affected may, within sixty days of the issuance of this Notice, file a written protest to the application with the Arizona Department of Water Resources, 15 South 15th Avenue, Phoenix, Arizona 85007. The protesting party shall send a copy of the protest to the applicant. The protest shall state:

1. The name and address of the protesting party.
2. The location of the protesting party's point of diversion of water.
3. The grounds for protest.
4. That a copy of the protest has been mailed or delivered to the applicant.

WR never sent to FOBO.

Dick Anderson confirmed that Notice will be posted in 2 places; Affidavit filed on 1/25/91. WRH

Issued this 16th day of May, 19 90.

as

DWR-33-05-8/88 – IPS 3705

ARIZONA DEPARTMENT OF WATER RESOURCES

10-03-1989: application for permit to appropriate public water of the state of arizona: amended no. 33-95369

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

AMENDED

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATER OF THE STATE OF ARIZONA

NO. 33-95369

FILED October 3, 1989

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

Address 450 Golden Gate Ave., San Francisco, CA 94102

2. Type of source and name, if any. Apache Spring

a tributary of San Simon on the Upper Gila watershed.
do not complete

3. Use of Water

A. Domestic
1. No. of Persons _____ 2. No. of Families _____

B. Municipal
1. Population to be served _____
2. Estimate of future population and water requirements _____

C. Irrigation
1. Location of the irrigated acreage

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

2. Number of acres to be irrigated _____

3. Describe type of crop to be irrigated _____

D. Stockwatering
1. Kind of stock CATTLE 2. No of stock 175

E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and the uses to which the power will be applied. Attach documents as necessary.

F. Mining
1. Kind of mining claims _____

2. Methods of supplying and using water _____

G. Recreation
1. Character of area to be used Historical pertinenceof the spring to the original settlement

H. Wildlife
1. Kind of wildlife Deer, Javalina, small mammals and birds

2. Character of area to be served Preservation and maintenance of habitat

I. Groundwater Recharge _____

J. Storage & Recovery _____

RECEIVED
MAY 1 1990
OPERATIONS DIV.

4. Amount of water

Use	Amount	Measure	Months of Use
~~STOCK~~	388,950	gallons per annum	Year Long
RECREATION	0.015	cubic feet per second	Average Monthly
~~WILDLIFE~~	6,510	gallons per annum	Year Long

RECEIVED
OCT 3 1989

DWR-33-01A-(Rev. 9/88) — IPS 3700

5. Legal description of point of diversion: County Cochise
SW ¼ SW ¼ NE ¼ Section 12 Township 15 ~~N~~S Range 28 E~~W~~-G&SRB

6. Legal description of place of use: County Cochise
SW ¼ SE ¼ NW ¼ Section 12 Township 15 ~~N~~S Range 28 E~~W~~-G&SRB
SW ¼ SW ¼ NE ¼ Section 12 Township 15 ~~N~~S Range 28 E~~W~~-G&SRB

7. Description of method(s) by which water will be put to beneficial use: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
CONCRETE SPRINGBOX LOCATED IN CHANNEL WITH GATED PIPELINE TO POINTS OF USE

8. Storage of water N/A
   A. Name of reservoir _____
   B. Dam specifications: Height _____ feet
   C. Reservoir behind dam
      1. Maximum storage volume at spillway crest _____ acre feet
      2. Capacity for each foot in depth in cubic feet _____

9. Construction of works will begin within COMPLETED after approv
of this application, will be completed within _____ thereafte
and the water will be applied to the proposed use(s) no later than _____

10. Name of owner of the land U.S. of America, National Park Service, c/o Ft. Rowie Nat'l Hist Sit
Does the applicant have legal access to the point of diversion and place(s) of use? Yes X No _____
if no, explain _____

11. Is the water to be used supplementally with other water(s)? Yes _____ No X
If "Yes" identify other waters or water rights, and explain below:

12. Additional comments An agreement concerning water use for Apache Spring was reached by the National Park Service and Maya Apartments on October 8, 1982 (Exhibit A) in settlement of CIV 76-202-TUC-RMB, District Court of Arizona. PHOTOGRAPH OF DEVELOPED SPRING SITE (EXHIBIT C)

13. Attach filing fee of $25.00

14. Attach a United States Geological Survey quad map with point of diversion and place(s) of use clearly marked on map. (Exhib
(EXHIBIT B)

DATED this 9th day of May 1990

Owen R. Williams
Applicant

OWEN R. WILLIAMS, CHIEF, WATER RIGHTS BRANCH, ON BEHALF OF THE NPS

United States Department of the Interior
NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
301 SOUTH HOWES ST., ROOM 335
FT. COLLINS, COLORADO 80521

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
L54(479)
WR/General Water Rights

May 9, 1990

Mr. Joe B. Stuart, Manager
Surface Water Rights Systems
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Dear Mr. Stuart:

The National Park Service (NPS) wishes to file the enclosed amendment to Application for Permit to Appropriate Public Water No. 33-95369. The Water Resources Division (WRD) prepared this amendment, on behalf of the Superintendent, Ft. Bowie National Historic Site and Regional Director, Western Region, to correct deficiencies in the original filing which you identified in your October 16, 1989, letter to the Western Regional Office. We wish to assure you that NPS has pursued this matter with due diligence. But, as Dan McGlothlin of my staff pointed out in his April 27 telephone conversation with you, some additional time beyond your April 30 filing deadline was needed to rectify the defective application.

With respect to the items that were identified as defective, the necessary corrections have been made on the attached amendment. These corrections appear on the amendment as additional information (in capital letters) and/or as deletions (crossed-out) of original information under sections 3.D., 4., 6., 7., 9., and 12.

We also wish to provide additional background to the water right sought by NPS in this application and to respond to the six items of concern outlined in your October 16, 1989, letter to Western Regional Office.

1. This application was filed by NPS for the purpose of appropriating an amount of surface water under State law sufficient to protect the existing consumptive uses at Apache Spring. In the event that you misunderstood our statement in Section 7 of the original application (which is now deleted), we would like to clarify that this filing does not constitute a reservation of all unappropriated natural flow for "instream flow and insitu use". Rather, it is intended to quantify the beneficial uses for livestock, wildlife, and recreation purposes. Therefore, we have quantified these uses under Section 4 as you requested. While these uses should be protected by a State appropriative right having a priority as of the date this spring site was added to the Ft. Bowie National Historical Site, a recent search of water right records revealed that rights were never filed for these uses under State administrative procedure.

Under Section 4 of the amended filing, we request a water right for livestock, recreation, and wildlife consumptive uses. These uses are being served by the Apache Spring development (see attached EXHIBIT C). Date of original construction of the development is unavailable, however, NPS has maintained and operated the system since acquiring the development with the land in 1966. The development presently consists of a concrete springbox, a regulated pipeline, two stock tanks, and a small silt check dam. The development is operated in accordance with an agreement between NPS and the livestock permittee to deliver supplies that satisfy the claimed consumptive uses. Refer to Exhibit A in the original application (Agreement Concerning Water Rights to the Mine Tunnel Water Sources and Related Matters, out-of-court settlement of CIV 76-202-TUC-RMB, dated October 8, 1982) for further information concerning water rights and operation and maintenance responsibilities for Apache Spring.

As the Agreement directs, NPS provides "that amount of Apache Spring water needed to sustain the number of livestock as permitted under the terms of the Bureau of Land Management/National Park Service grazing allotment with the carrying capacity as determined by Bureau of Land Management (BLM)". Carrying capacity for this allotment is 175 cows for six months, as determined by BLM (personal communication with Kim McReynold, Range Conservationist, BLM Safford District Office). Under Section 4 of the amendment, stock use is added (388,950 gallons or about one gallon per minute yearlong) to provide a sufficient quantity of water for the permitted use. As Apache Spring is the most reliable source of water on this grazing allotment, this rate of use also provides for an additional six months of emergency stockwatering needs. Spring flow is regulated to deliver this quantity via pipeline to two tanks located in SW1/4 SE1/4 NW1/4 Section 12. A minimal portion of this additional flow also provides for wildlife needs at these tanks.

The balance of springflow discharges from the pipeline into an unnamed wash downstream of the spring development. The amount of direct wildlife use of this flow is 6,510 gallons per annum. As you correctly pointed out in item one of your letter, a portion of this flow also provides for the maintenance of riparian habitat. We agree with your interpretation that flows for recreational use or maintenance of riparian vegetation should be quantified in cubic feet per second (cfs). Therefore, we provide, in Section 4, the average monthly flow (0.015 cfs) for riparian habitat maintenance expressed as recreation use. The presence of riparian habitat is of importance in the NPS's presentation of historical facts encompassing the Ft. Bowie National Historical Site to park visitors.

In summary, the water at Apache Spring provides for livestock, recreation and wildlife uses and is regulated by a springbox and pipe system that conveys water to the stated places of use.

2. The legal descriptions for places of use is revised. The location of the point of diversion, as specified in the original application, is correct. Uses for recreation and wildlife, including riparian habitat, are made in the stream segment between SW1/4 SE1/4 NW1/4 Section 12 and SW 1/4 SW1/4 NE1/4 Section 12 (less than one-quarter mile in length). Flows disappear into the alluvium within a quarter-mile of the development.

3. As discussed with you on the phone, we are submitting a revised photocopy of the portion of the U.S.G.S. Bowie Mtn. North, Ariz. quadrangle (Exhibit B) that contains the Ft. Bowie area. This map clearly shows township and range and places of use. This type of map reproduction is customarily accepted by DWR, as long as location data are clearly presented on the reproduced map.

4. The application is signed and dated on behalf of the Western Region and the Ft. Bowie National Historic Site, per your request.

5. The following information establishes the United States as owner of the land to which Apache Spring is appurtenant, as indicated in Section 10 of the application.

"Pursuant to a deed dated November 28, 1966, from Earl J. Neel to the United States of America, filed for record on January 19, 1976, and recorded at Page 46 and 47, of Book 1485, Cochise County, Arizona, the United States is the owner of certain lands situated in the S1/2, N1/2 and N1/2, SE1/4, Section 12, Township 15 South, Range 28 East, G&SRB&M."

As agreed in your discussions with Mr. McGlothlin, the above statement provides the information needed to satisfy DWR's requirement to show proof of land ownership when land where a water right is attached changes from one owner to another. The quitclaim deed for right-of-way at Apache Spring, as we provided in Exhibit A with the original application package, was not intended as proof of U.S. ownership of land in Section 12. If the above statement does not meet your needs, please notify us and we will process the Assignment form referenced in item 5 of your October 16 letter.

6. As we indicated above, the water source has been diverted for the purpose of providing consumptive uses. However, for our information and future needs, we would like you to send us a copy of instream flow permit requirements.

We wish to thank you for your patience in this matter. If you have any questions concerning this new information or other aspects of the amended application, please contact Dan McGlothlin or me at (303) 221-8336 and (303) 221-8301, respectively.

Sincerely,

Owen R. Williams
Chief, Water Rights Branch

Enclosures - Amended Application for Permit No. 33-95369
- Exhibit C (Photograph of Apache Spring Development)
- Exhibit B (Revised Bowie Mtn. North, Ariz.)

cc: WR - Kolipinski, Kilgore
Ft. Bowie National Historic Site - Dave Moore
479 - McGlothlin, Hansen

10-03-1989: application for permit to appropriate public water of the state of arizona: amended no. 33-95369

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

AMENDED

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATER OF THE STATE OF ARIZONA

NO. 33-95369

FILED October 3, 1989

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

Address 450 Golden Gate Ave., San Francisco, CA 94102

2. Type of source and name, if any. Apache Spring

a tributary of San Simon on the _____ watershed
(do not complete)

3. Use of Water

A. Domestic
1. No. of Persons _____ 2. No. of Families _____

B. Municipal
1. Population to be served _____
2. Estimate of future population and water requirements _____

C. Irrigation
1. Location of the irrigated acreage

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/

2. Number of acres to be irrigated _____

3. Describe type of crop to be irrigated _____

D. Stockwatering
1. Kind of stock CATTLE 2. No of stock 175

E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and th uses to which the power will be applied. Attach documents as necessary.

F. Mining
1. Kind of mining claims _____

2. Methods of supplying and using water _____

G. Recreation
1. Character of area to be used Historical pertinenceof the spring to the original settlement

H. Wildlife
1. Kind of wildlife Deer, Javalina, small mammals and birds

2. Character of area to be served Preservation and maintenance of habitat.

I. Groundwater Recharge _____

J. Storage & Recovery _____

4. Amount of water

Use	Amount	Measure	Months of Use
~~STOCK~~	388,950	gallons per annum	Year Long
RECREATION	0.015	cubic feet per second	Average Monthly
~~WILDLIFE~~	6,510	gallons per annum	Year Long

DWR-33:01A-(Rev. 9/88) — IPS 3700

RECEIVED
OCT 3 1989

5. Legal description of point of diversion: County Cochise
SW ¼ SW ¼ NE ¼ Section 12 Township 15 ~~X~~S Range 28 E~~X~~W–G&S

6. Legal description of place of use: County Cochise
SW ¼ ~~SE~~ ¼ ~~NW~~ ¼ Section ~~12~~ Township 15 ~~X~~S Range 28 E~~X~~W–G&S
SW ¼ SW ¼ ~~NE~~ ¼ Section 12 Township 15 ~~X~~S Range 28 E~~X~~W–G&S

7. Description of method(s) by which water will be put to beneficial use: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
CONCRETE SPRINGBOX LOCATED IN CHANNEL WITH GATED PIPELINE TO POINTS OF USE

8. Storage of water N/A
   A. Name of reservoir _____
   B. Dam specifications: Height _____ feet
   C. Reservoir behind dam
      1. Maximum storage volume at spillway crest _____ acre feet
      2. Capacity for each foot in depth in cubic feet _____

9. Construction of works will begin within COMPLETED after app
   of this application, will be completed within _____ there
   and the water will be applied to the proposed use(s) no later than _____

10. Name of owner of the land U.S. of America, National Park Service, c/o Ft. Bowie Nat'l Hist S
    Does the applicant have legal access to the point of diversion and place(s) of use? Yes X No _____
    if no, explain _____

11. Is the water to be used supplementally with other water(s)? Yes _____ No X
    If "Yes" identify other waters or water rights, and explain below:

12. Additional comments An agreement concerning water use for Apache Spring was reached by th
    National Park Service and Maya Apartments on October 8, 1982 (Exhibit A) in settleme
    of CIV 76-202-TUC-RMB, District Court of Arizona. PHOTOGRAPH OF DEVELOPED
    SPRING SITE (EXHIBIT C)

13. Attach filing fee of $25.00

14. Attach a United States Geological Survey quad map with point of diversion and place(s) of use clearly marked on map. (Exh
(EXHIBIT

DATED this 9th day of May 1990

O. R. Williams
Applicant

OWEN R. WILLIAMS, CHIEF, WATER RIGHTS
BRANCH, ON BEHALF OF THE NPS

United States Department of the Interior
NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

APR 1990
RECEIVED
WRD - FT COLLINS

(WR-RN)

April 11, 1990

Memorandum

To: Owen Williams, Chief, Water Resources Branch, WRD, NPS, Ft. Collins

From: Mietek Kolipinski

Subject: Application for NPS to Appropriate Water at Ft. Bowie NPS

Enclosed is a copy of a letter and enclosures to Mr. Joe B. Stuart, Arizona Department of Water Resources. In it I thank him for providing me, in behalf of National Park Service, with additional time in which to complete an application for Ft. Bowie to appropriate public water.

Enclosures include Mr. Stuart's October 16, 1989, letter which request further techinical information about Water Rights, Average Water Flow Rates, Legal Description of the Water Course, etc.

I will appreciate assistance by you or designated staff in helping the staff at Ft. Bowie NHS, administrated by Chiricahua NM, Superintendent Dave Moore, to compile the required data.

Bruce M. Kilgore

Enclosures

cc: Supt. Chiricahua

United States Department of the Interior
NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

(WR-RN)

April 3, 1990

Mr. Joe B. Stuart
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Dear Mr. Stuart,

As we discussed by telephone on March 20, 1990, I appreciate your assistance in resurrecting the file on "Application for Permit to Appropriate Public Water No. 33-95369." As I explained to you, an extremely tight work schedule kept me from answering your previous letters of October 16, 1989 and January 22, 1990 (copies enclosed). It is most kind of you to provide additional time for National Park Service to send you additional data lacking in the application you received from us on October 3, 1989.

I am working with staffs of National Park Service's, Water Resources Division, Ft Collins, Colorado and of Ft. Bowie National Historic Site to complete the application and resubmit it to you. I have set a target date of April 30, 1990 by which to resubmit the application.

Sincerely,

Mietek Kolipinski
Water Rights Coordinator

March 12, 1990

National Park Service
Western Regional Office
Ft. Bowie National Historic Site
ATTN: John D. Cherry
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Public Water
No. 33-95369

Dear Mr. Cherry:

By letters dated October 16, 1989 and January 22, 1990, this Department has attempted to obtain an Affidavit of Posting Notice for the referenced application.

At issue are the forms necessary for proceeding with the referenced application. To date, we have not had any response or attempt to resolve this matter. Consequently, this letter constitutes a cancellation of Application for Permit to Appropriate Public Water No. 33-95369 for failure to comply with the law and to proceed with the application with due diligence.

Pursuant to A.A.C. R12-15-208, you may request a review of or a hearing on this decision. Such a request must meet the requirements of this referenced rule and be filed with the Department's Docket Supervisor, Legal Division, 15 South 15th Avenue, Phoenix, Arizona 85007, within fifteen (15) days after the date of receipt of this letter.

Sincerely,

Herb Dishlip
Deputy Director
Water Management

HD:JBS:as

Certified Mail No. P-509 418 287

April 9, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

USDI, National Park Service
Western Regional Office
Mietek Kolipinski, Water Rights Coordinator
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for a Permit to Appropriate Public Water
No. 33-95369

Dear Mr. Kolipinski:

This is in response to your letter dated April 3, 1990, requesting an extension of time in which to correct the defects and refile the referenced application with the Department of Water Resources.

The Department of Water Resources hereby approves the extension of time or until April 30, 1990, to correct, complete and refile Application for a Permit to Appropriate Public Water No. 33-95369.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:as

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
Wesley E. Steiner
Director

15 South 15th Avenue
Phoenix, Arizona 85007

January 22, 1990

National Park Service
Western Regional Office
Ft. Bowie National Historic Site
Attn: John D. Cherry
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Public Water No. 33-95369

Dear Mr. Cherry:

Enclosed is a copy of your application and receipt with the corrected application number on both.

The original number 33-94853, was issued to you in error. Your new number is 33-95369. If you have any questions, please call our office.

On October 16, 1989, the Department of Water Resources returned the referenced appropriative application to you.

To date, your application has not been returned to this Department. Consequently, a new date of priority will be established for the application.

If we do not have a response from you within thirty days after the date of receipt of this letter, I will recommend that the referenced application be rejected for failure to proceed with the application with due diligence.

Yours truly,

Joe B. Stuart
Manager, Surface Water Rights Systems
Operations Division
Telephone (602) 542-1581

JBS:mg

Certified Mail No. P-509 419 705

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

APPLICATION FOR PERMIT TO APPROPRIATE PUBLIC WATER OF THE STATE OF ARIZONA

NO. 33-94853

FILED October 3, 1989

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

   Address 450 Golden Gate Ave., San Francisco, CA 94102

2. Type of source and name, if any, Apache Spring,

   a tributary of San Simon on the _____ watershed.
   (do not complete)

3. Use of Water

   A. Domestic
      1. No. of Persons _____ 2. No. of Families _____

   B. Municipal
      1. Population to be served _____
      2. Estimate of future population and water requirements _____

   C. Irrigation
      1. Location of the irrigated acreage

      _____ 1/4 _____ 1/4 _____ 1/4 Section _____ Township _____ N/S Range _____ E/W

      _____ 1/4 _____ 1/4 _____ 1/4 Section _____ Township _____ N/S Range _____ E/W

      2. Number of acres to be irrigated _____

      3. Describe type of crop to be irrigated _____

   D. Stockwatering
      1. Kind of stock _____ 2. No of stock _____

   E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and the uses to which the power will be applied. Attach documents as necessary.

   F. Mining
      1. Kind of mining claims _____

      2. Methods of supplying and using water _____

   G. Recreation
      1. Character of area to be used Historical pertinenceof the spring to the original settlement

   H. Wildlife
      1. Kind of wildlife Deer, Javalina, small mammals and birds

      2. Character of area to be served Preservation and maintenance of habitat.

   I. Groundwater Recharge _____

   J. Storage & Recovery _____

4. Amount of water

Use	Amount	Measure	Months of Use
*See Exhibit A			Year Long

DWR-33-01A-(Rev. 9/88) — IPS 3700

1989

10-03-1989: reciept for $25

Mietek or Zosia Kolipinski
33 Grove Street
San Rafael, California 94901
457-7975

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

RECEIPT

KIND ENTRY	FILE REFERENCE NO.
33	95369
	THRU

ACCOUNT NO. FUND SOURCE	AGENCY	CHAPTER	DIV.	INT. ACCT.	ITEM DESCRIPTION	RATE	$ AMOUNT
					(1) One Examination Fee for Application for		25.00
					Application for Permit to Appropriate		
					Water No. 33-95369		
					10-4-89, mg		

PAID

CHECK NO. 250, dated September 29, 1989

TOTAL $ 25.00



ARIZONA
DEPARTMENT
OF WATER
RESOURCES

October 16, 1989

National Park Service
Western Regional Office
Ft. Bowie National Historic Site
450 Golden Gate Avenue
San Francisco, California 94102

RE: Application for Permit to Appropriate Water No. 33-94853

Dear Sirs:

The referenced application is being returned to you, since the following information must be provided before the application can be considered for final review:

1. On item seven you stated that the water is for instream flow and in situ use. The law does not provide for the reservation of unappropriated natural flow. Therefore any water you intend to appropriate must be quantified on this application.

On item four, if you intend to obtain a water right for recreation and wildlife as separate consumptive uses, please quantify the required amounts separately in gallons per annum. If the wildlife and recreation amounts are for the maintenance of the riparian habitat, the amounts can be quantified in cubic feet per second.

Please provide the average flow rate on a monthly basis for each month of the year required to maintain the recreational use or the natural riparian habitat. You may submit any attachments as necessary.

2. Items five and six, please provide the complete legal description of the beginning point, each quarter/quarter in between and the ending point of the water course you are seeking an appropriation from.

3. The map attached to the application is inadequate. Please provide a U. S. G. S. quadrangle map that clearly shows the portion of the watercourse you are seeking an appropriation from. The sections, township and range must be clearly visible.

4. Please date and sign the application.

5. In reference to the three quit-claim deeds attached to your application, pursuant to A.R.S. §45-163 and §45-164, it is now mandatory that an Assignment form be completed

when the land where this water right is attached changes from one owner to another. These two statutes provide the basis for assignments that require the Department of Water Resources to maintain a current and accurate registry of all applications, permits, certificates of water right and statements of claim. Any future changes of ownership of water right must be done through this Department.

6. Please contact me regarding the permit requirements for an instream flow.

An application shall not lose priority of filing because of defects if the application is corrected, completed and refiled with the Department of Water Resources within sixty days after its return to the applicant, or within such further time as the Director of Water Resources may, by an order of record, allow. If the application is not refiled within sixty days from the date of this letter, a new date of priority will be established.

Yours truly,



Joe B. Stuart
Section Manager
Surface Water/Adjudication
Telephone (602) 542-1581

JBS:mg

Enclosures

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATER OF THE STATE OF ARIZONA

NO. 33-95369
FILED October 3, 1989

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

Address 450 Golden Gate Ave., San Francisco, CA 94102

2. Type of source and name, if any, Apache Spring

a tributary of San Simon on the _____ watershed.
do not complete

3. Use of Water

A. Domestic
1. No. of Persons _____ 2. No. of Families _____

B. Municipal
1. Population to be served _____
2. Estimate of future population and water requirements _____

C. Irrigation
1. Location of the irrigated acreage

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

_____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

2. Number of acres to be irrigated _____

3. Describe type of crop to be irrigated _____

D. Stockwatering
1. Kind of stock _____ 2. No of stock _____

E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and the uses to which the power will be applied. Attach documents as necessary.

F. Mining
1. Kind of mining claims _____

2. Methods of supplying and using water _____

G. Recreation
1. Character of area to be used Historical pertinenceof the spring to the original settlement

H. Wildlife
1. Kind of wildlife Deer, Javalina, small mammals and birds

2. Character of area to be served Preservation and maintenance of habitat.

I. Groundwater Recharge _____

J. Storage & Recovery _____

4. Amount of water

Use	Amount	Measure	Months of Use
*See Exhibit A			Year Long

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OCT 3 1989

DWR-33-01A-(Rev. 9/88) — IPS 3700

FILED

JUN 1 1 1982

W. J. FURSTENAU, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

MAYA APARTMENTS, an Arizona limited partnership,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants.

No. CIV 76-202-TUC-RMB

ORDER

The Court having reviewed the first, second, third and fourth Reports on Settlement Progress,

IT IS ORDERED that unless this matter is settled and the documents furnished to the Court by July 16, 1982, the parties shall comply with Local Rule 42(A)(C) and file a proposed pretrial order with the Court no later than August 5, 1982.

DATED: June 10, 1982.

Richard M. Bilby
United States District Judge

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EXHIBIT A

FOR THE DISTRICT OF ARIZONA

OCT 12 1982

CLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA
BY: _____ DEPUTY

MAYA APARTMENTS, an Arizona limited partnership,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants

No. CIV 76-202-TUC-RMB



STIPULATION FOR DISMISSAL

It is hereby stipulated that the above-entitled action be discontinued and dismissed with prejudice and without cost to either party.

Dated this 5 day of October, 1982.

MAYA APARTMENTS

By _____
M. S. MACCOLLUM, M.D.

_____
DARYL M. WILLIAMS
Murphy & Posner

ATTORNEY FOR PLAINTIFF

A. MELVIN MCDONALD
United States Attorney
District of Arizona

BRUCE R. HEURLIN
Assistant United States Attorney

_____
JOHN R. HILL, JR.
Attorney, Department of Justice
Land and Natural Resources Divisi
1961 Stout Street, Drawer 3607
Denver, Colorado 80294-3607
303/837-2892

ATTORNEYS FOR FEDERAL DEFENDANTS



Williams
Heurlin
Hill
Stanley
RMO

COPY FOR YOUR INFORMATION

MAYA APARTMENTS
vs.
U.S.A.

ORDER

PURSUANT to the foregoing Stipulation,

IT IS ORDERED that the above entitled action is DISMISSED with prejudice, each party to bear its own costs.

DATED: October 11, 1982.

Richard M. Bilby
United States District Judge

RECEIVED
OCT 3 1989

AGREEMENT CONCERNING WATER RIGHTS TO THE
MINE TUNNEL WATER SOURCES AND RELATED MATTERS

THIS AGREEMENT, made this 8 day of October, 1982, between the UNITED STATES OF AMERICA acting by and through the National Park Service ("United States") and MAYA APARTMENTS, an Arizona limited partnership ("Maya"),

W I T N E S S E T H:

WHEREAS:

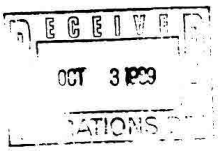
A. There exist two developed water sources within the boundaries of Fort Bowie National Historic Site, on land owned by the United States, located in the SE 1/4, NE 1/4 Section 12 of T. 15 S., R. 28 E., Gila and Salt River P. M. Said land was acquired by the United States from a predecessor-in-interest of Maya. These two water sources are referred to herein as the "Mine Tunnel" water sources. The United States and Maya assert conflicting claims of ownership to said water sources, which conflicting claims have never been legally determined.

B. United States and Maya have concluded that it would be in their best interests to enter into this agreement to fix and determine their respective rights to the Mine Tunnel water sources and to reach agreements as to other matters.

NOW THEREFORE, the parties hereto agree as follows:

MINE TUNNEL WATER SOURCES

1. Equal Rights to Water. United States and Maya hereby agree to share equally in the use and right to use each of the two Mine Tunnel water sources. Failure of either party to use all or part of its rights herein shall not be construed as a loss of all or part of the rights of said party to the other party. To effectuate this Agreement to share the Mine Tunnel water sources equally, the parties will each quitclaim to the other any-all of its water rights to each Mine Tunnel source



hat is or may be in excess of or alf of the quantity of water that now flows from, or may in the future flow, from each Mine Tunnel source. A copy of the quitclaim is attached hereto as Exhibit A.

2. Operation and Maintenance. The parties agree that the operation and maintenance of the Mine Tunnel water sources water delivery system within Fort Bowie National Historic Site shall be handled in the following manner:

a. No work shall be done to increase flows from the two Mine Tunnel water sources without the written permission of the United States.

b. Any maintenance, repair, or new construction within the Historic Site shall be performed in such a manner as to minimize harm to the Historic Site and its resources. The United States shall have the right to limit the type of equipment used.

c. The responsibility for repair and maintenance of the system within the Historic Site shall be as follows:

(1) Both parties shall share equally the costs of repair and maintenance of the system from the springs to, and including, the collection box.

(2) The National Park Service shall be solely responsible for repair and maintenance of the pressure pump and the pipe from the pump to the National Park Service facilities.

(3) MAYA shall be solely responsible for repair and maintenance of the system from where it leaves the collection box throughout the remainder of the system.

OCT 3 1989
ATIONS DIV.

(4) Both parties shall share the costs of repair of either Mine Tunnel Spring when repairs are necessary to maintain that equal share of the combined sources available to either party at 2.5 gpm. However, the parties shall first agree to the need and extent of repair before the resulting cost is shared. Provided, however, that in the event of inability to agree on the need or extent of repair, the reduction in flow attributable to the need for repair shall be borne by the dissenting party.

d. Any change in the present course or alignment of the system within the Historic Site is subject to the written approval of the United States. Furthermore, the United States shall have the right, at its sole expense, to further improve the system to transport water from either Mine Tunnel source up to the National Park Service facilities.

e. The United States shall have the right to further modify, at its own expense, the present system to ensure that no more than one-half of the water from the Mine Tunnel sources is transported to Maya, provided, however, that this shall not apply to that amount of water attributable to repairs made unilaterally by Maya pursuant to 2.c.(4), above.

3. Use of Water Off the Monument. Maya's Mine Tunnel water right, as established herein, is limited to the reasonable domestic needs for a ranch headquarters at the "Old Shaffer Place" and stock watering. Maya's water use is also limited to use on that land owned by Maya, or permitted to Maya from the Bureau of Land

RECEIVED
OCT 3 1989

Management and the State of Arizona for grazing purposes, as of September 1, 1981, adjacent to the Fort Bowie National Historic Site.

APACHE SPRING

4. Water Rights. The parties recognize that the right to water at Apache Spring which is located in the SW 1/4, SW 1/4, NE 1/4, Section 12, T. 15 S., R. 28 E., Gila and Salt River P.M., is governed by applicable law. However, the parties agree between themselves that Maya shall be entitled to that amount of Apache Spring water needed to sustain the number of livestock as permitted under the terms of the Bureau of Land Management/ National Park Service grazing allotment with the carrying capacity as determined by Bureau of Land Management. Said livestock shall not be allowed to drink directly from the spring or its water course, but shall be limited to drinking from two stock tanks as further discussed below. The United States shall have the right to use the remainder of said water.

5. Operation and Maintenance. The United States shall have the responsibility and control over the operation and maintenance of Apache Spring and the water delivery system from Apache Spring to Maya's two stock tanks. However, the cost of maintaining the system from where the system leaves the spring up to, but not including, the two stock tanks, shall be borne by the United States. Maya shall be solely responsible for the maintenance of the stock tanks and any associated costs.

6. Location of Stock Tanks. The two stock tanks shall remain where presently located unless the parties agree otherwise.

PIPELINE RIGHT-OF-WAY

7. Maya agrees to quitclaim to the United States any interest in that pipeline right-of-way reserved by Earl J. Neel in that

RECEIVED
MAR 3 1989

certain deed recorded in Book 148, Pages 46 and 47 , Cochise County, Arizona. A copy of said quitclaim deed is attached hereto as Exhibit B.

MISCELLANEOUS

8. Maya agrees to dismiss, with prejudice, its action entitled: Maya Apartments v. United States, Civil No. 76-202-TUC-RMB (D. Arizona), with each party bearing its own costs.

9. The headings herein are for convenience only and said headings shall not be deemed to affect the agreements made herein.

10. This agreement shall be binding in all respects upon the successors and assignees of each of the parties hereto.

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

12. Any obligation in this Agreement on the part of the United States to expend funds shall be subject to the availability of funds.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, all as of the day and year first above written.

UNITED STATES OF AMERICA

DATED: 10-8-82 By: Donald M. Spalding

Donald M. Spalding
Acting Regional Director, Western Region

MAYA APARTMENTS

DATED: 13 July 82 By: [signature]

07-08-1982: quitclaim deed

National Park Service, Western Regio..
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 8, 1982, for a valuable consideration, I, the National Park Service, Department of the Interior, U.S. Government do hearby remise, release and forever quitclaim to Maya Apartments the following described water rights in the State of Arizona, County of Cochise

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

Levi E. López

ACTING Regional Director, [illegible]

County of San Francisco)
State of California)

On this 8th day of July, in the year 1982, before me Mary E. Meredith, personally appeared Levi E. Lopez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Acting Regional Director of Western Region, National Park Service, Dept. of the Interior and acknowledge to me that the National Park Service, Department of the Interior executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

Mary E. Meredith
Notary Public in and for said County of San Francisco, State of California. My commission expires March 26, 1985.

OFFICIAL SEAL
MARY E. MEREDITH
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Mar. 26, 1985

OCT 3 1989
[illegible]RATIONS DIV.

07-15-1982: quitclaim deed

450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration I N. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from; each Mine Tunnel source.

TRANSAMERICA TITLE INSURANCE CO.
BOX 10
BISBEE, ARIZONA 85635

STATE OF ARIZONA] SS.
COUNTY OF COCHISE]

I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT WAS FILED IN THIS OFFICE AT REQUEST OF:

WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER

$3.00

DEPUTY DRAFT

JAN 24 '83 2 20 PM

INDEXED

DATE

DOCKET 1648 PAGE 264 NO 1383

COCHISE COUNTY RECORDER

FOR THE NATIONAL PARK SERVICE

N S MacCollum

for: Maya Apartments

County of Maricopa)
State of Arizona)

On this 15th day of July, 19 82, before me Malene L Smith,
A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

RECEIVED
1989

Malene L Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr 12 1985

DKT 1616 PAGE 264

Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration, I M. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described pipeline right-of-way in the State of Arizona, County of Cochise:

That pipeline right-of-way reserved by Earl J. Neel in that certain deed dated November 28, 1966, and recorded at pages 46 and 47 of Book 1485, Cochise County, Arizona; said pipeline right-of-way being 10 (ten) feet in width; beginning at Apache Spring, located in the W½, SW¼, SW¼, NE¼ of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, thence N 80° 10' E, 1320 (one thousand three hundred twenty) feet and N 58° 10' E, 1500 (one thousand five hundred) feet to a point 1340 (one thousand three hundred forty) feet south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian.

STATE OF ARIZONA] SS.
COUNTY OF COCHISE]
WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER
I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF: TRANSAMERICA TITLE INSURANCE
P. O. BOX 1900
FEE $ $3.00 SIERRA VISTA, ARIZONA 85
DEPUTY DRAFT
DATE JAN 24 '83 -2 20
INDEXED
DOCKET 1616 PAGE 263 NO 1382

COCHISE COUNTY RECORDER

FOR THE NATIONAL PARK SERVICE

for: Maya Apartments

County of Maricopa
State of Arizona

On this 15th day of July, 19 82 before me Malvine L. Smith, A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

Malvine L Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr. 12, 1985.

RECEIVED DKT 1616 PAGE 263

United States Department of the Interior
NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

Received OCT 05 1989
Water Resources Branch

L54(WR-RN)

September 19, 1989

Mr George Schade, Section Manager
Litigation Support
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Re: Application to Appropriate and Statement of Claimant Form for Apache Springs at Fort Bowie National Historic Site

Dear Mr Schade:

Please find enclosed the Application for Permit to Appropriate Public Water of the State of Arizona and the Statement of Claimant Form for Apache Springs at Fort Bowie National Historic Site. As suggested by Ron Thomas, Arizona Department of Water Resources, we are submitting the Application and Statement of Claimant forms together to expedite filing.

Also enclosed is the $45.00 filing fee. Please return a receipt for the filing fee and a copy of the filed application and claimant forms, with file numbers and filing dates, for our records. If there are any questions concerning these applications, please contact Bill Hansen, Water Rights Branch, Fort Collins, Colorado, at (303) 221-8333.

Sincerely,

for John D. Cherry
Associate Regional Director
Resource management and Planning

Enclosure

cc:
Field Solicitor, Phoenix, w/enclosure
FOBO - Superintendent, w/enclosure
WRD - Williams, Hansen, w/enclosure

STATEMENT OF CLAIMANT FORM
FOR
OTHER USES[1]

For Departmental Use Only
File No. 39-
Date Filed:
WFN

UPPER GILA RIVER WATERSHED UPSTREAM FROM ASHURST-HAYDEN DAM EXCLUDING THE SAN PEDRO RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY

1. **Claimant Name:** U.S. of America, c/o National Park Service, Western Regional Office, Fort Bowie National Historic Site
   Claimant Address: 450 Golden Gate Ave. City San Francisco
   State: California Zip Code 94102 Telephone (415) 556-6732

2. **Basis of Claim:**
   - A. ☐ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No. _____
   - B. ☒ Appropriation Right acquired after June 12, 1919. Application No. _____, Permit No. _____, or Certificate of Water Right No. _____
   - C. ☐ Decreed water right. Principal litigants, court, date and case no. _____
   - D. ☐ Right to withdraw groundwater. Grandfathered Right No. _____
   - E. ☐ Other, describe: _____

3. **Claimed Priority Date:** ____/____/____(month/day/year)

4. **Use:**
   - A. ☐ Municipal
   - B. ☐ Commerical or Industrial
   - C. ☐ Mining
   - D. ☐ Stockwatering other than from a stockpond
   - E. ☒ Recreation, Fish & Wildlife
   - F. ☒ Other, describe: Instream use for historical interpretation and habitat maintenance

5. **Source of Water:**
   - A. ☐ Stream: name _____, tributary to _____
   - B. ☒ Spring: name Apache Spring, tributary to San Simon
   - C. ☐ Lake or Reservoir: name _____, tributary to _____
   - D. ☐ Groundwater.

6. **Legal description of the Point of Diversion:** (attach additional sheet if required)
   SW 1/4, SW 1/4, NE 1/4, Section 12 ,Township 15 N/S, Range 28 E/W/

7. **If there are Irrigation, Domestic or Stockpond Uses also supplied from the Point of Diversion, describe:** _____

8. **Means of Diversion:**
   - A. ☐ Instream pump.
   - B. ☐ Gravity flow into a ditch, canal or pipeline.
   - C. ☐ Well: Arizona Department of Water Resources Well Registration No. 55-_____
   - D. ☐ Other, describe: _____

[1] *See Instructions for explanation of uses in this category*

9. Means of Conveyance:

A. ☐ Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: _____

B. ☒ Other, describe: Instream flow and in situ use

10. Place of Use, If other than point of diversion: (attach additional sheet if required)

County Cochise

Legal Subdivision	Section	Township	Range
E 1/2, SW	1	15 ~~N~~S	28 E~~W~~
NW	12	15 ~~N~~S	28 E~~W~~

11. Claimed Right:

A. Maximum Flow Rate: See Exhibit A ☐ cubic-feet per second ☐ gallons per minute ☐ Arizona miner's inches

B. Annual Volume of Water Use: _____ acre-feet

C. Storage Right: _____ acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage resevoir(s) place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant John D. Cherry, Assoc. Reg. Dir. of Res. Mgmt Plng, Western Reg. Office, National Park Service

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? (415) 556-6732 -- Regular Work Days

15. Additional comments: An agreement concerning water use for Apache Spring was reached by the National Park Service and Maya Apartments on October 8, 1982 (Exhibit A) in settlement of CIV 76-202-TUC-RMB, District Court of Arizona.

(attach additional sheet if required)

16. Attach Filing Fee to Form. Mail form(s) and filing fee(s) to: Department of Water Resources, Adjudications Division, 15 South 15th Avenue, Phoenix, Arizona 85007.

17. Notarized Statement:

I (~~We~~), John D. Cherry, on behalf of the National Park Service the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my (our) knowledge and belief true, correct and complete.

_____

(seal) _____

_____ _____

My Commission Expires Notary Public

or, _____

Authorized Personnel of the Department of Water Resources

00-00-0000: application for permit to appropriate public water of the state of arizona apache spring a tributary of san simon

ARIZONA DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

APPLICATION FOR PERMIT TO APPROPRIATE PUBLIC WATER OF THE STATE OF ARIZONA

NO. _____

FILED _____

1. Name U.S. of America, c/o National Park Service, Western Regional Office, Ft. Bowie Nat'l Hist. Site Telephone (415) 556-6732

   Address 450 Golden Gate Ave., San Francisco,CA 94102

2. Type of source and name, if any, Apache Spring ,

   a tributary of San Simon on the _____ watershed.
   do not complete

3. Use of Water

   A. Domestic
      1. No. of Persons _____ 2. No. of Families _____

   B. Municipal
      1. Population to be served _____
      2. Estimate of future population and water requirements _____

   C. Irrigation
      1. Location of the irrigated acreage

      _____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

      _____ ¼ _____ ¼ _____ ¼ Section _____ Township _____ N/S Range _____ E/W

      2. Number of acres to be irrigated _____

      3. Describe type of crop to be irrigated _____

   D. Stockwatering
      1. Kind of stock _____ 2. No of stock _____

   E. Power - Describe the nature of the works by which power is to be developed, pressure head, points of release of water and the uses to which the power will be applied. Attach documents as necessary.

   F. Mining
      1. Kind of mining claims _____

      2. Methods of supplying and using water _____

   G. Recreation
      1. Character of area to be used Historical pertinenceof the spring to the original settlement

   H. Wildlife
      1. Kind of wildlife Deer, Javalina, small mammals and birds

      2. Character of area to be served Preservation and maintenance of habitat.

   I. Groundwater Recharge _____

   J. Storage & Recovery _____

4. Amount of water

Use	Amount	Measure	Months of Use
*See Exhibit A			Year Long

DWR-33-01A-(Rev. 9/88) — IPS 3700

5. Legal description of point of diversion: County Cochise
SW ¼ SW ¼ NE ¼ Section 12 Township 15 N/S Range 28 E/W-G&SRB&M

6. Legal description of place of use: County Cochise
_____ ¼ E 1/2 ¼ SW ¼ Section 1 Township 15 N/S Range 28 E/W-G&SRB&M
_____ ¼ _____ ¼ NW ¼ Section 12 Township 15 N/S Range 28 E/W-G&SRB&M

7. Description of method(s) by which water will be put to beneficial use: Instream flow and in situ use

8. Storage of water N/A
   A. Name of reservoir _____
   B. Dam specifications: Height _____ feet
   C. Reservoir behind dam
      1. Maximum storage volume at spillway crest _____ acre feet
      2. Capacity for each foot in depth in cubic feet _____

9. Construction of works will begin within _____ after approval of this application, will be completed within _____ thereafter, and the water will be applied to the proposed use(s) no later than _____.

10. Name of owner of the land U.S. of America, National Park Service, c/o Ft. Bowie Nat'l Hist Site
    Does the applicant have legal access to the point of diversion and place(s) of use? Yes X No _____
    if no, explain _____

11. Is the water to be used supplementally with other water(s)? Yes _____ No X
    If "Yes" identify other waters or water rights, and explain below:

12. Additional comments An agreement concerning water use for Apache Spring was reached by the National Park Service and Maya Apartments on October 8, 1982 (Exhibit A) in settlement of CIV 76-202-TUC-RMB, District Court of Arizona.

13. Attach filing fee of $25.00

14. Attach a United States Geological Survey quad map with point of diversion and place(s) of use clearly marked on map. (Exhibit B)

DATED this _____ day of _____, 19_____.

_____
Applicant
John D. Cherry, on behalf of the NPS

FILED

JUN 11 1982

W. J. FURSTENAU, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

MAYA APARTMENTS, an Arizona limited partnership,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants.

No. CIV 76-202-TUC-RMB

ORDER

The Court having reviewed the first, second, third and fourth Reports on Settlement Progress,

IT IS ORDERED that unless this matter is settled and the documents furnished to the Court by July 16, 1982, the parties shall comply with Local Rule 42(A)(C) and file a proposed pretrial order with the Court no later than August 5, 1982.

DATED: June 10, 1982.

Richard M. Bilby
United States District Judge

EXHIBIT A

FOR THE DISTRICT OF ARIZONA

OCT 12 1982

CLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA
BY: _____ DEP

MAYA APARTMENTS, an Arizona limited partnership,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,

Defendants

No. CIV 76-202-TUC-RMB



STIPULATION FOR DISMISSAL

It is hereby stipulated that the above-entitled action be discontinued and dismissed with prejudice and without cost to either party.

Dated this 5 day of October, 1982.

MAYA APARTMENTS

By _____
M. S. MACCOLLUM, M.D.

_____
DARYL M. WILLIAMS
Murphy & Posner

ATTORNEY FOR PLAINTIFF

A. MELVIN MCDONALD
United States Attorney
District of Arizona

BRUCE R. HEURLIN
Assistant United States Attorney

_____
JOHN R. HILL, JR.
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, Colorado 80294-3607
303/837-2892

ATTORNEYS FOR FEDERAL DEFENDANTS

Williams
Heurlin
Hill
Stanley
RMS

COPY FOR YOUR INFORMATION

MAYA APART NTS
vs.
U.S.A.

ORDER

PURSUANT to the foregoing Stipulation,

IT IS ORDERED that the above entitled action is DISMISSED with prejudice, each party to bear its own costs.

DATED: October 11, 1982.

Richard M Bilby
United States District Judge

AGREEMENT CONCERNING WATER RIGHTS TO THE
MINE TUNNEL WATER SOURCES AND RELATED MATTERS

THIS AGREEMENT, made this 8 day of October, 1982, between the UNITED STATES OF AMERICA acting by and through the National Park Service ("United States") and MAYA APARTMENTS, an Arizona limited partnership ("Maya"),

W I T N E S S E T H:

WHEREAS:

A. There exist two developed water sources within the boundaries of Fort Bowie National Historic Site, on land owned by the United States, located in the SE 1/4, NE 1/4 Section 12 of T. 15 S., R. 28 E., Gila and Salt River P. M. Said land was acquired by the United States from a predecessor-in-interest of Maya. These two water sources are referred to herein as the "Mine Tunnel" water sources. The United States and Maya assert conflicting claims of ownership to said water sources, which conflicting claims have never been legally determined.

B. United States and Maya have concluded that it would be in their best interests to enter into this agreement to fix and determine their respective rights to the Mine Tunnel water sources and to reach agreements as to other matters.

NOW THEREFORE, the parties hereto agree as follows:

MINE TUNNEL WATER SOURCES

1. Equal Rights to Water. United States and Maya hereby agree to share equally in the use and right to use each of the two Mine Tunnel water sources. Failure of either party to use all or part of its rights herein shall not be construed as a loss of all or part of the rights of said party to the other party. To effectuate this Agreement to share the Mine Tunnel water sources equally, the parties will each quitclaim to the other any-all of its water rights to each Mine Tunnel source

that is or may be in excess of one-half of the quantity of water that now flows from, or may in the future flow, from each Mine Tunnel source. A copy of the quitclaim is attached hereto as Exhibit A.

2. Operation and Maintenance. The parties agree that the operation and maintenance of the Mine Tunnel water sources water delivery system within Fort Bowie National Historic Site shall be handled in the following manner:

a. No work shall be done to increase flows from the two Mine Tunnel water sources without the written permission of the United States.

b. Any maintenance, repair, or new construction within the Historic Site shall be performed in such a manner as to minimize harm to the Historic Site and its resources. The United States shall have the right to limit the type of equipment used.

c. The responsibility for repair and maintenance of the system within the Historic Site shall be as follows:

(1) Both parties shall share equally the costs of repair and maintenance of the system from the springs to, and including, the collection box.

(2) The National Park Service shall be solely responsible for repair and maintenance of the pressure pump and the pipe from the pump to the National Park Service facilities.

(3) MAYA shall be solely responsible for repair and maintenance of the system from where it leaves the collection box throughout the remainder of the system.

(4) Both parties shall share the costs of repair of either Mine Tunnel Spring when repairs are necessary to maintain that equal share of the combined sources available to either party at 2.5 gpm. However, the parties shall first agree to the need and extent of repair before the resulting cost is shared. Provided, however, that in the event of inability to agree on the need or extent of repair, the reduction in flow attributable to the need for repair shall be borne by the dissenting party.

d. Any change in the present course or alignment of the system within the Historic Site is subject to the written approval of the United States. Furthermore, the United States shall have the right, at its sole expense, to further improve the system to transport water from either Mine Tunnel source up to the National Park Service facilities.

e. The United States shall have the right to further modify, at its own expense, the present system to ensure that no more than one-half of the water from the Mine Tunnel sources is transported to Maya, provided, however, that this shall not apply to that amount of water attributable to repairs made unilaterally by Maya pursuant to 2.c.(4), above.

3. Use of Water Off the Monument. Maya's Mine Tunnel water right, as established herein, is limited to the reasonable domestic needs for a ranch headquarters at the "Old Shaffer Place" and stock watering. Maya's water use is also limited to use on that land owned by Maya, or permitted to Maya from the Bureau of Land

Management and the State of Arizona for grazing purposes, as of September 1, 1981, adjacent to the Fort Bowie National Historic Site.

APACHE SPRING

4. Water Rights. The parties recognize that the right to water at Apache Spring which is located in the SW 1/4, SW 1/4, NE 1/4, Section 12, T. 15 S., R. 28 E., Gila and Salt River P.M., is governed by applicable law. However, the parties agree between themselves that Maya shall be entitled to that amount of Apache Spring water needed to sustain the number of livestock as permitted under the terms of the Bureau of Land Management/ National Park Service grazing allotment with the carrying capacity as determined by Bureau of Land Management. Said livestock shall not be allowed to drink directly from the spring or its water course, but shall be limited to drinking from two stock tanks as further discussed below. The United States shall have the right to use the remainder of said water.

5. Operation and Maintenance. The United States shall have the responsibility and control over the operation and maintenance of Apache Spring and the water delivery system from Apache Spring to Maya's two stock tanks. However, the cost of maintaining the system from where the system leaves the spring up to, but not including, the two stock tanks, shall be borne by the United States. Maya shall be solely responsible for the maintenance of the stock tanks and any associated costs.

6. Location of Stock Tanks. The two stock tanks shall remain where presently located unless the parties agree otherwise.

PIPELINE RIGHT-OF-WAY

7. Maya agrees to quitclaim to the United States any interest in that pipeline right-of-way reserved by Earl J. Neel in that

certain deed recorde in Book 1485, Pages 46 and 47, Cochise County, Arizona. A copy of said quitclaim deed is attached hereto as Exhibit B.

MISCELLANEOUS

8. Maya agrees to dismiss, with prejudice, its action entitled: Maya Apartments v. United States, Civil No. 76-202-TUC-RMB (D. Arizona), with each party bearing its own costs.

9. The headings herein are for convenience only and said headings shall not be deemed to affect the agreements made herein.

10. This agreement shall be binding in all respects upon the successors and assignees of each of the parties hereto.

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

12. Any obligation in this Agreement on the part of the United States to expend funds shall be subject to the availability of funds.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, all as of the day and year first above written.

UNITED STATES OF AMERICA

DATED: 10-8-82

By: Donald M. Spalding
Donald M. Spalding
Acting Regional Director, Western Region

MAYA APARTMENTS

DATED: 13 July 82

By: [signature]

After recording return

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 8, 1982, for a valuable consideration, I, the National Park Service, Department of the Interior, U.S. Government, do hearby remise, release and forever quitclaim to Maya Apartments the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

Levi E. Lopez

ACTING Regional Director, [illegible]

County of San Francisco)
State of California)

On this 8th day of July, in the year 1982, before me Mary E. Meredith, personally appeared Levi E. Lopez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Acting Regional Director of Western Region, National Park Service, Dept. of the Interior and acknowledged to me that the National Park Service, Department of the Interior executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

OFFICIAL SEAL
MARY E. MEREDITH
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Mar. 26, 1985

Mary E. Meredith
Notary Public in and for said County of San Francisco, State of California. My commission expires March 26, 1985.

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration, I M. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

TRANSAMERICA TITLE INSURANCE CO.
WHEN RECORDED RETURN TO
SIERRA VISTA, ARIZONA 85635

STATE OF ARIZONA] ss.
COUNTY OF COCHISE]

I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF:

WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER
FEE $ 3.00

DEPUTY DRAFT JAN 24 '83 -2 20 PM

INDEXED STATE COPY VERIFIED

DATE

DOCKET 1648 PAGE 264 NO 1383

COCHISE COUNTY RECORDER 1881

FOR THE NATIONAL PARK SERVICE

M S MacCollum

for: Maya Apartments

County of Maricopa)
State of Arizona)

On this 15th day of July, 19 82, before me Malene L. Smith, A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the person whose name _____ subscribed to the within instrument and acknowledged to me that ___ he ___ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

NOTARY PUBLIC MARICOPA CO.

Malene L. Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr 12 1985

DKT 1646 PGE 264

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration, I H. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described pipeline right-of-way in the State of Arizona, County of Cochise:

That pipeline right-of-way reserved by Earl J. Neal in that certain deed dated November 28, 1966, and recorded at pages 46 and 47 of Book 1485, Cochise County, Arizona; said pipeline right-of-way being 10 (ten) feet in width; beginning at Apache Spring, located in the W½, SW¼, SW¼, NE¼ of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, thence N 80° 10' E, 1320 (one thousand three hundred twenty) feet and N 58° 10' E, 1500 (one thousand five hundred) feet to a point 1340 (one thousand three hundred forty) feet south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian.

STATE OF ARIZONA] SS.
COUNTY OF COCHISE]

WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF: TRANSAMERICA TITLE INSURANCE CO.
P. O. BOX 1900
SIERRA VISTA, ARIZONA 85635

FEE $ $3.00 DEPUTY DRAFT
DATE JAN 24 '83 -2 20 PM
INDEXED P.C. F.N. FEE
DOCKET 1646 PAGE 263 NO 1382

COCHISE COUNTY RECORDER 1881

FOR THE NATIONAL PARK SERVICE

for: Maya Apartments

County of Maricopa
State of Arizona

On this 15th day of July, 19 82, before me Mafine L. Smith, A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

PUBLIC MARICOPA CO.

Mafine L. Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr. 12, 1985.

DKT 1646 PAGE 263

Swan

United States Department of the Interior
NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
301 SOUTH HOWES ST., ROOM 335
FT. COLLINS, COLORADO 80521

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
L54(479)
FOBO/Water Rights

May 2, 1989

DEPARTMENT OF THE INTERIOR
RECEIVED
MAY 5 1989
OFFICE OF FIELD SOLICITOR
PHOENIX, ARIZONA

Memorandum

To: Office of the Solicitor
Attn: Bill Swan, Esquire

From: Chief, Water Rights Branch, Water Resources Division

Subject: Application to Appropriate and Statement of Claimant for Apache Springs at Fort Bowie National Historic Site

Please find attached the Application for Permit to Appropriate Public Water of the State of Arizona and Statement of Claimant form for Apache Springs at Fort Bowie National Historic Site. We are proposing to file both the application and claimant form at the same time as discussed at our meeting with the Department of Justice on April 4, 1989.

Please review the application and claimant form and notify either myself or Bill Hansen at (303) 221-8301 or (303) 221-8333, respectively, if the material meets with your approval.

O. R. Williams

Attachment

cc: FOBO - Superintendent

Reviewed and approved by Bill Swan on 5/16/89.

W. Swan

May 2, 1989

L54(479)
FOBO/Water Rights

Memorandum

To: Office of the Solicitor
Attn: Bill Susa, Esquire

From: Chief, Water Rights Branch, Water Resources Division

Subject: Application to Appropriate and Statement of Claimant for Apache Springs at Fort Bowie National Historic Site

Please find attached the Application for Permit to Appropriate Public Water of the State of Arizona and Statement of Claimant form for Apache Springs at Fort Bowie National Historic Site. We are proposing to file both the application and claimant form at the same time as discussed at our meeting with the Department of Justice on April 4, 1989.

Please review the application and claimant form and notify either myself or Bill Hansen at (303) 221-8301 or (303) 221-8333, respectively, if the material meets with your approval.

Owen Williams

Attachment

cc: FOBO - Superintendent

FWP:WHansen:scp:5/2/89:221-8302:WANG#432
Revised 5/3/89:jr

W.R. Hansen WRH
Owen Williams

May 2, 1989

L54(479)
FOBO/Water Rights

Memorandum

To: Associate Regional Director, Resource Management and Planning
Western Regional Office

From: Chief, Water Rights Branch, Water Resources Division

Subject: Water Rights at Fort Bowie National Historic Site

Please find attached the Application for Permit to Appropriate Public Water of the State of Arizona and the Statement of Claimant form to the Arizona Department of Water Resources (ADWR) for a water right at Apache Springs at Fort Bowie National Historic Site (FOBO). This application and claim are a result of our continuing efforts to prepare the claim for National Park Service water rights in the Gila River general adjudication.

This material has been reviewed and approved by the Superintendent of FOBO and a copy has been sent to Bill Swan, Solicitor's Office (SOL), Phoenix, for review and approval. If no changes are forthcoming from SOL, the application and claim shall be ready for your signature and transmittal to ADWR. We will notify you of SOL approval so the forms can be forwarded to ADWR.

A notarized signature is required for the Statement of Claimant form. A signature is also required for the Application for Permit to Appropriate Public Water of the State of Arizona. If the attached does not meet with your approval, please contact us about your concerns. Please forward a filing fee of $45.00 (payable to Arizona Department of Water Resources) with the application and claim to ADWR. We have attached a draft cover letter for your consideration.

Owen Williams

Attachments

FNP:BHANSEN:scp:5/2/89:221-8302:WANG#433
Revised:5/3/89:jr

L54(479)

May 2, 1989

FOBO/Water Rights

DRAFT

Mr. George Schade, Section Manager
Litigation Support
Arizona Department of Water Resources
15 South 15th Avenue
Phoenix, Arizona 85007

Re: Application to Appropriate and Statement of Claimant Form for Apache Springs at Fort Bowie National Historic Site

Dear Mr. Schade:

Please find enclosed the Application for Permit to Appropriate Public Water of the State of Arizona and the Statement of Claimant Form for Apache Springs at Fort Bowie National Historic Site. As suggested by Ron Thomas, Arizona Department of Water Resources, we are submitting the Application and Statement of Claimant forms together to expedite filing.

Also enclosed is the $45.00 filing fee. Please return a receipt for the filing fee and a copy of the filed application and claimant forms, with file numbers and filing dates, for our records. If there are any questions concerning these applications, please contact Bill Hansen, Water Rights Branch, Fort Collins, Colorado, at (303) 221-8333.

Sincerely,

John D. Cherry
Associate Regional Director
Resource Management and Planning

Enclosure

cc: Field Solicitor, Phoenix, w/enclosure
FOBO - Superintendent, w/enclosure
WRD - Williams, Hansen, w/enclosure

FNP:BHANSEN:scp:5/2/89:221-8302:WANG#431
Revised:5/3/89:jr

STATEMENT OF CLAIMANT FORM
FOR
OTHER USES[1]

For Departmental Use Only
File No. 55-
Date Filed:
WFN

UPPER GILA RIVER WATERSHED UPSTREAM FROM ASHURST-HAYDEN DAM EXCLUDING THE SAN PEDRO RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY

1. **Claimant Name:** U.S. of America, c/o National Park Service, Western Regional Office, Fort Bowie National Historic Site
Claimant Address: 450 Golden Gate Ave. City San Francisco
State: California Zip Code 94102 Telephone (415) 556-6732

2. **Basis of Claim:**
A. ☐ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No. _____
B. ☒ Appropriation Right acquired after June 12, 1919. Application No. _____, Permit No. _____, or Certificate of Water Right No. _____
C. ☐ Decreed water right. Principal litigants, court, date and case no. _____
D. ☐ Right to withdraw groundwater. Grandfathered Right No. _____
E. ☐ Other, describe: _____

3. **Claimed Priority Date:** ____/____/____(month/day/year)

4. **Use:**
A. ☐ Municipal
B. ☐ Commerical or Industrial
C. ☐ Mining
D. ☐ Stockwatering other than from a stockpond
E. ☒ Recreation, Fish & Wildlife
F. ☒ Other, describe: Instream use for historical interpretation and habitat maintenance

5. **Source of Water:**
A. ☐ Stream: name _____, tributary to _____
B. ☒ Spring: name Apache Spring, tributary to San Simon
C. ☐ Lake or Reservoir: name _____, tributary to _____
D. ☐ Groundwater.

6. **Legal description of the Point of Diversion:** (attach additional sheet if required)
SW 1/4, SW 1/4, NE 1/4, Section 12, Township 15 N/S, Range 28 E/W/

7. **If there are Irrigation, Domestic or Stockpond Uses also supplied from the Point of Diversion, describe:** _____

8. **Means of Diversion:**
A. ☐ Instream pump.
B. ☐ Gravity flow into a ditch, canal or pipeline.
C. ☐ Well: Arizona Department of Water Resources Well Registration No. 55-_____
D. ☐ Other, describe: _____

[1] *See Instructions for explanation of uses in this category*

REPORT OF

TELEPHONE CONVERSATION

DATE 3/20/89 TIME 1000 AM/PM

PROJECT: New Use Statement of Claimant Forms
Gila River General Adjudication

NPS PERSON ON CALL: Bill Hansen ☐ I CALLED ☒ S/HE CALLED

PERSON Bill Swan (Solicitor-Phoenix); Pat Barry (DOJ-Phoenix) - Conference Call

ORGANIZATION

ADDRESS

TELEPHONE NO. EXT.

SUBJECTS DISCUSSED Conference call was scheduled to discuss New Use Statement of Claimant Forms for the Sparks Wells at CORO and for Mine Tunnel Spr and Apache Springs at FOBO. The discussion centered around whether NPS should or could file these developments as "new uses". Initially, history of each use was discussed. Swan and Barry agreed that several options existed for Sparks wells: (1) claim reserved rights based upon date of acquisition; (2) request intervention and request admendment to previous claim stating reason as "Mr Sparks didn't file claim" and we would like to. They said Judge Goodfarb granting regularly. Options for Mine Tunnel Spring: (1) file as reserved claim with priority date date of acquisition, or (2) file as "New Use" with ~~as~~ priority date date of application to appropriate in 1986. This alternative requires adjusting present data on claim form (check box B not C). Options for Apache Springs: (1) file as reserved ~~claim~~ claim with priority date date of acquisition or (2) file a application to appropriate -- This results in priority date of 1989 and does not allow filing as "new use". File SofC at same time as applic. to approp. Swan said that neither Mine Tunnel or Apache Spgs could be filed as though decreed. Agreement btw USA & Maya was only a agreement & not a decree -- nothing said about nature of water right.

ACTION TO BE TAKEN Discuss options w/ Williams & file appropriate claims.

~~DECISION~~ DECISION MADE TO FILE SPARKS WELLS AS NEW USES AND MINE TUNNEL SPR AS NEW USE. DID NOT FEEL CLAIM AS RESERVED RT. APPROPRIATE. WILL FILE APACHE SPR ~~AS~~ W/ STATE AS A NEW APPROPRIABLE RIGHT (APPL. TO APPROP.)

COPIES TO:

November 29, 1985

L54 (479)
FOBO Water Rights

Memorandum

To: Superintendent, CHIR/FOBO

From: Chief, Water Rights Branch
Water Resources Division

Subject: Water Rights -- Fort Bowie NHS

Attached please find copies of water right applications for Mine Tunnel Springs at Fort Bowie NHS. The originals of the applications have been sent to the Western Regional Office for signature and transmittal to the Arizona Department of Water Resources. Please review the content of the applications for accuracy and contact Owen Williams of my staff if any errors are found.

We are uncertain as to how the State will respond to these applications in view of the ongoing adjudication in the Upper Gila River Basin. However, it is certain that our filing should be initiated as soon as possible so as to inform the State of our use and presumption or right.

You will note the absence of an application for water rights for Apache Springs. In view of the stipulation agreement with Maya Apartments, it will be difficult, at best, to quantify NPS interests in Apache Springs. If this situation changes, then an application for water rights would certainly be in order.

Stanley L. Ponce

Stanley L. Ponce

Attachments

cc: Western Regional Office

FNP:OWilliams:pml:11/27/85:221-5341:31127wil.mm2

After recording retur

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 8, 1982, for a valuable consideration, the National Park Service, Department of the Interior, U.S. Government, do hearby remise, release and forever quitclaim to Maya Apartments the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

Levi E. Lopez

ACTING Regional Director, [illegible]

County of San Francisco)
)
State of California)

On this 8th day of July, in the year 1982, before me Mary E. Meredith, personally appeared Levi E. Lopez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Acting Regional Director of Western Region, National Park Service, Dept. of the Interior and acknowledged to me that the National Park Service, Department of the Interior executed it.

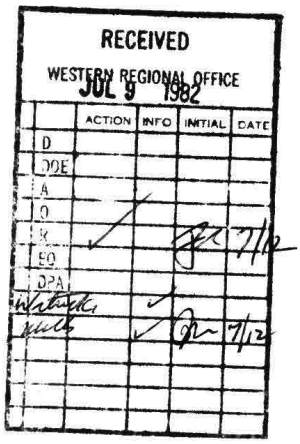
IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

OFFICIAL SEAL
MARY E. MEREDITH
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Mar. 26, 1985

Mary E. Meredith
Notary Public in and for said County of San Francisco, State of California. My commission expires March 26, 1985.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
SAN FRANCISCO FIELD OFFICE
450 GOLDEN GATE AVENUE, BOX 36064
SAN FRANCISCO, CALIFORNIA 94102

July 8, 1982



Dr. M.S. MacCollum
333 E. Virginia, Suite 112
Phoenix, Arizona 85004

Re: Maya Apartments v. United States of America
Civil Action No. 76-202-TUC-RMB, U.S.D.C. Arizona
DJ 90-1-5-1666

Dear Dr. MacCollum:

On behalf of the National Park Service, I am forwarding to you the quitclaim deeds referred to in John Hill's letter to you of July 1, 1982.

The first two quitclaim deeds are from the Park Service to you and from you to the Park Service of that water in excess of one-half the source from each Mine Tunnel spring. These quitclaim deeds are referred to in paragraph 1 of page 1 of the agreement. The Park Service's quitclaim has been executed.

The third quitclaim is for the Apache Springs right-of-way from you to the Park Service as mentioned in paragraph 7 on page 4 of the agreement.

If these meet with your approval, please execute the appropriate two and forward all three to John Hill.

Thank you for your cooperation and patience in this matter.

Sincerely yours,

Ralph G. Mihan

Ralph G. Mihan
Field Solicitor

Enclosures
cc:
John Hill, Department of Justice, w/encls
Regional Director, Western Region,
National Park Service, w/encls
Superintendent, Chiricahua, w/encls

National Park Service, Western Region
Division [illegible] Resources
450 Golden [illegible] Avenue, Box 36063
San Francisco, California 94102

copy

QUITCLAIM DEED

By this instrument dated July 8, 1982, for a valuable consideration, the National Park Service, Department of the Interior, U.S. Government, do hearby remise, release and forever quitclaim to Maya Apartments the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

STATE OF ARIZONA } SS.
COUNTY OF COCHISE }
WITNESS MY HAND AND OFFICIAL SEAL
[illegible] COUNTY RECORDER
DEPUTY

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF Murphy + Posner 1500 Thunderbird Town 100 West Clarendon Phx Ariz. (85013)
FEE $ $5.00
DRAFT
DATE OCT 12 '82 -11-05 AM
INDEXED | P. OTOSTAT. COMPARED | SCOTTED
DOCKET 1624 PAGE 273 NO 19235

COCHISE CO. RECORDER

Levi E. López
ACTING Regional Director

County of San Francisco)
State of California)

On this 8th day of July, in the year 1982, before me Mary E. Meredith, personally appeared Levi E. Lopez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Acting Regional Director of Western Region, National Park Service, Dept. of the Interior and acknowledged to me that the National Park Service, Department of the Interior executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

OFFICIAL SEAL
MARY E. MEREDITH
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Mar. 26, 1985

Mary E. Meredith
Notary Public in and for said County of San Francisco, State of California. My commission expires March 26, 1985.

DKT 1624 PG 273

After recording return to:

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration, I H. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described pipeline right-of-way in the State of Arizona, County of Cochise:

That pipeline right-of-way reserved by Earl J. Neel in that certain deed dated November 28, 1966, and recorded at pages 46 and 47 of Book 1485, Cochise County, Arizona; said pipeline right-of-way being 10 (ten) feet in width; beginning at Apache Spring, located in the W½, SW¼, SW¼, NE¼ of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, thence N 80° 10' E, 1320 (one thousand three hundred twenty) feet and N 58° 10' E, 1500 (one thousand five hundred) feet to a point 1340 (one thousand three hundred forty) feet south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian.

STATE OF ARIZONA] SS.
COUNTY OF COCHISE]
I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF: TRANSAMERICA TITLE INSURANCE CO.
WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER
FEE $ $3.00
P. O. BOX 1900
SIERRA VISTA, ARIZONA 85635
DEPUTY
DRAFT
DATE JAN 24 '83 -2 20 PM
INDEXED
PAID
DKT 1646 PAGE 263 NO 1382

COCHISE COUNTY * RECORDER * 1881

FOR THE NATIONAL PARK SERVICE

for: Maya Apartments

County of Maricopa)
State of Arizona)

On this 15th day of July, 19 82, before me Malinee L. Smith, A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

NOTARY PUBLIC MARICOPA CO.

Malinee L. Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr. 12, 1983.

DKT 1646 PAGE 263

After recording return to:

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 15, 1982, for a valuable consideration, I M. S. MacCollum for Maya Apartments, do hearby remise, release and forever quitclaim to the United States of America the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

TRANSAMERICA TITLE INSURANCE CO.
SIERRA VISTA, ARIZONA 85635

STATE OF ARIZONA] SS.
COUNTY OF COCHISE]

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF:

WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER
FEE $ 3.00
DEPUTY
DRAFT
DATE JAN 24 '83 -2 20 PM
INDEXED MICROFILMED NOTATED
DOCKET 1648 PAGE 264 NO 1383

COCHISE COUNTY * RECORDER * 1881

FOR THE NATIONAL PARK SERVICE

M S MacCollum

for: Maya Apartments

County of Maricopa)
State of Arizona)

On this 15th day of July, 19 82, before me Malinie L. Smith,
A Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

MALINIE L. SMITH NOTARY PUBLIC MARICOPA CO.

Malinie L Smith
Notary Public in and for said County of Maricopa, State of Arizona. My commission expires My Commission Expires Apr. 12, 1985.

DKT 1646 PAGE 264

After recording return to

National Park Service, Western Region
Division of Water Resources
450 Golden Gate Avenue, Box 36063
San Francisco, California 94102

QUITCLAIM DEED

By this instrument dated July 8, 1982, for a valuable consideration, the National Park Service, Department of the Interior, U.S. Government, do hearby remise, release and forever quitclaim to Maya Apartments the following described water rights in the State of Arizona, County of Cochise:

Any and all rights to water from each Mine Tunnel source that is or may be in excess of ½ (one-half) the quantity of water that now flows from, or may in the future flow from, each Mine Tunnel source.

Levi E. Lopez

ACTING Regional Director

County of San Francisco)
State of California)

On this 8th day of July, in the year 1982, before me Mary E. Meredith, personally appeared Levi E. Lopez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Acting Regional Director of Western Region, National Park Service, Dept. of the Interior and acknowledged to me that the National Park Service, Department of the Interior executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Official Seal the day and year in this certificate first above written.

OFFICIAL SEAL
MARY E. MEREDITH
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires Mar. 26, 1985

Mary E. Meredith
Notary Public in and for said County of San Francisco, State of California. My commission expires March 26, 1985.

Supporting Hydro Data

E.T. Calculation for Fort Bowie National Historical Site, Arizona

The eqn to calculate ET using the Blaney-Cridd method can be written as follows

$$U = K \sum_{1}^{m} (p \times t)$$

K - empirical crop coefficient for the growing period

Cottonwood

- see comment under m

- use Blaney's recommended K-value (Cruft and Thompson; 1967) of 0.85 for the entire year

m

- The Arizona State Climatologist's office (?) had no info. on growing season in the area, therefore, ET will be calculated for the entire year w/ the appropriate K-value

p (latitude = 32°08')
- given in calc., obtained from Table 1 TR Nº 21, USDA (1967)

t mean monthly temp. °F
- given in calc. obtained from Arizona State Climatologist

$U = K \sum_{1}^{m} p \times t$

	Avg. Mon. Temp (t)	Avg. Daytime Hrs % of yr (p x 10)	Avg. mon K	Consumptive Use (U), inches
Jan	51.1	7.20	0.85	3.13
Feb	53.8	6.97	0.85	3.19
Mar	57.8	8.36	0.85	4.11
Apr.	65.0	8.75	0.85	4.83
May	73.2	9.62	0.85	5.99
Jun	82.9	9.60	0.85	6.76
Jul	86.2	9.77	0.85	7.15
Aug	84.0	9.28	0.85	6.63
Sep	80.4	8.34	0.85	5.70
Oct	70.4	7.95	0.85	4.76
Nov	58.7	7.11	0.85	3.55
Dec	52.0	7.05	0.85	3.12
				58.92

Total potential ET for 1 acre area:

$58.92 \text{ in} \left(\frac{\text{ft}}{12 \text{ in}}\right)(1 \text{ acre}) = 4.91 \text{ AF}$

Other Supporting Information

10-03-1995: diary and work record entry

DIARY AND WORK RECORD — 40th Week, 276th Day — **TUESDAY 3** OCTOBER, 1995

NAME OR PROJECT	DETAILS OF MEETINGS · AGREEMENTS · DECISIONS	TIME HRS. 1/10
Sean Hoff	Think 3 AFY/acre is the upper end Some information suggests 3 AFY/ac for exchanges from wells Probably closer to 2.5 AFY/ac. Doesn't [redacted] see 7.8 AFY/ac for ag. purposes, a farmer could capture return water but doesn't think new water is justified	
Sam H.	- Had call from Flagstaff	
Swan/Ronstadt/ISH	- Conf. Call - Fort Apache Spring	
Carlos	- why don't we tell DWR we want the Maya Agreement incorporated in the applications? Better off than using supplemental agreement	
Swan	- Can we file for pre-1919 rights?	
Carlos	- Think of it as priority of documents - document that controls is HVL agreement even if NAS files pre-1919 rights	
Swan	- NAS/BOR will make a judgement as to whether we should file for pre-1919 rights	
Carlos	- do Nine Tunnel same as Fraights Spg.? If NAS find out	
Swan	- A letter to Joe Stuart saying, ISSue permit to incorporate the HVL agreement Work w/ DWR on language Draft letter for Swan/Ronstadt to sign	
Judy WACA	- What is more cost effective? Head above Spg's flow? . Story was aware of ponds experiment? . MTG needs to go forward If Grandfather clause for existing rts.	
LCR	Seems that only real issue is GW develop. impacts, Need to get handle on gw system consultants studies needed	

Mtg w/ Swan (1/13/92) - 1430 - Phoenix

- Weinzer (SKIP) proposing language for dropping protest
  - a) 10.9 non-consumptive use
  - b) about 1 ac-ft consumptive, existing use not new use
  - c) Swan OKd language

- Crockett - Response to 1/14/91 Letter
  - Bound by terms of MAVA
  - Apache Spr - permit issued as copermittees
  - MT - copermittees.
  - Pre 1919's - agree to not object to rts(e)

- Swan concern - to Crockett (Conference Call)
  - Pre 1919 - how many entities
    - Who protected 1919 water rts
    - evidence of continuous use?
  - need title linkage to NPS
    - Swan - agreement
      1) HYL drop protest
      2) NPS stand by agreement
      3) NPS not protest pre-1919 claim
      * 4) Assignment of that portion given to NPS (pre 1919)
  - Can guarantee other Fed agencies (BIA) won't protest
  - Maya Agreement "constitutes an assignment"

- We have new attorney (DOJ) - non-Indian lit. sec.

W.R. Hansen

REPORT OF TELEPHONE CONVERSATION

DATE 10/16/91 TIME 1045 AM/PM

PROJECT FOBO Apache Spr Protst by BIA

NPS PERSON ON CALL Bill Hansen ☒ I CALLED ☐ S/HE CALLED

PERSON Henry Dodge

ORGANIZATION BIA - San Carlos Irrigation Dist.

ADDRESS

TELEPHONE NUMBER (602) 723-5439

DISCUSSION Discussed BIA's protest of Apache Spr's application (1990). Told him water used for stockwatering since the 1900's and from time immemorial for recreation/wildlife. Application just legitimizes water use.

Henry stated the following concerns:

1) BIA received adjudicated rts in 1938
2) Why is the US claiming water rts when process completed in the 30's
   ↳ I told him the NPS purchased land in the 60's
3) Cummulative impacts to the project of the recent rash of instream flow claims by Fed agencies. He has scheduled mtg w/Swan to discuss concerns.

Henry will discuss w/ Swan and call me back to let me know if BIA will drop protest or what conditions required. I told him their rts would be senior to our 1990 rt if a call was made.

Charles Weinzer - New Manager
Frank Jones - Branch Chief, Branch Water Rts Protection - Invite (602) 379-6789

Jeff Crockett (602) 257-5947

REPORT OF TELEPHONE CONVERSATION

DATE 6/19/91 TIME 1010 AM/PM

PROJECT FOBO Water Rts

NPS PERSON ON CALL Bill Hansen ☐ I CALLED ☒ S/HE CALLED

PERSON Jeff Crockett, Attorney

ORGANIZATION HYL Ranch, AZ

ADDRESS

TELEPHONE NUMBER 602-257-5947

DISCUSSION Jim Warren, HYL owner, questioned why we filed applications on Mine Tunnel (MT) & Apache Springs when both parties had filed pre-1919 water rts applic. He thought that to be redundant. I informed Jeff that a pre-1919 applic. existed for Apache Spgs (filed by HYL). They are concerned that by filing Applic to Appropriate ADWR might interpret a second filing to mean they are relinquishing their 1919 Applic.

Warren says MT has been flowing for 150 years - no domestic use on Apache Spgs.

I told Crockett that we did not feel they had basis for protest on MT. US bound by agreement to share water 50/50. He agreed & will talk to Warren about dropping protest.

I told Jeff US still willing to be coapplicant on Apache, but we could not file for domestic uses due to non-use & exclusion in agreement. They could continue to pursue domestic under pre-1919. Told him we would fight domestic claim in adjudication. Told him state would enforce policy that Fed own land, water rt. in our name. They disagree - could be co-applicants & address in cover letter to Stewart.

Confusion - Warren thinks there's a pre 1919 on MT. Might be error in location - HYL has applic for graphite #5 spring - same as MT? - YES, HYL (Cardon Invest) filed.

Action: Ck on pre 1919's w/ ADWR
Ck on legal location of MT & Apache

Patti Rocko (ADWR) on 6/19/91
@ 1530

All water rts registrations (applic.), either approp, [or pre 1919]
for Sec 12, T15S, R28E (HYL or NPS)

	33-95369	NPS	A to A
1919	36-24155	HYL	
	33-90513	NPS	
	36-24154	HYL	
Priority date			
12/31/1900	36-21940	HYL	
12/31/1900	36-24159	HYL	
"	36-27342	HYL	
4/17/26	36-20530	BLM	
12/31/1900	36-24153	HYL	

Anderson

Apache Springs

#4 Graphite — we call-where cows MT
SE NE Sec 12

NR2 — Same as BLM
SW SW Sec 12

Siphon Canyon — only source Apache Drinking from canyon
"

Unnamed Spr. — Spr Mon. 7s BLM Spr on Map comm. siphon
SW¼ Sec 12

#5 Graphite Spr
NE SE Sec 12
Prob. Upper MT spr

Part land acquisition, part BLM – 8/30/64 – FOBO authorize
est 1972 (7/28)

MT being used for ranch house (domestic)

Anderson 6/19 @ 1610 – ↗ –

Cardon Investments
HYL Ranch Properties

APACHE SPRINGS

```
SW1200                ARIZONA DEPARTMENT OF WATER RESOURCES  TODAYS DATE 01/23/91
 NEXT SCREEN:                  SURFACE WATER - CLAIMS
       NEXT #:     -
REGISTRATION #  36 - 0024155 0000          ACTIVE   - ACTIVE
PRIORITY DATE: 12 31 1900
HOLDER NAME: HYL RANCH PROPERTIES       ADDRESS: 4455 E CAMELBACK RD
                                                 #290-E
                                                 PHOENIX          AZ 85018
SOURCE NAME: NR 3 APACHE             TYPE: SPRING
WATERSHED: UPPER GILA RIVER           SUB:
ANNUAL USE:          19.40  AFA                 USES: DOMESTIC
                                                      STOCK
CAPACITY:                  CLAIMED ACRES:
LIVESTOCK NUMBER:          TYPE:
LAND OWNER: PRIVATE

STATUS: ON FILE

INACTIVE BOX NUMBER:
```

SW1105 ARIZONA DEPARTMENT OF WATER RESOURCES TODAYS DATE 01/23/91
NEXT SCREEN: SURFACE WATER - CLAIMS (36)
NEXT # -
(CONTINUED) RIGHT # 36 - 0024155 0000
POINT OF DIVERSION

LOT#	-OR-	QUARTERS	SECT	TWNSHP	RANGE
		SW NE	12	15.0 S	28.0 E

00-00-0000: affidavit: state of arizona; apache springs ranch is located within the sw quarter of the ne quarter of section 12, towns

AFFIDAVIT

STATE OF ARIZONA:

County of Cochise:

Josephine L. Moseley **being first duly sworn**

deposes and says as follows:

No. 3 Spring (Apache), Apache Springs Ranch

This Spring is located within the SW quarter of the NE quarter of Section 12, Township 15 South, Range 28 East of the G & SRB & M, Cochise County, Arizona. This Spring was used in 1900 for livestock watering and domestic purposes by then ranch owner T. J. Riggs, whom I knew personally. In 1932 the ranch was acquired by my uncle, J. P. Shafer and still later by Cardon Investments, the current owner. The Spring continues to be used for domestic and livestock watering purposes today, as it has been since T. J. Riggs owned it in 1900.

These are copies of everything in file No. 36-24155

Further affiant saith not.

Josephine L Moseley.

Subscribed and sworn to before me this 21

day of June **19** 79.

Sylvia L. Turner

Notary Public or Deputy Assessor

My commission expires My Commission Expires March 31, 1983

ASSIGNMENT

One Assignment and $5.00 Fee to be Filed for Each Document

For valuable consideration, the undersigned hereby assigns and transfers:

____Application to Appropriate Public Waters No.____
____Permit to Appropriate No.____
____Certificate of Water Right No.____
__X__Water Rights Registration No. 36-24155
____Registration of Stockpond No.____

together with all rights evidenced therein to HYL Ranch Properties, an Arizona Partnership by James E. Warne, Jr. as Trustee of the Warne Family ~~Assignee~~ Trust as its General Partner Assignee

5500 North Dromedary, Phoenix, AZ 85018
Address

DATED this 24th day of July, 19 86.

x M.S. MacCollum
Assignor

126 E. Desert Park Lane, Phoenix, AZ 85020
Address

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing assignment was acknowledged and signed before me this 29th day of July, 1986, by M.S. MacCollum.

My commission expires:
March 10, 1988

Jay L. Engleman
Notary Public

ACCEPTANCE

The undersigned hereby accepts the assignment of the document described herein and agrees to be bound by the terms and conditions thereof.

DATED this 30 day of JULY, 19 86.

J.E. Warne Jr., Trustee 5500 North Dromedary, Phoenix, AZ 85018
Assignee Address

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged and signed before me this 30th day of July, 1986, by J.E. Warne, Jr.

My commission expires:
My Commission Expires July 25, 1989

Brenda Swanson
Notary Public

APPROVAL

Approved by and filed with the Arizona Department of Water Resources this date AUG 19 1986.

Lawrence A. Ramsey
Director
For:

ASSIGNMENT

One Assignment and $5.00 Fee to be Filed for Each Document

For valuable consideration, the undersigned hereby assigns and transfers:

____Application to Appropriate Public Waters No.____
____Permit to Appropriate No.____
____Certificate of Water Right No.____
____Water Rights Registration No. 36-24155
____Registration of Stockpond No.____

together with all rights evidenced therein to M. S. MacCollum
Assignee

126 East Desert Park Lane, Phoenix, Arizona 85020
Address

DATED this 5th day of June, 1986.

Cardon Investments by: Douglas Cheesman — 134 West Broadway, Mesa, AZ 85202
Assignor — Address

STATE OF ARIZONA)
County of MARICOPA) ss.

The foregoing assignment was acknowledged and signed before me this 5 day of June, 1986, by Douglas Cheesman.

My commission expires:
My Commission Expires April 22, 1989

Sara J Sand
Notary Public

ACCEPTANCE

The undersigned hereby accepts the assignment of the document described herein and agrees to be bound by the terms and conditions thereof.

DATED this 9th day of June, 1986.

M. S. MacCollum — 126 East Desert Park Lane, Phoenix, AZ 85020
Assignee — Address

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged and signed before me this 9th day of June, 1986, by M. S. MacCollum.

My commission expires:
My Commission Expires April 22, 1989

Sara J Sand
Notary Public

APPROVAL

Approved by and filed with the Arizona Department of Water Resources this date JUN 11 1986.

Lawrence R Romley
FOR: Director

08-19-1986: state of arizona department of water resources: receipt

U. S. Life Title Company of Az.
Re: MacCollum to Hyl Ranch
3030 North Central Avenue
Phoenix, Arizona 85012

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

RECEIPT

KIND ENTRY	FILE REFERENCE NO.
33	various
	THRU
	49 filings

FUND SOURCE	ACCOUNT NO. AGENCY	CHAPTER	DIV.	INT. ACCT.	ITEM DESCRIPTION	RATE	$ AMOUNT
					Forty-Nine (49) Assignments against:	$5.00	$245.00
					1 Certificate of Water Right 3 Applications to Appropriate		
					12 Registrations of Stockponds 33 Water Rights Registrations		
					From: Maxwell S. MacCollum		
					To: Hyl Ranch Properties, an Az. Partnership 5500 No. Dromedary Phoenix, Arizona 85018		
					U.S. Life check #011825 dated 8-1-86		

WATER PAYMENT
GUESTS 1
CHK NO 11825
TO 245.00
TAX 0.00
TOTAL 245.00
REM.CHEK 245.00

(8-19-86)

TOTAL $245.00

ec

06-11-1986: state of arizona department of water resources: receipt

Headquarters West, Ltd.
Att: Con A. Englehorn
Re: Hyl Ranch
849 North 3rd Avenue, Suite B
Phoenix, Az. 85003

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

RECEIPT

KIND ENTRY	FILE REFERENCE NO.
36	12 filings
	THRU
38	6 filings

ACCOUNT NO. FUND SOURCE	AGENCY	CHAPTER	DIV.	INT. ACCT.	ITEM DESCRIPTION	RATE	$ AMOUNT
					Eighteen (18) Assignments; 12 against Water Rights Registrations and 7 Stockpond Registrations.	$5.00	$90.00
					From: Cardon Investments		
					To: M. S. MacCollum 126 E. Desert Park Lane Phoenix, Az. 85020		
					Check No. 1393 dated 6-11-86		

WATER RIGHTS PAYMENT
ASSETS 1
CHK NO 1393
88 90.00
RA 0.00
TOTAL 90.00
REMITTED 90.00

(6-11-86)

TOTAL $ [illegible] $90.00

ec

06-11-1986: state of arizona state land department: bill for statement of claim of right to use public water filing fee

TO AVOID PAYMENT OF PENALTY AND INTEREST THIS PAYMENT MUST BE IN THE OFFICE OF THE STATE LAND DEPARTMENT
ON OR BEFORE THE DUE DATE. DATE OF POSTAL STAMP NOT ACCEPTED AS DATE OF PAYMENT.

STATE OF ARIZONA
STATE LAND DEPARTMENT
1624 WEST ADAMS – 4th FLOOR – PHOENIX, ARIZONA 85007

STATEMENT

Cardon Investments
134 W. Broadway
Mesa, Ariz 85202

SECTION	TOWNSHIP	RANGE

46371

KIND ENTRY	LEASE-REFERENCE NO.	
36	24148	00

24155

ACCOUNT NO. GRANT FUND	SUB	CARRYING CAPACITY	BILLING DESCRIPTION	RATE	ACRES	$ AMOUNT
10	210	52	Statement of Claim of			70 00
			Right to Use Public Water			
			Filing Fee			
			36-24148 thru 36-24161 (14 filings)			
			Check # 7242 (#120°°)			

CERTIFICATE OF PURCHASE UNPAID BALANCE	BILLING PERIOD FROM MO. DAY YR	BILLING PERIOD TO MO. DAY YR	DATE BILLED MO. DAY YR.	DATE DUE MO. DAY YR.	TOTAL ACRES	TOTAL AMOUNT
$			6 28 79			$ 70 00

IF PAYMENT IS MADE ON OR BEFORE THIS DATE ⇒ PAY THIS AMOUNT

OTHER SIDE FOR LAW PERTAINING TO PENALTY AND INTEREST – A. R. S. SEC. 37-288.

TOTAL AMOUNT SUBJECT TO PENALTY AND INTEREST IF NOT PAID ON OR BEFORE DATE DUE ($)
5% PENALTY OF RENTAL AMOUNT - - - - - - - - - - - - $
TOTAL RENTAL AMOUNT PLUS PENALTY - - - - - - - - ($) TOTAL PENALTY AND INTEREST
10% INTEREST PER ANNUM OF RENTAL AMOUNT
AND PENALTY – NUMBER OF DAYS DELINQUENT ( ) $ $
TOTAL AMOUNT DUE INCLUDING PENALTY AND INTEREST - - - - - - - - - - - - $
CASH RECEIVED $
BALANCE DUE OR OVERPAYMENT $

PENALTY AND INTEREST DISTRIBUTION	$

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIM OF RIGHT TO USE PUBLIC WATERS OF THE STATE

Filing Fee $5.00

(LEAVE BLANK)
Registry No. 36-24155
Filed JUN 28 1979 (DATE) at 8:00 M. (TIME)

INSTRUCTIONS:

1. Submit Statement of Claim in duplicate.
2. Answer all questions fully.
3. File separate claim for each claimed right to appropriate and for each source of water.

1. Name of Claimant Cardon Investments
(Print Last Name or Name of Co.) (First Name) (Middle Initial)
134 W. Broadway, Mesa, AZ 85202 833-4221
(Address, City, State, Zip) (Phone No.)

2. The purpose(s) and extent of use(s) Stockwater, domestic
(Examples: Irrigation, Stockwater, Domestic)

3. The quantities of water used annually 19.4 acre feet from 1st January
(Gallons or Acre feet) (Day) (Month)
to 31st December each year
(Day) (Month)

4. The date(s) the water was first used beneficially _____ _____ 1900
(Month) (Day) (Year)

5. The Name(s) of the water course(s) or Water Source(s) being claimed No. 3 Spring (Apache Spring)
(Source Name)
Tributary to Gila River on the Upper Gila Basin (Leave Blank) Watershed

6. The point of diversion is within the SW ¼, NE ¼, Section 12,
of Township 15 S (N/S), Range 28 E (E/W), G&SRB&M, in the County of Cochise.

7. The Place(s) of use is in the SE ¼, SW ¼, Section 12, of
Township 15 S (N/S), Range 28 E (E/W), G&SRB&M, in the County of Cochise.

8. The legal basis for the claim Prior use prior to June 12, 1919.
See attached affadavit.
(Attach copies of any documents being filed in support of Claim)

STATE OF ARIZONA)
) ss
County of)

Mark Dangerfield being first duly sworn on oath, deposes and states that the foregoing Statement of Claim is true and correct of his own knowledge except as to any matters stated therein to be on information and belief and as to all such matters so stated he believes the same to be true and correct.

Cardon Investments
BY: Mark Dangerfield
(CLAIMANT(S))

Subscribed and sworn to before me this 27 day of June, 1979.

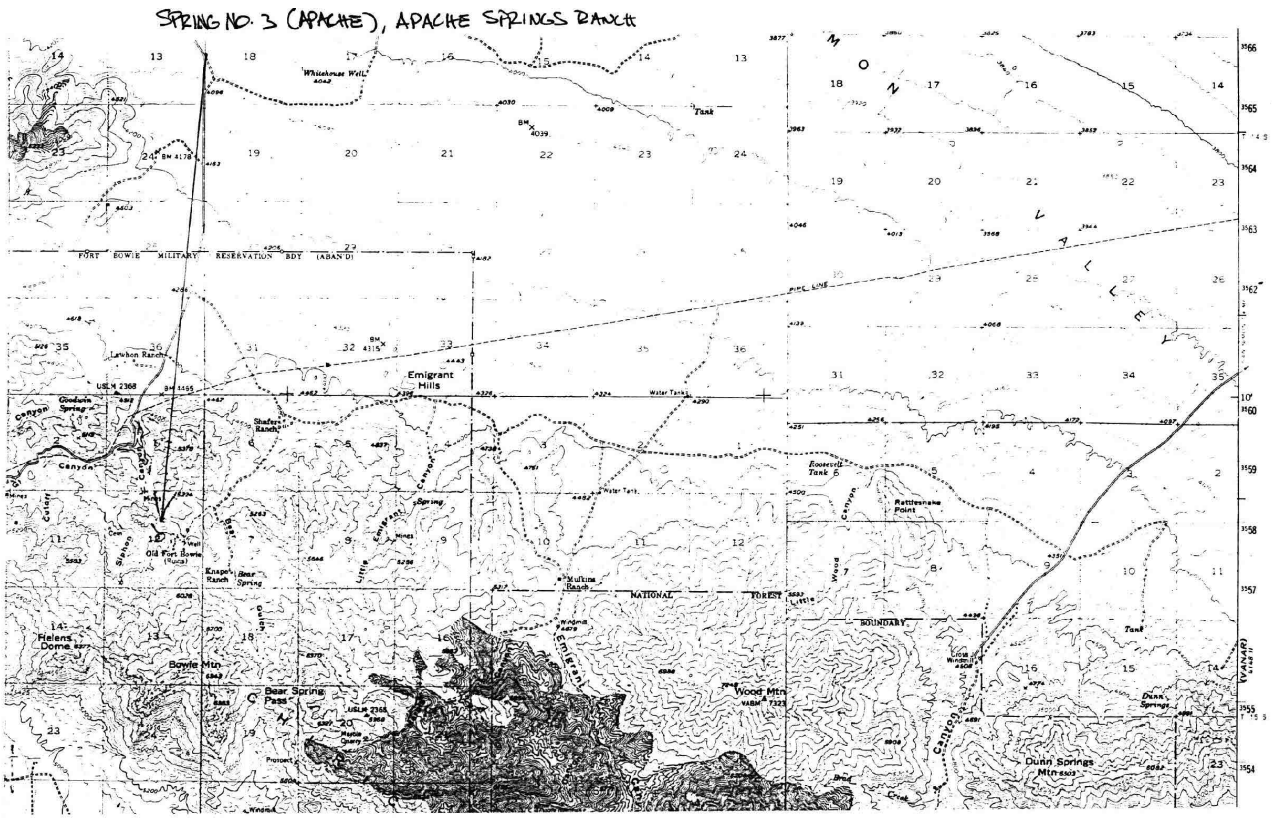
My Commission Expires:
My Commission Expires June 19, 1983, 19____.
(SEAL)

Janet L. Hickinger
(NOTARY PUBLIC)

Filed in Water Rights Claim Registry No. 36-24155 of the State Land Department of June 28, 1979 at 8:00 a M.

ARS 45-134 "FILING OF CLAIM WITH THE DEPARTMENT NOT DEEMED 28-76 ADJUDICATION OF RIGHT"

Brian Kirby
Adjudication Section


SPRING NO. 3 (APACHE), APACHE SPRINGS RANCH
FORT BOWIE MILITARY RESERVATION BDY (ABANDD)
Emigrant Hills
Bowie Mtn.
Helens Dome
Bear Spring Pass
Wood Mtn.
Dunn Springs Mtn.
Rattlesnake Point
Roosevelt Tank 6
Whitehouse Well
Tank
Water Tanks
Spring
Mines
Knapp Ranch
Bear Spring
Mullins Ranch
NATIONAL
FOREST
BOUNDARY
Dunn Springs
Canyon
Cañon

06-27-1979: arizona state land department: statement of claim of right to use public waters of the state; registry no. 36-21940

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIM OF RIGHT TO USE PUBLIC WATERS OF THE STATE

Filing Fee $5.00

(LEAVE BLANK)
Registry No. 36-21940
Filed 6-27-79 (DATE) 8:00 A.M. (TIME)

INSTRUCTIONS:

1. Submit Statement of Claim in duplicate.
2. Answer all questions fully.
3. File separate claim for each claimed right to appropriate and for each source of water.

1. Name of Claimant Cardon Investments
(Print Last Name or Name of Co.) (First Name) (Middle Initial)

134 W. Broadway, Mesa, AZ 85202 833-4221
(Address, City, State, Zip) (Phone No.)

2. The purpose(s) and extent of use(s) Stockwater
(Examples: Irrigation, Stockwater, Domestic)

3. The quantities of water used annually 438,000 gallons from 1st January
(Gallons or Acre feet) (Day) (Month)

to 31st December each year
(Day) (Month)

4. The date(s) the water was first used beneficially _____ _____ 1900
(Month) (Day) (Year)

5. The Name(s) of the water course(s) or Water Source(s) being claimed No. 2 Spring aka Apache Spr.?
(Source Name)

Tributary to Gila River on the UPPER GILA RIVER Watershed
(Leave Blank)

6. The point of diversion is within the SW ¼, SW ¼, Section 12,
of Township 15 S (N/S), Range 28 E (E/W), G&SRB&M, in the County of Cochise.

7. The Place(s) of use is in the SW ¼, SW ¼, Section 12, of
Township 15 S (N/S), Range 28 E (E/W), G&SRB&M, in the County of Cochise.

8. The legal basis for the claim Prior use prior to June 12, 1919.
See attached affidavit
(Attach copies of any documents being filed in support of Claim)

STATE OF ARIZONA)
) SS
County of)

Mark Dangerfield being first duly sworn on oath, deposes and states that the foregoing Statement of Claim is true and correct of his own knowledge except as to any matters stated therein to be on information and belief and as to all such matters so stated he believes the same to be true and correct.

Cardon Investments
BY: Mark Dangerfield
(CLAIMANT(S))

Subscribed and sworn to before me this 27 day of June, 1979.

My Commission Expires:
My Commission Expires June 19, 1983
_____, 19____.
(SEAL)

Janet L. Hickinger
(NOTARY PUBLIC)

Filed in Water Rights Claim Registry No. 36-21940 of the State Land Department of June 27, 1979 at 8:00 A.M.

Brian Kirby
Adjudication Section

ARS 45-184 "FILING OF CLAIM WITH THE DEPARTMENT NOT DEEMED ADJUDICATION OF RIGHT"
26-78

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIM OF RIGHT TO USE PUBLIC WATERS - STATE OF ARIZONA

Examination Fee $5.00
Map (see instructions)
CLAIM MUST BE SUBMITTED IN DUPLICATE

To be filled in by State Land Department
Registry No. 36- 27342
Filed 7-2-79 (Date) at 4:04 P.M. (Time)

1. Name of Claimant CARDON INVESTMENTS (10 Print Last Name or Name of Co.) (31 First Initial) (32 Middle Initial)

134 W. Broadway, Mesa, Az. 85202 (Address, City, State, Zip) 833-4221 (Phone No.)

2. The waters claimed are used for 0006 (33)

3. The amount of water used annually is 5 Acre Feet (Gallons or Acre Feet) from 1st (Day) January (Month)
to 31st (Day) December (Month) each year.

4. The date the water was first used beneficially was ___ (37 Month) ___ (39 Day) 1900 (41 Year)

5. The direct source of supply is SALT RIVER CANYON (44 Source Name) CA (65 Type of Watercourse)
Tributary to Gila River on the ___ (67 Leave Blank) Watershed.

6. The Point of Diversion (locate on map) is within the SW (10) ¼ SW (12) ¼, Section 12 (14),
of Township 15S (16), Range 20E (20), G&SRB&M, in the County of Cochise
Number of Points of Diversion ___ (24) SEE #14

7. The Place(s) of Use (locate on map) is in the SW ¼ SW ¼, Section 12, of
Township 15 S (N/S), Range 28 E (E/W), G&SRB&M, in the County of Cochise
See # 14
Acres irrigated ___ (25) Number and Kind of Stock ___ (31 Number) A (35 Kind)
Number of Families ___ (36) Other uses explain on line 14.

8. The water is diverted by ___
___ the maximum flow is ___

9. If water is stored, give capacity and name of Reservoir in Acre Feet ___ (41) (Capacity)
___ (Name)
Height of Dam ___ ft., Area inundated in Acres ___

10. The Claimed Right to Water was created by the following facts: ___
Beneficial Use Since 1900.
___
___
(Attach copies of any documents supporting Claim)

11. The land on which the water is used is owned by F (50)

```
SW1200              ARIZONA DEPARTMENT OF WATER RESOURCES  TODAYS DATE 06/19/91
 NEXT SCREEN:                SURFACE WATER - CLAIMS
        NEXT #: 36 - 0021940 0000
REGISTRATION #:  36 - 0021940 0000          ACTIVE   - ACTIVE
PRIORITY DATE: 12 31 1900
HOLDER NAME: HYL RANCH PROPERTIES      ADDRESS: 4455 E CAMELBACK RD
                                                #290-E
                                                PHOENIX          AZ 85018
SOURCE NAME: NR 2                        SPRING
WATERSHED: UPPER GILA RIVER
ANNUAL USE:          1.34  AFA                  USES: STOCK

CAPACITY:              CLAIMED ACRES:
LIVESTOCK NUMBER:      TYPE:
LAND OWNER: PRIVATE

STATUS: ON FILE

INACTIVE BOX NUMBER:
```

L1425(WR)ML
FOBO
Tr. 01-105 (Water right)
E. Cardon Exch.

JAN 5 1976

December 23, 1975

Memorandum

To: General Superintendent, Southern Arizona Group

From: ACTING Regional Director, Western Region

Subject: Apache Springs - Fort Bowie

Enclosed for your information and use is a summary of the circumstances to date regarding Apache Spring at Fort Bowie. We propose a field inspection of all aspects of the situation followed (or preceeded) by a meeting to determine our next step and/or position in light of the Apache Spring owner's current stance.

It would be most appropriate and very helpful to have Superintendents Albert and Lukens participate, as well as your Office. Bob Gibbons will be accompanied by Dick Ditlevson of the Field Solicitor's Office. Following the discussions they will meet with the Cardon attorneys to attempt to fashion a reasonable solution, and that meeting has been scheduled for Friday January 23, 1976.

Therefore, we suggest a meeting at Fort Bowie/Chiricahua on January 21 - 22. Please advise if this is not satisfactory by calling Bob at 556-0258.

(SGD) JOHN H. DAVIS

Enclosures (4 with map)

cc: Field Solicitor, San Francisco, w/encl
Superintendent, FOBO/CHIR, w/encl
Superintendent, SAGU, w/encl



L1425
FOBO
Cardon Exch.
(Water Rights)

December 19, 1975

Situation re Apache Spring - Ft. Bowie

1. August 30, 1964. Public Law 88-510 (78 Stat 681) enacted which authorized the Secretary of the Interior to establish the Fort Bowie National Historic Site - not to exceed 1,000 acres.

2. November 28, 1966. As part of the private land acquisition within the proposed area Earl J. Neel conveyed 240 acres (containing Apache Spring) to the United States, but reserved water rights to Apache Spring, together with a ten-foot wide right-of-way for a water pipeline to transport water for stockwatering from Apache Spring to a point 1,340 feet south of the Northeast corner of Section 12, T 15S, R 28 E, Gila & Salt River Base & Meridian (deed attached).

3. November 13, 1969. An agreement was executed by Earl J. Neel on behalf of himself, his heirs and assigns, and the National Park Service for the purpose of restoring and protecting Apache Spring. The agreement specified:

A. For the term, Earl J. Neel conveyed, relinquished and released to the United States the use of Apache Spring as a source of water, together with the pipeline right-of-way.

B. The term: for so long as Apache Spring is administered by the United States/assigns as part of a historic site, and during such administration adequate water is available at Apache Spring (copy of executed but unconsummated agreement attached).

4. November 14, 1969. Neel conveyed his property (Schaffer place) outside the Site to Apache Springs Cattle Company, including the reserved Apache Spring water and the pipeline R/W within the Site. Ostensibly the principals are Elijah Cardon and his brother(s).

5. Subsequent to the 1969 agreement a well was drilled by the Service in Siphon Canyon approximately ½ mile northeasterly of Apache Spring. The well is capped; it test pumped more than ten gallons per minute.

6. Substitute water was and is delivered from the U. S.-owned Mine Tunnel sources (3) originating easterly of Apache Spring to a point on the easterly boundary of the Site. This point of delivery purportedly

lies about 1,340 feet south of the northeast corner of Section 12. However, there is evidence that the point may not be that far south, because the Shaffer Ranch road ("back road") appears to intersect the Site farther north. Since the pipeline lies adjacent and ten feet south of the road where it intersects the boundary, the point of delivery is actually between Moseley and U. S. property, being about 1,130 feet south of the Northeast corner of Section 12.

The 1969 agreement calls for the United States to deliver ten gallons per minute to the grantor (now Cardon) at a point on the Site boundary between Cardon and the United States. To do this would probably require pumping - even from the Mine Tunnel sources mentioned below.

7. January 5, 1971. FOBO established by withdrawal and reservation of 970 acres as published in Federal Register Vol. 36, No. 2. Included former Neel property and Apache Spring.

8. November 30, 1973. Apache Springs Cattle Company conveys certain interests including the Apache Spring rights, to Minnesota Title Company as Trustee under Trust No. 1182.

9. March 1975. Draft master plan and environmental assessment for FOBO. The master plan suggests:

A. 5/8-mile right-of-way will be secured to provide legal access to second fort site. (This involves Sam Moseley's land and the Cardon/M.T.C. 1182 property east of the Site. It appears the desired R/W is about 2½ miles in length.)

B. Continue Site grazing use under BLM administration.

C. Ensure that water rights and access to water are retained by area landowners.

D. Formal agreement to preclude unsightly and intrusive development of Apache Spring is needed.

10. February 6, 1975. Memorandum from Superintendent Lukens to Region summarizing Apache Spring situation and posing alternative solutions.

A. Water has not been pumped to the Cardon fee-owned land from Apache Spring since 1927. The overhead powerline has been removed.

B. A second collection system operates to deliver water to Helen's Dome pasture to the south, which is grazed by Cardon.

C. Neel (and possibly his predecessor) was taking water from the Mine Tunnel sources prior to our purchase of his property.

D. We have rehabilitated the Mine Tunnel collection system, and after our use two to four gallons per minute goes into the previous owner's collection system and down by gravity flow to the Cardon ranching headquarters (Schaffer Place). The Cardon's have never indicated that there has not been enough water for their ranching needs. In fact, there is overflow and the previous owner agreed to removal of the pump and the overhead power line at Apache Spring.

Since at least 1957 - 18 years - there has been no need for the ranch operators to pump water from Apache Spring.

E. The present arrangement is satisfactory, but legally unstable, and could result in further development of Apache Spring and spoil the natural setting the Service desires to protect.

F. Alternatives: (1) Complete the agreement. (2) Purchase Apache Spring (conflicts with legislative commitments). (3) Purchase and agree to supply water to existing two points of delivery.

11. April 25, 1975. Superintendent Lukens and myself met in the Mesa Arizona office of Mr. Elijah Cardon (Cardon Bros.), Apache Springs Cattle Company. In an hour-long discussion we explained our exchange proposal to legalize the status quo regarding water delivery, rescind the 1969 agreement, and apart, but as a simultaneous action, acquisition of an administrative right-of-way (not public) over the "back road". Mr. Cardon appeared to concur in general and requested we make the written proposal to their attorney, Gove Allen.

12. September 11, 1975. Letter from Service to Mr. Gove L. Allen proposing exchange and transmitting an exchange deed (copy enclosed).

13. September 17, 1975. Reply from Attorney Allen rejecting proposal. Two problems: water and highway.

Specific points he made:

A. Neel deed to U. S. ambiguous as to whether the use was limited solely to watering livestock.

B. The reservation point of delivery is 1340 feet south of northeast corner, section 12. Important because Neel did not own the $NW\frac{1}{4}NW\frac{1}{4}$, but did own $SW\frac{1}{4}NW\frac{1}{4}$ of adjacent Section 7. (This would put the point of delivery 20 feet south of the northeast corner

of the Cardon property as it lies adjacent to the east boundary of the Site. An actual plotting shows the line would intersect the east boundary of the site 1650 feet south of the corner and the point of delivery would be 250 feet due east.)

C. "Conceivably all the water produced by Apache Springs could be used for stockwatering purposes either by the installation of additional lines or the use of a water truck."

(I suppose this could be construed as acknowledgement that the reserved water is "earmarked" for stockwatering - contrary to point A above. I don't believe Cardon's have a legal right to road access across the site to Apache Spring. However, under the legislative intent to perpetuate grazing within the Site, as well as outside, I doubt that we could or would want to attempt to block reasonable access to Apache Spring water via pipeline and/or direct cattle access achievable by modification of the pasture fences. After all, we are now "furnishing" Apache Spring water to the Helen's Dome Pasture, in addition to water supplied from the Mine Tunnel sources. Certainly Cardons have the right - short of our completing the agreement - to all Apache Spring water, even if they had to pump it all out through a pipeline(s) within the reserved right-of-way.)

(The Pipeline right-of-way defined in the reservation - at least for the easterly part - appears not to contain the pipe now delivering water by gravity from Mine Tunnel Sources. Moreover, I expect that it never has, except perhaps along the first 1320 feet from the Apache Spring. The portion of the pipeline, from the upper vertical shaft of the Mine Tunnel complex, is most likely the same pipeline that was used to deliver water from Apache Spring. In the past, most probably Apache Spring was "tied" to the Mine Tunnel Sources by the same line going to the Schaffer Place and traversing Sam Moseley's land, as it does now. It appears that to get water to the "1340 foot" delivery point - from the Mine Tunnel, and certainly Apache Spring sources, requires pumping. At any rate, the present pipeline alignment downslope from the Mine Tunnel Sources <u>does not</u> conform to the reserved right-of-way.)

D. The U. S. cannot consume any water nor impair the flow of Apache Spring under the 1969 agreement.

E. Agreement does not provide for our receiving 100 gallons per day. (We never indicated it did. On second thought, this provision of our draft deed could be stricken.)

F. (Contrary to the point he makes, substitute water from Mine Tunnel sources - collectively - does match, and very possibly exceeds the flow from Apache Spring.) Mr. Allen indicates the U. S. could comply with the agreement by combining Apache Spring and Mine Tunnel Sources.

G. National Park Service is requesting Cardon to accept 1½ gallons per minute instead of 10 gallons per minute. (Cardon does not have 10 gallons per minute under the agreement now; Cardon cannot receive 10 gallons per minute from Apache Spring - it only flows 1½ to 2 gallons per minute. This is undoubtedly the reason Neel or his predecessor(s) abandoned pumping from Apache Spring and resorted to Mine Tunnel long ago.)

(At this point I will suggest what occurred to me some time back: Did Neel or his predecessor(s) perfect a water right by reason of beneficial use, since I believe Arizona recognizes the appropriation doctrine exclusively?)

H. The deed changes the delivery point from 1340 feet to 1130 feet south of the corner. (Right! Because this is where the water is now delivered, i. e. the line intersects east boundary of Site.)

I. There are two forfeiture provisions: water used for any purpose other than watering livestock and cessation of this use for a two-year period.

J. Cardon makes the following counteroffer:

(1) U. S. will deliver 10 GPM to east boundary (which Allen believes is "1340" point) and to Helen's Dome pasture where it's now being delivered. Presumably he means 10 GPM total, but that is not necessarily so in view of the following:)

(2) "The United States will deed Cardon its vacant land in Sections 1, 11, 12, 14, 13, 24, T 15 S, R 28 E and Sections 7, 8, 9, 17, 18, 19, 20, 21 and 28 T 15 S R 29 E." (This comprises 9600 acres or 15 sections, which at the $200.00 rate would be $1,920,000.00.) (?) (No doubt this is to make 10 GPM more palatable to us.) (On September 12, 1975 we requested approval of WA30 to file a withdrawal application on 1780 acres, which included some of the above.)

K. Cardon will transfer to the U. S. the rights to Apache Spring, rescind the 1969 agreement, and grant a highway easement over the "back road". (From the letter it could be assumed the Cardons are not aware of the Siphon Canyon capped well, but they could very well have knowledge of its existence.)

14. October 31, 1975. Mr. Leo Buse, an attorney who identified himself as assisting Mr. Allen, called me to advise that they were interested in getting the matter straightened out, and that there was no doubt that the Cardon's would prevail if they sued to force us to comply with the 1969 agreement. (Right here I seem to differ from others acquainted with this situation, in that it does not seem reasonable that we might be judicially forced to give them more water than Apache Spring can produce, and that the worst that can happen is that we simply tell Cardons to go back and take their Apache Spring water, if they cannot "live" with the present state of affairs.)

My comprehension was vague regarding his further comments as to - what I took to be - a proposal for them to buy back the Neel property with a deposit of funds in court, etc., etc. - all of which prompted me to suggest a later meeting - perhaps where I might be accompanied by counsel. He agreed and said I would arrange such a meeting.

Bob Dibblee

After recording turn to:
National Park Serv
Western Region
Division of Lands, Box 36063
450 Golden Gate Avenue
San Francisco, Ca 94102

f BOWIE NATIONAL HISTORIC SITE

EXCHANGE DEED

WHEREAS, by deed dated November 28, 1966, filed for record on January 19, 1967, and recorded at Pages 46 and 47, of Book 1485, Cochise County, Arizona, Earl J. Neel conveyed to the United States of America hereinafter called United States, certain lands within Fort Bowie National Historic Site situated in Cochise County, State of Arizona, more particularly described as follows: S 1/2 N 1/2, N 1/2 SE 1/4, Section 12, Township 15 South, Range 28 East, Gila and Salt River Meridian, containing 240 acres, more or less, and in said deed, Earl J. Neel Grantor, reserved water rights to Apache Springs located approximately in the S 1/2 SW 1/4 SW 1/4 NE 1/4, Section 12, Township 15 South, Range 28 East, Gila and Salt River Meridian, Arizona, together with a ten-foot wide right-of-way for a water pipeline to transport water for stockwatering,

WHEREAS, Earl J. Neel conveyed to Apache Springs Cattle Company by deed dated November 14, 1969, recorded November 25, 1969 at Docket 614, page 167 of Official Records, Cochise County, Arizona, his interest in certain lands, including the water rights reserved in the above mentioned deed to the United States, and

WHEREAS, Apache Springs Cattle Company, by Warranty Deed dated November 30, 1973, recorded at Docket 898, page 165 of Official Records, Cochise County, Arizona, subsequently conveyed, together with other interests, the said water rights to Minnesota Title Company, as Trustee under its Trust No. 1182,

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived and for equal value, the Minnesota Title Company, herein designated the exchange proponent and the United States have mutually agreed to exchange water rights as hereinafter set out:

1. Minnesota Title Company, as Trustee for Trust No. 1182, the proponent, hereby quitclaims to the United States of America, and its assigns, any right to water from Apache Springs, located as described above, together with an appurtenant ten-foot wide right-of-way for a water pipeline to transport water for stockwatering described as follows: From Apache Springs thence N 80° 10' E 1320 feet, and N 58° 10' E 1500 feet to a point 1340 feet south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, which termination point of the right-of-way lies on the easterly boundary of the existing Fort Bowie National Historic Site, said water interest and appurtenant right-of-way being that designated as N.P.S. Tract No. 01-105 and,

2. In exchange therefor, the National Park Service, under the authority of Section 5(b) of the Act of July 15, 1968 (P.L. 90-401; 82 Stat. 356), hereby quitclaims to Minnesota Title Company as Trustee for Trust No. 1182, the proponent; its successors and assigns, the right to take and use a supply of water not to exceed one and one half (1-1/2) gallons per minute, together with an appurtenant pipeline right-of-way. Said water is to be used only for stockwatering purposes attendant with a cattle ranching business and is to be delivered along the existing pipeline route and from the sources as described on Exhibits "A", "B" and "C" attached hereto and made a part hereof.

The National Park Service reserves the right to take up to 100 gallons per day from the water supply herein conveyed should the flow ever amount to less than 1-1/2 gallons per minute.

The Proponent agrees that said water right herein conveyed will terminate whenever the Minnesota Title Company as Trustee under Trust No. 1182, its successors and assigns 1) uses the water for any use other than stockwatering, or 2) the water is no longer used for stockwatering purposes for a period of two years.

FURTHERMORE, it is agreed by the Minnesota Title Company, as Trustee for Trust 1182, and the United States of America, acting through the National Park Service, that the stockwatering agreement executed on November 13, 1969, recorded at Docket 613, page 65, No. 16832, official records, Cochise County, Arizona, is hereby rescinded in its entirety.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA and the MINNESOTA TITLE COMPANY have caused these presents to be executed as of this _____ day of _____, 1975.

MINNESOTA TITLE COMPANY, as
Trustee for Trust No. 1182

By:_____
President

By:_____
Secretary

UNITED STATES OF AMERICA

By:_____
John E. Ritchie
Chief, Division of Land Acquisition

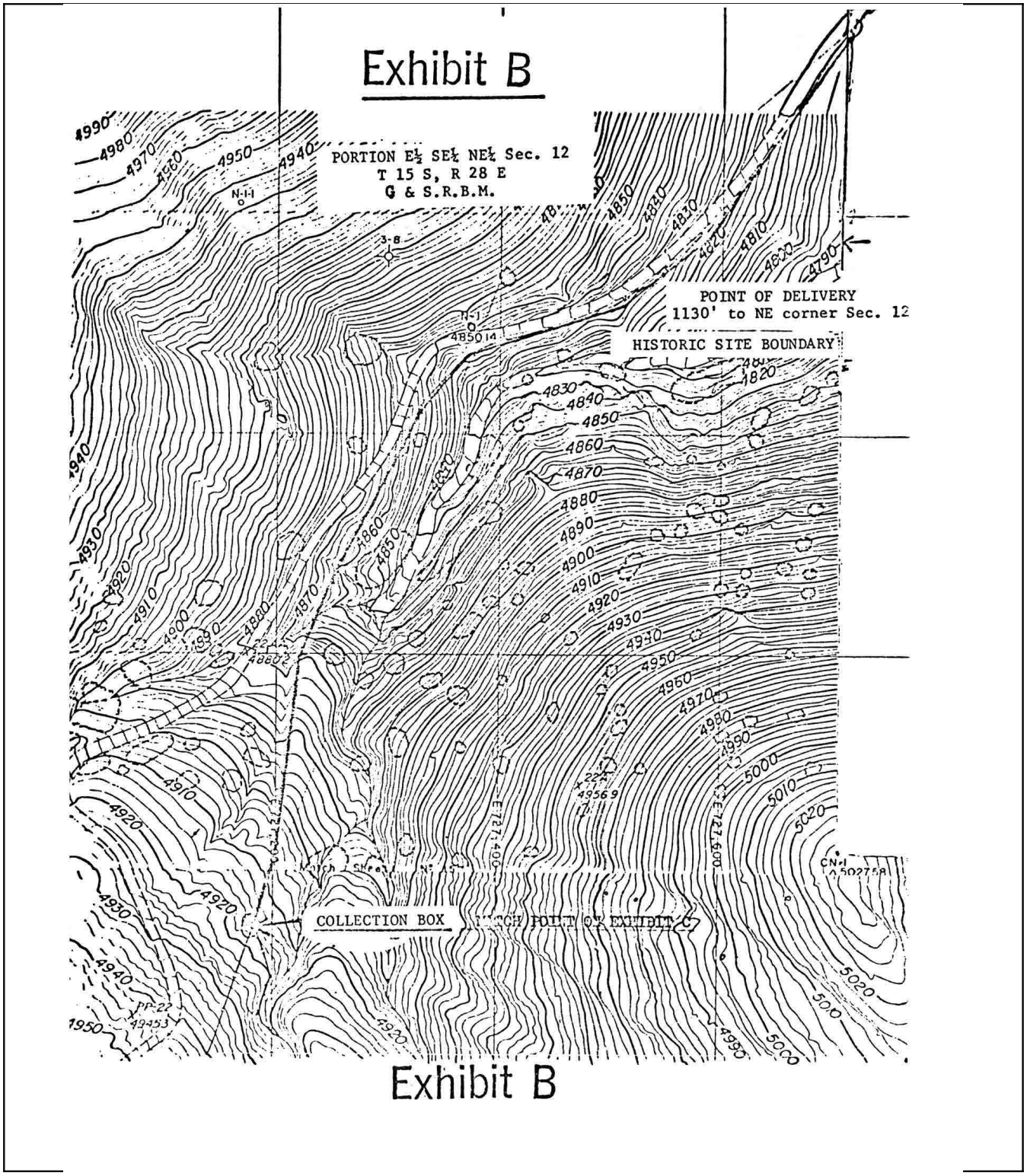
EXHIBIT A

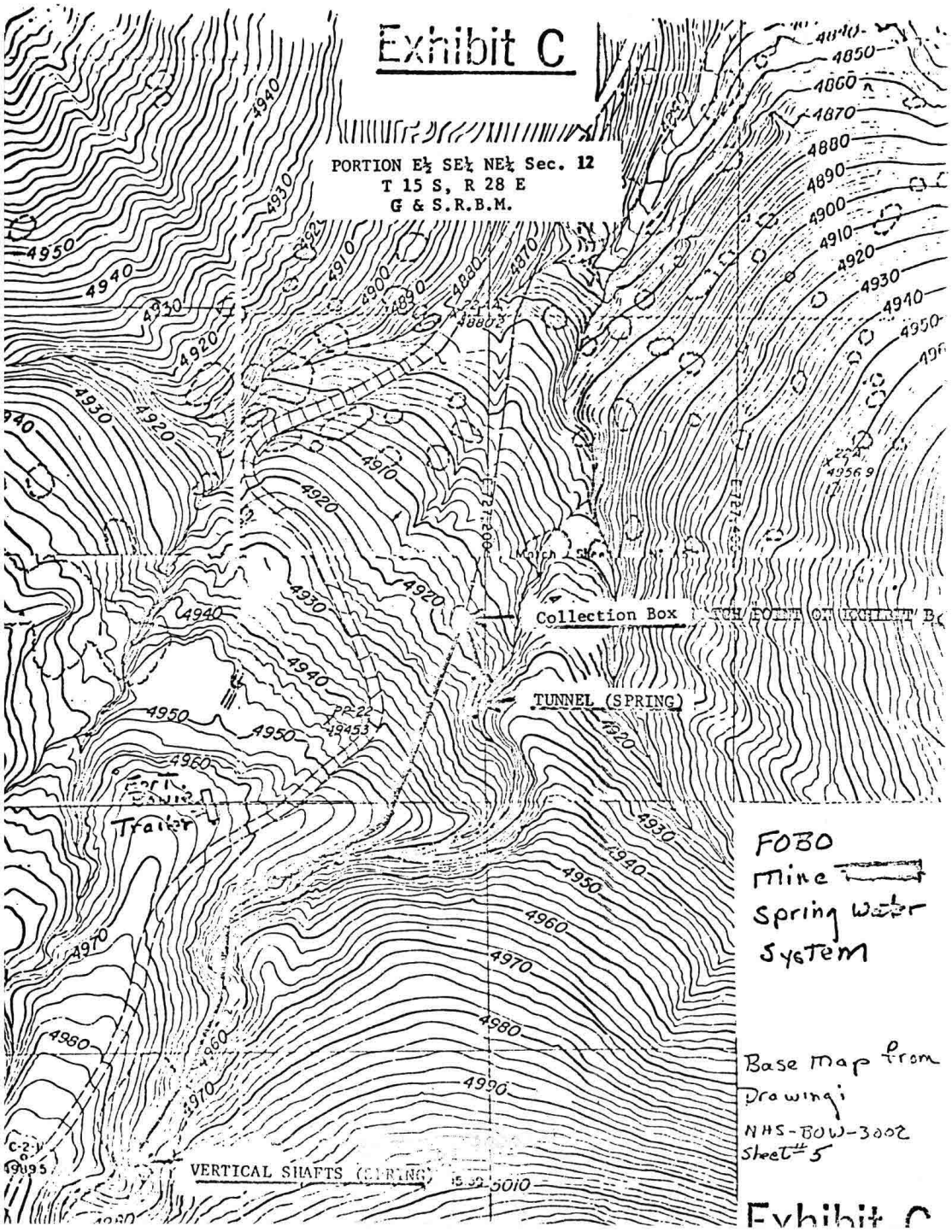
A water pipeline right-of-way ten (10) feet wide, the centerline of which is described as follows:

Beginning at a point located on the east boundary between the Historic Site and the Trustee's land, said point being 1,130 feet south of the northeast corner of Section 12, T. 15 S., R. 28 E., G&SRBM, and said point being the point of delivery for the water supply herein conveyed,
thence South 33° 10' West 215 feet;
thence South 51° 30' West 95 feet;
thence South 72° 15' West 150 feet;
thence South 42° West 65 feet;
thence South 27° West 174 feet;
thence South 23° West 70 feet;
thence South 20° West 190 feet;
thence South 16° West 60 feet to a point, said point being the site of a collection box (as shown on Exhibit B) from which two pipelines continue southerly to the spring sources as follows:

One pipeline continues South 70° 30' East 50 feet, to the northern side of a tunnel approximately 60 feet in length, wherein the spring sources are located (as shown on Exhibit C);
The other pipeline continues South 20° West 180 feet;
thence South 61° 45' West 143 feet;
thence South 7° 30 ' West 70 feet;
thence South 24° 30' West 65 feet;
thence South 32° 30' West 80 feet to two vertical shafts wherein the other spring sources are located.

12-19-1975: situation regarding apache spring - ft. bowie cont. exchange deed: exhibit b; point of delivery 1130' to ne corner sec. 1




Exhibit C
PORTION E½ SE¼ NE¼ Sec. 12
T 15 S, R 28 E
G & S.R.B.M.
Collection Box
TUNNEL (SPRING)
Trailer
VERTICAL SHAFTS (SPRING)
FOBO
Mine
Spring Water
System
Base Map from
Drawing:
NHS-BOW-3002
Sheet #5
Exhibit C

Ret. U.S. Dept. of Int. Nat. Park Service Office of Land & Water Rights 450 Golden Gate Ave. Box 36063 San Francisco, Calif. 94102

1

real. 12

DEED NO 24600 etc.

WARRANTY DEED

THIS INDENTURE made the 4th day of _____, in the year ____, between Earl J. Neel, party of the first part, grantor, and THE UNITED STATES OF AMERICA, the party of the second part, grantee, Witnesseth:

THAT the said party of the first part, for and in consideration of the sum of Fifty Thousand Dollars ($50,000), lawful money of the United States of America, to him in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and warrant unto the said party of the second part and its assigns forever,

THAT land described as follows:

S½N½, N½SE¼, Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, Arizona, containing 240 acres, more or less.

The title to said land to be conveyed free and clear, except as follows:

1400

1063-803

(a) The water rights to be reserved by grantor to Apache Spring located in the W½SW¼SW¼NE¼, Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, Arizona, together with a ten-foot wide right-of-way for a water pipeline to transport water for stockwatering described as follows: from Apache Springs thence N 80°10' E, 1320 feet, and N 58°10' E, 1500 feet to a point 1340 feet south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian. If the United States deems it necessary, it will bury the existing pipeline along this easement at no cost to the grantor. Said pipeline however after burying to be maintained, repaired or replaced, if necessary, according to accepted practice by the grantor at his expense in such manner as to not unreasonably disturb the surface and visitor use of the Site. Any earth excavated from the area for the purpose of maintaining, repairing or replacing the pipeline will be replaced by grantor so that the right-of-way will conform with the surrounding area.

(b) An undivided 1/4 mineral fee interest of all oil, gas and other minerals in the S½N½, Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian, Arizona, containing 160 acres, vested in A. L. Stransberry and Mary M. Stransberry, his wife, as found in Docket 104 at Page 020, County Records, Cochise County, Arizona.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to its assigns forever. And the said party of the first part, and his assigns, the said premises, in the quiet and peaceable possession of the said party of the second part, its assigns against the said party of the first part, and his assigns and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have executed these presents the day and year first above written.

Earl J. Neel

Earl J. Neel

2

11/13/69

AGREEMENT

This agreement is executed this November 13, 1969, between the officer representing the United States of America and Earl J. Neel of Palm Springs, California.

Whereas, pursuant to a deed dated November 28, 1966 from Earl J. Neel to the United States of America, filed for record on January 19, 1967 and recorded at Pages 46 and 47, of Book 1455, Cochise County, Arizona, the United States of America is the owner of certain lands within Fort Bowie National Historic Site situated in Cochise County, State of Arizona, more particularly described as follows:

> S½N½ and N½SE¼, Section 12, Township 15 South,
> Range 28 East, Gila and Salt River Meridian,
> containing 240 acres, more or less.

In the deed, Earl J. Neel as Grantor reserved water rights to Apache Springs located in the W½SW¼SW¼NE¼, Section 12, Township 15 South, Range 28 East, Gila and Salt River Meridian, Arizona, together with a ten-foot wide right-of-way for a water pipeline to transport water for stockwatering described as follows: from Apache Springs thence N 80°10' E, 1320' and N 58°10' E, 1500' to a point 1340' south of the NE corner of Section 12, T. 15 S., R. 28 E., Gila and Salt River Meridian. It is provided in the deed that if the United States deemed it necessary, it would bury the existing pipeline along this easement at no cost to the Grantor. Said pipeline however after burying would be maintained, repaired, or replaced, if necessary, according to accepted practice by Grantor at his expense in such manner as to not unreasonably disturb the surface and visitor use of the Site. Any earth excavated from the area for the purposes of maintaining, repairing or replacing the pipeline would be replaced by Grantor so that the right-of-way would conform with the surrounding area.

Whereas, the United States of America is desirous of restoring Apache Springs.

NOW, THEREFORE, for the term of this agreement, Grantor conveys, relinquishes

STATE OF ARIZONA
COUNTY OF COCHISE

Regional Director
S. W. Regional Office
Nat'l. Park Serv
P. O. Box 72
Santa Fe, N. Mex
87501

DKT 513 Page 1080

and releases to the United States of America and assigns the use of Apache Springs as a source of water, together with the ten-foot wide right-of-way for a water pipe for stockwatering described above, and in consideration thereof, the United States of America agrees to supply continuously to Grantor, his heirs and assigns, the use and privilege to a stream of water for stockwatering, measuring 10 gallons per minute, to be delivered to Grantor at a point on the boundary between Grantor's property and the Site, described as:

> a point on the east line of Section 12, Township 15 South, Range 28 East, Gila and Salt River Meridian, which is 1340' south of the Northeast corner of the same Section 12.

The term of this agreement will be for so long as Apache Springs is administered by the United States or assigns as a part of a historic site, and during such administration adequate water is available at Apache Springs to provide for Grantor's reserved water rights. Upon expiration of such term this agreement will be null and void and the rights of the parties hereto will be the same as though this agreement was never executed.

It is understood that a water supply system is being constructed by the National Park Service at the Site, however, as of this date it is not completed. Therefore, the rights of the parties to this agreement as set forth herein will not commence until such time as the officer representing the National Park Service advises Mr. Neel, in writing, that the water supply system has been completed and the Site is capable of furnishing water to Mr. Neel.

Nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year in furtherance of the subject matter of this agreement, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may

arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

The United States, its employees and visitors to the Site, will not consume the water from Apache Springs but the Park Service will allow the Spring to exist in its natural state.

The Grantor, his heir and assigns agree not to permit the water delivered from the line of the United States to run to waste.

Earl J. Neel

Officer Representing
The National Park Service

ACKNOWLEDGMENT

State of)
) ss
County of)

On this 1st day of December, in the year 19 72, before me Marjorie C. Sherman a Notary Public, personally appeared Earl J. Neel known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

MARJORIE C. SHERMAN
NOTARY PUBLIC
RIVERSIDE COUNTY
CALIFORNIA
My Commission Expires August 24, 1973

3253 E. Palm Canyon Drive, Palm Springs, Calif.

(SEAL)

Notary Public

County of Riverside

State of California

My commission expires: 8-24-73

ACKNOWLEDGMENT

State of New Mexico)
) ss
County of Santa Fe)

On this the 12th day of November 1969 before me, Maxine Sloan, the undersigned officer, personally appeared Carl O. Walker, Acting Regional Director, Southwest Region, National Park Service, Department of the Interior, United States of America, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

MAXINE SLOAN NOTARY PUBLIC (SEAL) SANTA FE COUNTY, N.M.

Maxine Sloan
Notary Public

County of Santa Fe
State of New Mexico
My commission expires: 8-16-70

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

IN REPLY REFER TO: MN (L 54)

WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

RECEIVED
NATIONAL PARK SERVICE
WASHINGTON OFFICE
MAR 7 12 01 PM '75

L54(WR)PSW
FOBO/AWR Docket #1 March 4, 1975

Memorandum

To: Superintendent, Chiricahua
Through: General Superintendent, Southern Arizona Group

From: ACTING Regional Director, Western Region

Subject: Water Rights at Apache Spring, Fort Bowie National Historic Site

In accordance with your telephone conversation with Chief, Division of Water Resources, Gerard S. Witucki, and in reply to your memorandum of February 6, the following information is supplied.

Upon review of our water docket files and discussions with Field Solicitor, Ralph Mihan, we have arrived at conclusions somewhat similar to yours. According to our files, the water right agreement was recorded in Cochise County on November 13, 1969 in Docket 613, Page 225, Number 16832; however, we are of the opinion that the conditions for the agreement to take effect were never satisfied. Our rationale for this is based on the second paragraph of page two, which specifies that the agreement was not to commence "until such time as the officer representing the National Park Service advises Mr. Neel, in writing that the water supply system has been completed and the site is capable of furnishing water to Mr. Neel." The correspondence predating this agreement indicated that the water system referred to was to be constructed from a well drilled on the south bank of Syphon Canyon by the Service in 1966. The agreement, however, does not call for a supply from any specific source but only a stream of water measuring 10 gallons per minute. Since we never constructed a pipeline from the well to the Neel property but instead rehabilitated the Mine Tunnel collection system, we have never completed a system capable of furnishing the agreed 10 gallons per minute. Consequently, we have presumably never notified anyone in writing of completion of such construction or the capability of delivering 10 gallons per minute to the property. It should be noted that the agreement provides for water for stockwatering, and a change to domestic use probably could not be implied.

The reservation of water rights and the right-of-way at Apache Spring is property which Mr. Neel retained rather than an easement which we are allowing him a use of. Concluding then that the agreement never took effect, the water right (historical - prior to 1919) to Apache Spring remained with Mr. Neel or his successors.

In view of the fact that we wish to maintain Apache Spring in the natural state as a part of the historic scene, we may wish to take further action. Alternatives we may wish to consider are: (1) to purchase the spring and right-of-way outright, without reservations. This may not be acceptable to the owner because of his present water demands; (2) we may wish to investigate the possibilities of condemnation. The implied intent of the legislative commitments as well as the specific reference to stockwatering in the deed provide a basis for arguing that a change in the use of the water to supply a subdivision was not anticipated or agreed upon. Further, it would not be environmentally sound to utilize sources from within the monument to supply outside subdivisions for an unforeseeable future.

As discussed with Mr. Witucki, we will be pleased to assist you further to resolve this problem.

(SGD) JOHN H. DAVIS

cc:
Field Solicitor, San Francisco, w/cy of inc.
(WR)ML, Attn: Mr. Gibbons, w/cy of inc.

bc:
WASO, Ass't Dir., Resource Mgmt,
Attn: Mr. Vic Berte' w/cy of inc.

United States Department of the Interior

NATIONAL PARK SERVICE
Chiricahua National Monument
Dos Cabezas Star Route
Willcox, Arizona 85643

IN REPLY REFER TO:

L4 1925
F0 80

February 6, 1975

RECEIVED
NPS Western Regional Office
FEB 10 '75

Director		
Deputy Director		
EEO		
Public Affairs		
Operations Eval.		
Administration		
Park System Mgmt.		
Professional Svc.		
Action taken:		

Memorandum

To: Bob Gibbons, Lands, WR

From: Superintendent, CHIR

Subject: Water rights

I've reviewed the water rights stuff and have come up with some more information.

I've attached copies of our commitments with regards to Apache Spring. It appears that we don't do anything without the owner's OK. The commitments were all based on the ranching operations. I'd think that if Cardon wanted to subdivide, say, and use the water for other purposes he could take the spring.

The ranch has not pumped water through the pipeline right of way (as described in the deed reservation) since 1957. Their collection system used for pumping has deteriorated to the point that it would need to be replaced in its entirety.

The pump was pulled as it was completely shot. Their collection box is full of weeds. Since it's sealed except for the pump access it could not be cleaned. The overhead powerline has been removed. Should they want power to the spring again we (NPS) would have to put in an underground line from the trailer to the spring. Their partially buried pipeline has almost completely deteriorated and would need to be replaced.

The only remaining collection system for the spring, which we now maintain, produces between two and four gpm depending on the season. To clean up the Apache Spring area we have, with the previous owner's (Tovrea's) approval removed the stock watering tank and installed another about 600 feet away between the Helen's Dome and Fort Bowie Pastures. Through values we are providing sufficient water to the stock tanks to take care of the stock watering. The remaining water flows free down the wash.

When we purchased the private land of the Fort the previous owner had a pipeline which drew water from what we refer to as the Mine Tunnel water source. This water is collected from a seep in a mine tunnel plus two other subsurface seeps. We understand this water would be classified as surface water and under Arizona law the owner of the surface owns the water. There is no mention of this water source (Mine Tunnel Water) in the legislative history or the deed.

Since acquiring the land we have rehabilitated the mine tunnel collection system and there is an overflow of two to four gpm after our use which goes into the previous owner's old collection system and down to a storage tank at the Schaffer Place, the ranching headquarters operation center (corrals, pens, quarters). To date this amount (two-four gpm) has apparently satisfied the ranching needs since the owner has not indicated otherwise. We also know there is overflow after the ranching operation requirements. If it was not satisfactory we would think the rancher would supplement this water by pumping from Apache Spring, which was done prior to 1968. Not only has this not occurred but the previous owner has agreed to the removal of the pump and overhead powerline.

For all practical purposes what has happened is that by our rehabilitation of the mine tunnel collection system and resulting increase in water production there has been no need for the rancher to pump water from Apache Spring.

Our existing arrangement is satisfactory to us. It meets the legislative commitments in that "water from Springs in Apache Pass" is not adversely affecting the cattle and cattle ranching operations. If anything, it is helping because we handle and maintain the water supply and the owner has no obligations. The problem, however, is that if the rancher wishes to change Apache Spring and/or pump water along his right of way he can legally do it. This would raise hell with our wish to maintain Apache Spring and the Fort area in something of a natural setting. So although the present arrangement is satisfactory it is unstable.

I don't think the Apache Land and Cattle Company (Cardon) can long operate solely in ranching operations at a profit. The private land base is too small and the resource too marginal. I would anticipate BLM will be more restrictive as time goes on. If it were a one family operation, things would be different but as a side operation to another business (Cardons are Standard Oil distributors for Arizona, I think) the profit motive is too great. Probably the greatest profit gain would be in land sale and development. This is what we think the Cardons are doing. If this is what happens BLM would issue the grazing allotment to another rancher in the general area.

If Cardons do sell on a land development basis then what becomes of the water rights we do not know. We need an answer to this. If they are interested in using their water right to Apache Spring to provide water to a subdivision a number of questions arise. Are we still obligated to live with the deed reservation? Who would retain ownership of the water right and could it be used for domestic purposes? If they do subdivide it would be doubtful that BLM would continue with the allotment since the private land base would be too small.

If development of the water from Apache Spring were to take place then we would cut off the overflow water to the ranching operations. Then the sole water source of the owner would be Apache Spring. With a two-four gpm water supply it is doubtful if any additional development could take place. Historically, Apache Spring could not supply enough water for the Fort. It is doubtful if it could supply water for any development in today's world.

These are the alternatives as we see them:

1. If the agreement with Neel (see attached) is still in effect with the present owner, supply the water agreed to.

Discussion: Since Apache Spring is only providing two-four gpm it would not seem logical to provide 1Ø gpm in lieu thereof. The cost of construction and continuous supply would be extreme for the federal government. The location selected for the water to be supplied would result in severe environmental impacts.

The provision that "The United States, its employees and visitors to the site, will not consume the water from Apache Spring..." is not desirable. We would like visitors to be able to drink from the spring should they desire.

We can find no record that the agreement was recorded in Cochise County.

Conclusion: The agreement has more undesirable aspects than desirable.

2. Purchase the water right without reservations.

Discussions: Unless the present owner is terminating his ranching operation this alternative would be in conflict with the legislative commitments. BLM indicates that since Apache Spring is the base water for both the Helen's Dome and Fort Bowie Pastures the allotment would be drastically changed. If, however, the owner proposed to disband the Apache Land and Cattle Company, there would be no conflict with the agreement.

Conclusion: This is the most desirable alternative since it would once and for all end problems with Apache Spring.

3. Purchase the water right with reservations.

Discussion: The reservation would be that NPS would provide water on a first priority basis for stock watering only at or in the vicinity of the existing watering sites. We would be responsible for maintaining the water system to satisfy the commitment. We would also provide an amount of water not to exceed two gpm into the existing pipeline serving the Schaffer Place.

Conclusion: This is the most feasible alternative under existing conditions. We would satisfy our commitments to Congress, provide the allotee with his water needs, allow NPS to provide the visitor with a reasonably natural scene.

4. Continue with present status.

Discussion: At this moment the present status is alternative #3 without legal basis. It could at any time revert to complete control by the owner as deeded. NPS would also find it necessary to provide power (reimbursable) at the spring. If the owner chooses to redevelop the spring problems of serious consequence could result.

Conclusion: In light of Cardon's interest in Apache Spring water this alternative is too unstable.

I guess this is the most complete summary we can provide. Mr. Cardon did request his ranch manager to ask us for a copy of the Neel agreement. I've enclosed a letter to Mr. Cardon but wanted you to look it over first. If the agreement doesn't carry forth then we certainly wouldn't want to send it. Also after review of the case with Mr. Mihan you may have a better approach. Whatever, you can proceed as you see fit based on our desire to achieve alternative #2 as first choice or alternative #3 as the second choice.

William M. Lukens

William M. Lukens

Enclosures

FEB 2 Fort Bowie Water Rights Corres. File

L54(WR)PSW
FOBO/AWR #1 February 12, 1976

Memorandum

To: Regional Director, Western Region
Through: Associate Regional Director, Professional Services
Through: Chief, Division of Water Resources

From: Hydrologist, Division of Water Resources, Western Region

Subject: Field Trip of January 28 - 30, to Fort Bowie NHS, Arizona

Purpose of the trip: To provide hydrologic, geologic and water right expertise to the Regional Representatives from the Lands Division and the Solicitor's Office in an effort to arrive at a solution to the water right problems at Fort Bowie. In addition, to collect physical data in the area to clear up what has been up to now a somewhat confused picture of the physcial situation.

Companions: None.

Accomplishments and/or observations: Physical examination of the area was made in conjunction with Chiricahua Superintendent, Lew Alberts; Saguaro Superintendent, Bill Lukens; Area Ranger, Bill Hoy; Staff Attorney, Dick Ditlevson, Field Solicitor's Office, WRO; and Realty Specialist, Bob Gibbons, Lands Division, WRO. On January 28, all (sites) of the Mine Tunnel Springs(s) sources were visited and discharges and specific conductances were taken. Identical data was also collected for Apache Springs and another spring located to the south of the area in Siphon Canyon. The presently unused pipeline from Apache Springs to the Mine Tunnel Springs was inspected as well as the fencing within the park which separates two Bureau of Land Management (BLM) grazing areas (both of which are supplied water from Apache Springs). Considering both Apache Springs and all of the Mine Tunnel sources, the park is presently diverting somewhat more than 10 gallons per minute for Mr. Cardon's use.

A relatively new two foot contour interval map of the area was used to identify the easement as per the reserved right-of-way from Apache Springs. It appears that the easement extends to the lower dam at which a pump was

used several years ago. The easement falls to the north of Fort Bowie ruins proper. Water from Mine Tunnel Springs is presently diverted to a location on the east boundary of the area. Such adjacent land is not owned by Mr. Cardon. However, it appears that this could be corrected and have water delivery continue by gravity flow.

Dick Ditlevson, Field Solicitor's Office, with Bob Gibbons, Lands Division, and myself met with Apache County Engineer and later with the County Attorney in Bisbee, Arizona, on January 29. Review of County Engineer records failed to specifically meet statute requirements for achievement of county roadway easement for the road south of Mr. Cardon's ranch house to the area. In view of the above and past experiences with similar efforts, he was skeptical as to the success of such an effort in the event Mr. Cardon closed the road. The County Attorney was more optimistic as to the legal recourse which we might have by interpretation of the "benefit of the public" clause in the statute and long term county maintenance of the road. He described our situation as "very arguable."

We were joined by incoming Superintendent Lew Alberts and proceeded to the Bureau of Land Management Office in Safford, Arizona. Their records indicate no Cardon grazing permit tie to Apache Springs, but rather to the spring in Siphon Canyon. It appears that the total Cardon grazing permit is for 200 head. BLM could modify future grazing permits to exclude the 240 acre track of privately acquired land (which contains Apache Springs) and could modify certain fencing between the two pastures in question to allow watering of cattle from the Siphon Canyon Spring. BLM Area Manager, W.S. Earp, expressed the opinion that they would be unable to assist in any way should the ranch road be closed. The Bureau is presently reevaluating all grazing permits in light of the Environmental Impact Statements. This task is scheduled for completion by October 1977 and it appears likely that grazing will be reduced in the vicinity of Fort Bowie.

On January 30, in Phoenix, the Field Solicitor's Representative, Mr. Ditlevson and I visited State Water Resources Division. Official records indicate no water rights (with the exception of possible "ancient" and court adjudicated rights) for the area.

We were joined by Lands Division Representative, Bob Gibbons and subsequently met with Mr. Cardon and two lawyers representing him. This meeting was held in an effort to "defuse" the proposed settlement as expressed by Cardon's recent, written offer. Hostility was immediately evident and demands were made for government compliance with the 1969

agreement to deliver 10 gallons per minute at the prescribed area boundary, to be utilized for any purpose. Mr. Dick Ditlevson indicated that due to funding and changed area plans, it appeared that the government would be unable to carry out the specific terms of the contract. He continued on to state that it was the government's desire to acquire full title to Apache Springs water, eliminate the Apache Springs easement, and that in so doing, we wished to in no way to interfere with grazing of the Cardon interest. Further discussions and questions led to the realization that none of Cardon's Group were familiar with the physical aspects of the area, i.e., present water sources, volumes delivered, points of delivery, etc. Mr. Cardon and his attorneys retired for private discussions and returned with an offer to yield the water rights for Apache Springs, the appurtenent easement, the roadway access and 1/4 section of land to the east of Fort Bowie in return for an estimated 12 sections of BLM land and one section of State land. It was agreed that this offer would be formally presented in written form to the Service in the near future.

A synopsis of the above findings, meetings and proposal was presented to John Clay, General Superintendent, SOAR Group, and some of his staff.

Recommendations: No further action appears appropriate at this time, pending receipt of the formal Cardon proposal.

Conclusions: Full evaluation of the Cardon proposal should be made upon its receipt. Upon this determination, appropriate planning as to presentation of an equitable counter offer should be undertaken. Efforts will again be made to resolve present park management problems as related to Cardon interests.

(Signed)

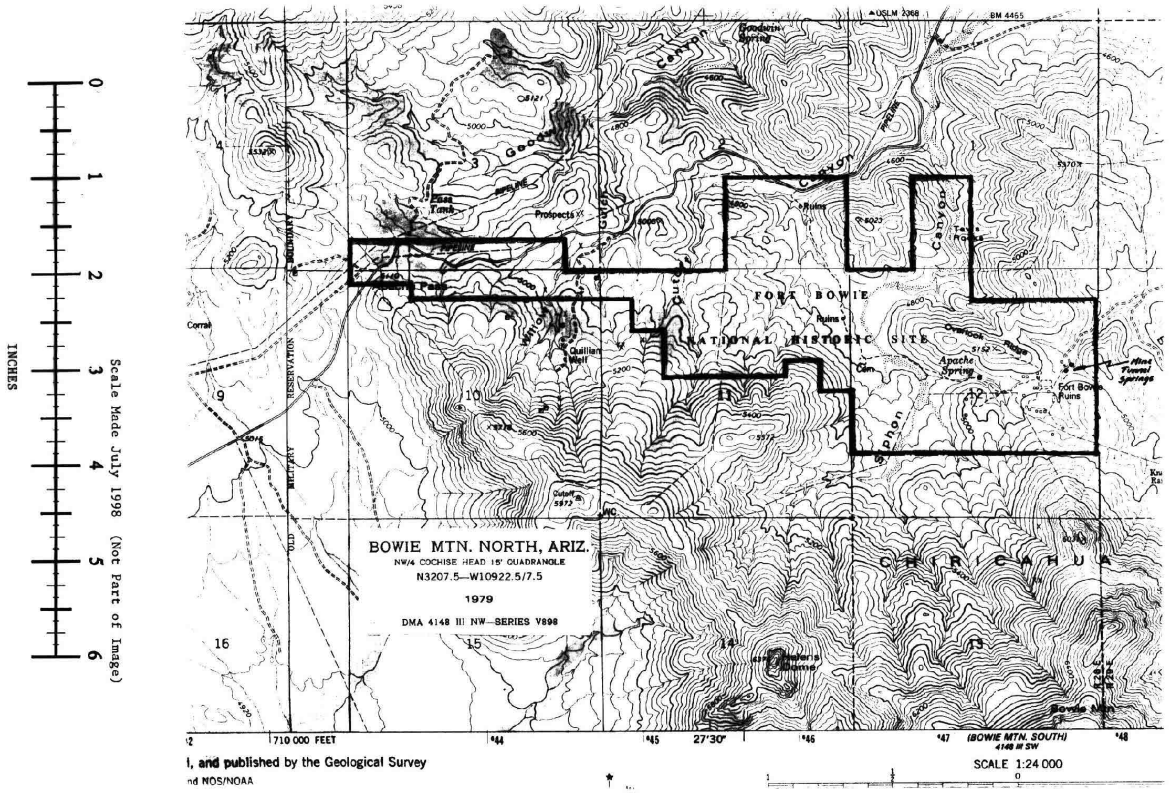
William L. Werrell

Cleared for Distribution:

/S/JOHN H. DAVIS
For: Regional Director, Western Region

2/19/1976
Date

cc:
Superintendent, SOAR Group
Field Solicitor, San Francisco
(WR)ML, Mr. Gibbons
WASO, Water Resources, Mr. Berte'



Docket Information

Number of Documents in Docket 169

Documents Dated from 2/6/1975 to 10/3/1995

Docket Compiled: 6/2/2016