WATER-RIGHT DOCKET

Organ Pipe Cactus National Monument

Docket No: 4

QUITOBAQUITO SPRINGS. WATER RESERVE

Preliminary Docket Information

09-24-1974: water right/source docket information

WATER RESOURCES/WATER ~~RIGHTS~~ DATE: September 24, 1974

WATER RIGHT/SOURCE DOCKET INFORMATION

REGION Western AREA Organ Pipe Cactus National Monument

SITE Quitobaquito Springs

STATE Arizona COUNTY Pima DOCKET NO WR # 4

LOCATION SW¼ NE¼ SE¼ Sec 18 T17S R7W G&SRPM (C-17-7) 18 dac

REGIONAL BASIN ~~Basin and Range~~ 22 Western Mexican Drainage LOCAL BASIN ~~Sonoran~~ D. Rio Sonoita

ACQUIRED BY Condemnation

APPLICATION PERMIT CERTIFICATE

ACTION DUE PRIORITY 1860 RESERVATION Nov. 21, 1923

QUANTITY USE Wildlife and Recreation

STATUS Active SOURCE Springs

REMARKS

NARRATIVE:

Quitobaquito, as described in a memo of May 11, 1945, consists of a pond (a man-made reservoir of approximately one quarter acre) and several small springs. The area is 250 to 300 feet north of the International Boundary (but within Organ Pipe Cactus National Monument as proclaimed on April 13, 1937). A water source report made in July of 1968 for the Quitobaquito Springs and pond described the history as follows:

> Early used as a center of a band of Papagos. Noted by Kino in 1698. Settled circa 1860 by Adolph (Andrew) Dorsey who built ponds, adobe jacal, planted pomengranate and fig trees. Later used by T. Childs, R. Daniells and J. Merril, and families of Lopez and Orosco. A frequent watering place for miscellaneous travelors.

However the only claim of record found in a search by the Arizona Land Title and Trust Company on April 17, 1957 was for the Quitobaquito Millsite filed on November 1, 1894 by A.N. Dorsey and John Gandolfo.

On November 21, 1923, Public Water Reserve No. 88 was proclaimed withdrawing from settlement, location, sale, or entry all lands within a quarter mile radius of an "unnamed pond" (this being Quitobaquito) and reserved them for public use. The Acting Regional Director of the NPS on December 22, 1950, requested the BLM to determine whether Aquajita Spring was considered withdrawn under Public Water Reserve No. 107. Paul Cutter responded to this request inaa report Dated March 16, 1951 and spoke of Quitobaquito Spring:

> "just northwest of Marker No. 172 and in the SE¼ Section 18 (when surveyed) was the cause of the creation of Public Water Reserve No. 88 by Executive Order of November 21, 1923, although the land was erroneously described as being approximately the SW¼ NE¼ Section 17. This fact is mentioned so that there will be no misunderstanding that Aquajita Spring was the spring included in Public Water Reserve No. 88."
> (Quitobaquito, not Aquajita, was reserved under PWR #88)

When Organ Pipe Cactus N.M. was established by executive order, the administration of the Monument was made subject to the area included as part of Public Water Reserve No. 88 which was within the Monument boundary.

Jose Juan Orosco, a Papago Indian, irrigated 5 acres of land from the pond, the irrigated land largely being south of the International Boundary in Mexico. The ditch that carried water from the pond to the cultivated land crossed a sixty foot strip along the boundary set aside by Executive Order of May 27, 1907 for the convenience of the border patrol. (Cont.)

Compiled by M. Ackerman

Approved by B. Werrell

A memo from the Commissioner of the Office of Indian Affairs to the Director of the NPS dated August 14, 1945, noted that the Park Service was (as a matter of policy) going to allow Jim Orosco, Jose Juan's son and heir, to continue his use of the pond and his residence (along with stock raising of about 100 head). The memo noted that Mr. Orosco was a ward of the United States because he was an American Indian.

On June 28, 1955, Jim Orosco consented to the condemnation of his property and water rights in the vicinity of Quitobaquito. On October 1, 1957, U.S. Attorney William Eubank in a memo to the Chief of Land Acquisition in the Lands Division, stated that Jim Orosco had no record title. His title was based upon possessory interests claimed through his father and possibly grandfather.

On September 9, 1957, the final judgement of condemnation (Civ. No. 905 Tuscon, U.S. v. 24,700 acres of land, Jim Orosco et. al) resulted in a settlement for $13,000 acquiring the property and all other interests "except those real property interests owned by the "Gray Partnership" composed of Robert Gray, Jack Gray, Henry Gray, Robert Louis Gray, and any other members of the Gray family or partnership not named who may have any claim or interest in said described property."

Previously, in a memo dated July 31, 1957, Mr. A. van V. Dunn voiced his opinion that "the settlement will eliminate claims without determination of whether the U.S. or the Gray family has title to the water and water systems. The Grays claim certain interests under protested Arizona water right applications. There is also the possibility that Orosco assigned other interests to the Grays before the Order of Delivery of Possession, whether recorded in the County or not."

Two of the above mentioned Gray family claims, Williams and Aquajita Springs were protested by the NPS on the basis that they were on Federal lands to which the Gray family had no legal right of access. However, if Jim Orosco owned this land, acquired by longstanding possession prior to withdrawal and he sold his title and rights of these sources to the Grays, there may be some doubt whether the government has a valid argument since the Grays would have a superior right, existing prior to the creation of the Monument. To date, no evidence of any such sale is known.

~~[illegible]~~

C/R. L-54

Orig L1425

October 9, 1957

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Acquisition of Orosco Interest, Suit in Condemnation
Civil 905 Tucson-Arizona, Organ Pipe Cactus

The memorandum of September 24 from Mr. Kell has clarified the status of the statements of Cameron, Meadows, Mavins and McDaniel. We have photostat copies, as signed in 1952, in Alien Water Rights 2, 3, 4, 5, 6, 7 and 8, but we only had a copy of the one signed by Mr. Cameron in Alien Water Right No. 1.

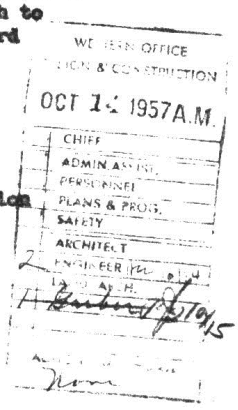
At this time we have changed the tab by hand, to make the Alien Water Right No. 1 read Docket 4. We have also inserted all instruments from the Department of Justice in that folder, but without punching and attaching by the acco fastener. That much should be done by you, and by the Superintendent. That establishes a Docket 4 and eliminates Alien Water Right 1.

I have not yet decided what I think should be in Docket 4, or whether the present contents of the folder should be used for just that Docket or for several. In any case, Docket 4 will be the records of Federal rights to the water in Public Water Reserve No. 88 with any conflicting claims by any but the Gray Partnership eliminated. I think there are other sources of water such as Rincon Spring, and the Orosco Well and Gray replacement (now Docket 3) for which other dockets may be desirable, with or without duplication of more than the Final Judgment in the recent condemnation. I will have to defer that action unless Messrs. Barton and Kell wish to outline what they think should be a matter of permanent record in each docket.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Organ Pipe Cactus
Chief, WCDC (2)



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM CROUCH; et al., and UNKNOWN OWNERS,

Defendants.

NO. CIV. 905-TUCSON

RECEIPT

I, Wm. H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that on the 13 day of September, 1957, I received from the United States of America, plaintiff herein, and deposited in the Registry of the Court, check of the Treasurer of the United States, No. 12,780,302, dated September 5, 1957, payable to the order of Clerk of the U. S. District Court for the District of Arizona, in the sum of THIRTEEN THOUSAND AND NO/100 ($13,000.) DOLLARS, pursuant to order entered on July 13, 1957 confirming the award in the above-entitled condemnation proceeding.

DATED: September 13, 1957.

WM. H. LOVELESS, Clerk
United States District Court
for the District of Arizona

By Emmelia Ellee
Deputy Clerk

7—1404

U. S. GOVERNMENT PRINTING OFFICE

09-13-1957: uniter states district court for the district of arizona: no. civ. 905-tucson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

- - - - - - -

UNITED STATES OF AMERICA, Plaintiff, vs. 24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM OROSCO; et al., and UNKNOWN OWNERS, Defendants.	NO. CIV. 905-TUCSON FINAL JUDGMENT IN CONDEMNATION

This matter duly coming on for hearing on the 4th day of September, 1957, in open court, and the United States of America, Plaintiff, appearing by Robert O. Roylston, Assistant United States Attorney, District of Arizona, and no other party appearing personally or by counsel; and the Court having executed an Order on the 13th day of July, 1957, settling the issues of law and fact previously raised between the Plaintiff and the Defendant Jim Orosco, a non-reservation Indian; and this hearing having been held in compliance with Rule 71A(e), Federal Rules of Civil Procedure, Title 28 U.S.C.A. requiring a final hearing;

NOW, THEREFORE, IT IS ADJUDGED AND DECREED, as follows:

1. That the Order entered by this Court on the 13th day of July, 1957, is the final judgment settling the law, facts and issue of just compensation in this action, except as herein expressly limited;

2. That no other person, real or artificial, is entitled to just compensation for the taking, by the Plaintiff, of the real property interests described in the above referred to Order;

3. That there are no legal interests, other than Jim Orosco, a non-reservation Indian, disposed of in said prior Order or in this Final Judgment, requiring the payment of just compensation for the

P—1404

U. S. GOVERNMENT PRINTING OFFICE

taking, by the Plaintiff, of the real property interest in this action; and the compensation set out in said prior Order was the just compensation for all property rights taken or destroyed as a result of this action.

DATED this 9 day of September, 1957.

JAMES A. [illegible]
Judge
United States District Court
for the District of Arizona

ENDORSED
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
FILED
SEP 9 - 1957
WM. H. LOVELESS, CLERK
BY EMELIA COLE
DEPUTY CLERK

I, WM. H. LOVELESS, Clerk of the United States District Court in and for the District of Arizona, do hereby certify that the annexed and foregoing is a true and full copy of the original thereof now remaining in my custody among the records of the said court.

ATTEST SEP 10 1957

WM. H. LOVELESS, Clerk
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

By [signature] Deputy Clerk

-2-

7—1604

U. S. GOVERNMENT PRINTING OFFICE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

- - - - - - -

UNITED STATES OF AMERICA, Plaintiff, vs.	:	
24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM OROSCO; et at., and UNKNOWN OWNERS, Defendants.	:	NO. CIV. 905-TUCSON O R D E R

: :

This matter being heard this day, ex parte, on the Motion of the Plaintiff for the entry of an order determining the issue of the amount of just compensation to be awarded to the owner of interests in the real property described fully in Exhibit "A" attached hereto; and it appearing to the Court that on July 8, 1957 the Plaintiff and the Defendant, owner of said real property, entered into a written Stipulation in this cause agreeing to the respective right, duties and liabilities of each party in relation to the other party in this action and as the amount of just compensation due Defendant; and both parties having agreed to the entry of a judgment in conformity with said Stipulation; and the Court having given due consideration to this matter;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

(1) The defendant, JIM OROSCO, a non-reservation Indian, as his sole and separate property, is liable and shall pay all liens and encumbrances perfected prior to July 5, 1957 against the real property described fully in Exhibit "A" attached hereto.

COPY

COPY

(2) The Plaintiff shall pay to the Defendant the sum of $13,000.00, interest included, as just compensation for the taking by the Plaintiff of the fee simple absolute title to the real property described fully in Exhibit "A" attached hereto.

(3) The Plaintiff is not liable to the Defendant for any other funds, interest or damage for the taking of the Defendant's rights and interests in the real property described in Exhibit "A" attached hereto, other than set out in paragraph numbered (2), above.

(4) The Clerk of Court shall disburse the sum herein set out to the Defendant, when received in the Registry of the Court, by making his Registry Check payable to Jim Orosco, and depositing it in the United States Mails, addressed to the Defendant, c/o A. C. Netherlin, Attorney at Law, Ajo, Arizona.

ORDERED this 19 day of July, 1957.

JAMES A. WALSH

Judge, United States District Court, for the District of Arizona

COPY

COPY

That land in Organ Pipe Cactus National Monument bounded by lines beginning at Monument No. 171 on the International Boundary between the United States and Mexico, thence north seven miles, thence west to the west boundary of Organ Pipe National Monument, thence southerly along the west boundary of said Monument to a point on said International Boundary, and thence southeasterly along said International Boundary to the point of beginning at aforesaid Monument No. 171, containing 24,699.22 acres, more or less, in Pima Counth, Arizona, EXCEPT those real property interests owned by the "Gray Partnership" composed of Robert Gray, Jack Gray, Henry Gray, Robert Louis Gray, and any other members of the Gray family or partnership not named who may have any claim or interest in said described property.

ENDORSED
FILED
JUL 13 1957
WM. H. LOVELESS, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY ERMELIA COLE
DEPUTY CLERK

I, WM. H. LOVELESS, Clerk of the United States District Court in and for the District of Arizona, do hereby certify that the annexed and foregoing is a true and full copy of the orginal thereof now remaining in my custody among the records of the said court.

JUL 16 1957

ATTEST
Wm. R. Loveless, Clerk
United States District Court
For the District of Arizona

by Ermelia Cole
Deputy Clerk

EXHIBIT "A"

COPY

COPY

09-13-1957: united states district court for the state of arizona: no. civ. 905-tucson, stipulation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

- - - - - - -

UNITED STATES OF AMERICA, Plaintiff, vs. 24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM OROSCO; et al., and UNKNOWN OWNERS, Defendants.	NO. CIV. 905-TUCSON STIPULATION

Whereas, by a Complaint filed in this action on October 8, 1956, and an Order for Delivery of Possession to the plaintiff, signed by Judge James A. Welsh on October 8, 1956, the plaintiff entered into possession of the hereinafter described real property for the purpose of acquiring the fee simple absolute title subject only to the interest of the Gray Partnership, as hereafter described; and

Whereas, Jim Orosco, an individual and a non reservation Indian, hereinafter referred to as the defendant, is entitled to just compensation from the plaintiff for the taking of the defendant's interests in the hereinafter described real property; and

Whereas, the plaintiff and defendant have agreed, between them to the amount of money due and owing the defendant by the plaintiff as just compensation for the plaintiff's taking of the hereinafter described real property; and

Whereas, each party herein desires that the Court enter a Judgment or Order in conformity with this Stipulation and both parties waive finding of facts and conclusions of law in this action;

COPY

COPY

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the United States of America and the defendant:

1. That the defendant has paid all liens and encumbrances attached to or perfected against the hereafter described real property;

2. The plaintiff and defendant agree that just compensation for the taking of all Jim Orosco's right, title and interests in the fee simple absolute estate over the following described real property is $13,000.00, interest included; and that this amount shall be due and payable to the defendant by the plaintiff as full and just compensation for the taking of the real property described more fully as:

> That land in Organ Pipe Cactus National Monument bounded by lines beginning at Monument No. 171 on the International Boundary between the United States and Mexico, thence north seven miles, thence west to the west boundary of Organ Pipe National Monument, thence southerly along the west boundary of said Monument to a point on said International Boundary, and thence southeasterly along said International Boundary to the point of beginning at aforesaid Monument No. 171, containing 24,699.22 acres, more or less, in Pima County, Arizona, EXCEPT those real property interests owned by the "Gray Partnership" composed of Robert Gray, Jack Gray, Henry Gray, Robert Louis Gray, and any other members of the Gray family or partnership not named who may have any claim or interest in said described property.

3. The said defendant does hereby release and discharge the United States of America, his officers and agents, from any and all claims, liability and damage, whatsoever, in his favor against the United States of America which now exist, or may hereafter exist, by reason of the United States of America's possession, use and occupancy of the above described real property.

4. The defendant hereby enters his appearance in this action and expressly waives service of summons, petition and any and all other notice or process, and all right to a hearing on the petition and pleadings filed in this action, right of appeal, and the right to the appointment of Commissioners, a Board of View or Jury for

COPY

COPY

for the determination of just compensation or damages.

5. The defendant and the plaintiff agree to the entering of a Judgment in conformity with this Stipulation, and to the dismissal of said premises from the above captioned proceedings.

EXECUTED this 8 day of July .1957

JIM OROSCO His

His Mark Jim I Orosco

Mark

We certify that we know Jim Orosco and witnessed him affix his mark to this document:

1. Blanche Swick
Address:
Box 563 - Ajo Arizona

2. Harry Miguel
Address:
Gen. Del. Ajo, Arizona

Approved as to form this

8 day of July 1957.

A. C. Metherlin
Attorney for Jim Orosco .

I, WM. H. LOVELESS, Clerk of the United States District Court in and for the District of Arizona, do hereby certify that the annexed and foregoing is a true and full copy of the original thereof now remaining in my custody among the records of the said court.

ATTEST July 16, 1957

Wm. R. Loveless, Clerk
United States District Court
For the District of Arizona

By Ermelia Cole
Deputy Clerk

UNITED STATES OF AMERICA

JACK D. H. HAYES
United States Attorney
for the District of Ariz.

WILLIAM E. EUBANK BY m.a.r.

WILLIAM E. EUBANK
Assis. U. S. Attorney

ENDORSED
FILED
July 13, 1957
WM. H. Loveless, Clerk
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZ.
BY ERMELIA COLE
DEPUTY CLERK

COPY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

- - - - - - -

UNITED STATES OF AMERICA, Plaintiff, vs. 24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM OROSCO, et al., and UNKNOWN OWNERS, Defendants.	NO. CIV. 905 TUCSON COMPLAINT IN CONDEMNATION

1. This is an action of a civil nature brought by the United States of America at the request of the Solicitor of the Department of the Interior for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Proclamation of the President of the United States of April 13, 1937 (50 Stat. 1827), issued under authority contained in Section 2 of the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C., 1952 Ed., Sec. 431); the Act of August 7, 1946 (60 Stat. 885; 16 U.S.C., 1952 Ed., Sec. 17j-2;) funds appropriated by the Interior Department Appropriation Act, 1957 (Public Law 573, 84th Congress), Title 40 U.S.C.A., Section 257.

3. The use for which the property is to be taken is for the protection and development of Organ Pipe Cactus National Monument.

4. The interest in the property to be acquired is fee simple absolute.

5. The property so to be taken is described more fully as follows:

7—1404

U. S. GOVERNMENT PRINTING OFFICE

Copy sent to Luttrell, Justice with letter of Oct 17, 1956 from Asst USAH. Eubank CO 4/19/63

That land in Organ Pipe Cactus National Monument bounded by lines beginning at Monument No.171 on the International Boundary between the United States and Mexico, thence north seven miles, thence west to the west boundary of Organ Pipe National Monument, thence southerly along the west boundary of said Monument to a point on said International Boundary, and thence southeasterly along said International Boundary to the point of beginning at aforesaid Monument No. 171, containing 24,699.22 acres, more or less, in Pima County, Arizona, EXCEPT those real property interests owned by the "Gray partnership" composed of Robert Gray, Jack Gray, Henry Gray, Robert Louis Gray, and any other members of the Gray family or partnership not named who may have any claim or interest in said described property.

6. The above described property is visually described on Department of Interior map attached hereto and marked as Exhibit A, and incorporated herein by reference.

7. The persons having or claiming an interest in the property whose names are ascertainable by a reasonably diligent search of the records and those whose names have otherwise been learned are:

Jim Orosco

United States of America

8. The County of Pima, Arizona, and the State of Arizona may have or claim an interest in the property by reason of taxes and assessments due and exigible.

9. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the Plaintiff and such persons are made parties to the action under the designation "Unknown Owners".

WHEREFORE, the Plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

A TRUE COPY. Complaint as shown by Exhibit "A"
Certified this 8 day of [illegible]

WM. H. LOVELESS, CLERK
By [illegible]
Deputy Clerk

JACK D. H. HAYS,
United States Attorney

WILLIAM E. EUBANK

WILLIAM E. EUBANK,
Assistant United States Attorney

Trial by jury of the issue of just compensation is demanded by Plaintiff.

7—1404
U. S. GOVERNMENT PRINTING OFFICE

10-04-1956: united states district court for the state of arizona: no. civ. 905 tucson, notice of condemnation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

- - - - - - - -

UNITED STATES OF AMERICA, Plaintiff, vs.	
24,699.22 ACRES OF LAND, more or less, in Pima County, Arizona; JIM GROSCO; et al., and UNKNOWN OWNERS, Defendants.	NO. CIV. 905 TUCSON NOTICE OF CONDEMNATION

TO:
Jim Grosco
State of Arizona
County of Pima
Gray Partnership consisting of:
Robert Gray
Jack Gray
Henry Gray
Robert Louis Gray; and others
Unknown Owners and Claimants of certain land in the
County of Pima, State of Arizona

You are hereby notified that a complaint in condemnation has heretofore been filed in the Office of the Clerk of the above-named Court in an action to condemn an estate in fee simple absolute in the following described property:

That land in Organ Pipe Cactus National Monument bounded by lines beginning at Monument No. 171 on the International Boundary between the United States and Mexico, thence north seven miles, thence west to the west boundary of Organ Pipe National Monument, thence southerly along the west boundary of said Monument to a point on said International Boundary, and thence southeasterly along said International Boundary to the point of beginning at aforesaid Monument No. 171, containing 24,699.22 acres, more or less, in Pima County, Arizona, EXCEPT those real property interests owned by the "Gray Partnership" composed of Robert Gray, Jack Gray, Henry Gray, Robert Louis Gray, and any other members of the Gray family or partnership not named who may have any claim or interest in said described property,

for the protection and development of Organ Pipe Cactus National Monument.

7—1404
U. S. GOVERNMENT PRINTING OFFICE

Copy sent to Luttrell, Justice, with letter of Oct. 17, 1956 from Asst US Att. Eubank
GL 2/19/63

The authority for the taking is the Proclamation of the President of the United States of April 13, 1937 (50 Stat. 1827), issued under authority contained in Section 2 of the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C., 1952 Ed., Sec. 431); the Act of August 7, 1946 (60 Stat. 885; 16 U.S.C., 1952 Ed., Sec. 17j-2;) funds appropriated by the Interior Department Appropriation Act, 1957 (Public Law 573, 84th Congress), Title 40 U.S.C.A., Title 257.

You are further notified that if you have any objection or defense to the taking of your property you are required to serve upon Plaintiff's attorney at the address herein designated within twenty days after personal service of this notice upon you, exclusive of the day of service, an answer identifying the property in which you claim to have an interest, stating the nature and extent of the interest claimed and stating all your objections and defenses to the taking of your property. A failure so to serve an answer shall constitute a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the just compensation and shall constitute a waiver of all defenses and objections not so presented.

You are further notified that if you have no objection or defense to the taking you may serve upon Plaintiff's attorney a notice of appearance designating the property in which you claim to be interested, and thereafter you shall receive notice of all proceedings affecting the said property.

You are further notified that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence as to the amount of the compensation to be paid for the property in which you have any interest and you may share in the distribution of the award of compensation.

7—1404

U. S. GOVERNMENT PRINTING OFFICE

You are further notified that trial by jury of the issue of just compensation is demanded by Plaintiff.

Dated this 4th day of October, 1956.

JACK D. H. HAYS,
United States Attorney
for the District of Arizona

WILLIAM B. BUBANK

WILLIAM B. BUBANK
Assistant United States Attorney
204 United States Court House
Phoenix, Arizona

A TRUE COPY.
Certified this 8 day of Oct 1956.

WM. H. LOVELESS, CLERK
By Emelia Gill
Deputy Clerk

7—1404

U. S. GOVERNMENT PRINTING OFFICE

10-04-1956: consent to condemnation of property

CONSENT TO CONDEMNATION OF PROPERTY

KNOW ALL MEN BY THESE PRESENTS that I, Jim Orosco, residing at Quitobaquito, Pima County, Arizona, claim certain lands, water rights, and other property interests in the vicinity of Quitobaquito within what will probably be when surveyed Section 18, T. 17 S., R. 7 W., Gila and Salt River Base and Meridian, and do hereby consent to the taking by the United States of America by proceedings in eminent domain of all my right, title and interest, possessory or otherwise, in and to all land, water rights, and fixtures attached to land within the area described above, the extent of such property interests and the value thereof to be determined by the United States District Court.

\+
HIS MARK
Jim Orosco

Chester A. Beaman
Witness

Witness

State of Arizona)
) SS
County of Pima)

On this the 28 day of June, 1955, before me, A. C. Netherlin, the undersigned officer, personally appeared Jim Orosco, known to me to be the person signing the within instrument by his mark, and acknowledged that he executed the same after having the instrument read to him and fully understanding the same, for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

A. C. Netherlin
Notary Public

My commission expires May 26 1958

08-06-1953: letter to region three from realtor & real estate appraiser regarding the appraisal report covering holdings of jese juan



Frank Mosshammer
REALTOR & REAL ESTATE APPRAISER
PHONE 3-4497 • • 368 NORTH FOURTH AVENUE • • PHOENIX, ARIZONA

August 6, 1953.

United States
Department of the Interior,
National Park Service,
Region Three,
Santa Fe, New Mex. Re: File L-2223-L

Gentlemen:

Enclosed find Appraisal Report covering holdings of Jese Juan Orosco, deceased, at Organ Pipe Cactus National Monument south of Ajo, Arizona, for the purpose of securing title by the United States Government through condemnation proceedings.

If there is any additional information you desire, kindly advise.

Yours very truly,

Frank Mosshammer
Frank Mosshammer

08-06-1953: cover sheet of appraisal report of jose juan orosco, property, orpi

APPRAISAL REPORT.
of

Jose Juan Orosco, Property

ORGAN PIPE CACTUS NATIONAL MONUMENT

Quitobaquito, Ariz.

08-06-1953: appraisal report

A P P R A I S A L R E P O R T.

For

U N I T E D S T A T E S
Department of the Interior
National Park Service
Region Three
Santa Fe, New Mexico

oOo

Pursuant to your letter of May 6, 1953, I have examined the holdings of Jose Juan Orosco, deceased at Quitbaquito, Arizona, which consists mainly of possessary rights to Springs, water hole and some tumbledown buildings, fencing, corrals, etc., with the view of determining the fair market value of same as of July 22nd, 1953.

LOCATION

Quitobaquito is located approximately thirty air miles or about fifty-five miles by road south and west of Ajo, Arizona the principal town in this section of the State of Arizona, as well as the main school and shopping area in this portion of Arizona.

PROPERTIES

OROSCO WELL:

Located approximately eight miles north and one-half mile west of Quitobaquito and within the Organ Pipe Cactus National Monument, in what will probably be when surveyed Section Eight (8) Township 16 South, Range 7 West of GSRB&M, Pima County, Arizona.

On July 22nd 1953, I visited the above described property in company with Mr. Wm. R. Supernaugh, Superintendent, at which time we found the old windmill and tower over a wet weather well (depth approximately 35 ft.) taken down and the hole covered with planks.

We were informed that Jim Orosco, one of the sons, had disposed of the well equipment and corral to the Gray Outfit for $300.00. The Gray outfit had just completed the drilling of a new well in the corral, depth of well 130 feet without the knowledge or consent of the National Park Service, and a new windmill ready for assembling nearby.

In view of the disposal of this equipment no value was assigned this parcel.

[redacted]

QUITOBAQUITO HOLDINGS:

Unsurveyed land which will probably be when surveyed Section 18, Township 17 South, Range 7 West, GSRB&M. Improvements consisted of three structures; one single room adobe house, one double room adobe house, one saguaro-rib structure, two corrals and a shed. The houses were in such condition they were not habitable and no value was assigned the three buildings.

However there were three structures constructed by the U.S.Bureau of Animal Husbandry, one being occupied at this time by Jim Orosco and his wife and were not taken into consideration as to values of property.

There were eleven small springs, some flowing very little, however, the total water flowing into a water hole was approximately 15 to 20 gallons per minute.

There were a few Fig Trees and Pomegranites which were being irrigated from water hole. In addition, there were approximately three to five acres which was formerly used for a general garden, but from appearance at time of appraisal, had not been planted for quite sometime.

No information could be secured from Jim Orosco due to his inability to understand English.

Capacity of water hole estimated at 2.4 acre feet.

HIGHEST & BEST USE:

No future adaptability higher than the present type; stock water permit.

AREA DESCRIPTION:

Subject area is of desert character, very sparsley settled and used only for cattle ranching. The nearest town is Ajo, Arizona situated approximately 45 miles north of subject property.

FEED VALUE, TYPE OF OPERATION:

The average annual percipatation in the extensive low valley area, judging from U.S.Weather Bureau records for Gila Bend Station, is only about five inches per annum. The forgge of such areas consists principally of part-season annual grasses having high feed value in occasional wet years; but otherwise of only small value.

The usual type of operation in such area consists of running Mexican steers as and when feed is available.

Values in the low seasonal country when expressed on a per C.Y.L. basis tend to lie considerably below those of the browse country due to the greater risk attached to operation in the low areas. A low grade of mixed grasses and browse country is in evidence.

In as much as the National Park Service is primarily interested in arriving at the Fair Market Value of the possessory rights to this water, and the highest and best use of this water is for stock watering purposes, it is the opinion of the appraiser that the fair market value of the grazing capabilities of the range value around this water estimated in number of head of cattle yearlong would be the measure of the value of this water, becasue without the water the grazing in this immediate area would not be possible and of course there are limits to the distance cattle can graze out from water and do well.

Based on studies made by the War Department and Grazing Service in 1942 on nearby ranges similar as to water conditions and improvements and allowing for increased market value of livestock at this time, it is my opinion that the grazing value of this permit is;

Estimated Carrying Capacity within range of water is

65 C.Y.L. @ $50.00	$3,250.00
Other Improvements such as fence, corrals, shed, etc.	250.00
T o t a l	$3,500.00

Appraised Value @ 4/1/55

Value of Permit based upon approximately fifty sections of grazing land.

SALES OF OTHER PROPERTIES

Joe Kennedy to Gatlin

Date of Transfer: 1-22-42 Location 7 miles NW Gila Bend
Consideration $3,000 Area; 30 Sec.Fed Range and 40 acres Pat.and well

The allotment forms part of a "Community" range bordering the Gila River. The grazing capacity on the basis of best information available is probably on the order of 100 C.Y.L. On this basis the purchase price is equivalent to $30.00 per C.Y.L. The range is unfenced, but the parcel of patented land contains an old adobe and frame dwelling. Twenty acres of this land is said to have been in cultivation at one time, but is not at present.

Dick Connelly to Jack Clem

Date of Transfer: 1-21-42 Location: adjoins west boundary of subject property
Consideration: $7,500

The allotment according to recent estimate by representatives of U.S. Grazing Service, is about 140 CYL or an average of about 5 head per section, year long. The price per CYL on this basis was $53.50. The allotment is well fenced all around with the exception of a few miles of natural barrier on the East, fronts on State Highway 84 giving good access to markets. Stock water conditions are reasonably good, but local authorities agre that buyer paid too much.

Archie Stamps to A. E. Pettit

Date of Transfer: Jan. 1940.
Consideration $3,000.00

Location North & West of S.P.
Area. 181 Sec.Fed Range & 148 A deeded land with well.

At the time of purchase it was unfenced, except along the R.R. Right-of-Way on the north and contained only one usable source of stock water (a well near north end). The purchase was made with the intention of developing additional watering points, as well as fencing the entire range; and this programxx was nearing completion when the taking of the Gunnery Range put a stop to further operations. The estimated total outlay up to that time including original purchase price, is $9,000.00 which would be equivalent to $25.00 per CYL based on a estimate of carrying capacity by representatives of U.S.Grazing service. However the carrying capacity averages only about 2 head per section compared to 5 head for the Clem holding.

CAMERON TO WELLS

Date of Transfer 9/1/39
Consideration $10,000

Location: Near Sentinel extending N from 211 Highway.
Area; 22 Sec.Fed Range

The transaction included 250 head of cattle having a stipulated value of $24.00 per head or $6,000.00 total value together with about $500 worth of horses leaving $3500 as the consideration for range alone? The purchase was made with the intention of developing additional water and adding fence. These improvements have been carried out at a cost of $8,000 so that the total outlay today stands at about $11,500.00 or xx $28.60 per CYL based on carrying capacity by representatives of U.S. Grazing Servive (400 CYL) The allotment has good accesibility to markets, favorable water conditions and fairly dependable feed one year with another but with a carrying capacity which does not exceed about 3 CYL per section in the best portion of the range.

There have been no recent real estate transactions in area in which subject property is located and appraiser was compelled to use sales data secured previously for War Department for comparative values as of today.

CERTIFICATION

I, the undersigned, do hereby certify that I have carefully inspected this property, and that to the best of my knowledge and belief, the statements made in this report are true and correct; that I have no personal interest, present or prospective, in this property or the owners, that my fee is not contingent upon the amount of the value reported herein; that I define value as the present worth of the future benefits; and that this appraisal is an estimate of the value so defined and valuation is given as of July 22, 1953.

Frank Mosshammer,
Real Estate Appraiser

Dated Phoenix, Arizona
August 6, 1953

QUALIFICATIONS of

W. FRANK MOSSHAMMER, Staff Appraiser May 1, 1943

1. Have been in General Real Estate, Insurance and Mortgage Loan business for 30 years. Adjusted Fire Losses for the Home Insurance Company of New York, Aetna Fire Insurance Company, Liverpool, London and Globe Insurance Co. The Connecticut Fire Insurance Co. and the London & Lancashire Insurance Co.

2. During the past 25 years have appraised approximately 6000 parcels of real estate throughout the State of Arizona.

   This work consisted of appraisals of dwellings, business properties and ranches for the State Banking Superintendent in examination of Banks, Trust Companies and Building & Loan Associations.

   Appraisal of properties for mortgage loans for First Federal Saving & Loan Ass'n. Western Savings & Loan Ass'n., Banks, Trust Companies and other financial institutions.

3. Appraisal of properties in condemnation proceedings for Phoenix attorneys and State Highway Department and values established were upheld by our courts.

4. Appraisal of approximately 1100 parcels of land for the Santa Fe Railroad over a period of three years for tax adjustment hearings.

5. Appraisal of properties for attorneys and Probate Court in Administration of Estates.

6. Appraisal of properties for attorneys and Superior Courts in civil suits.

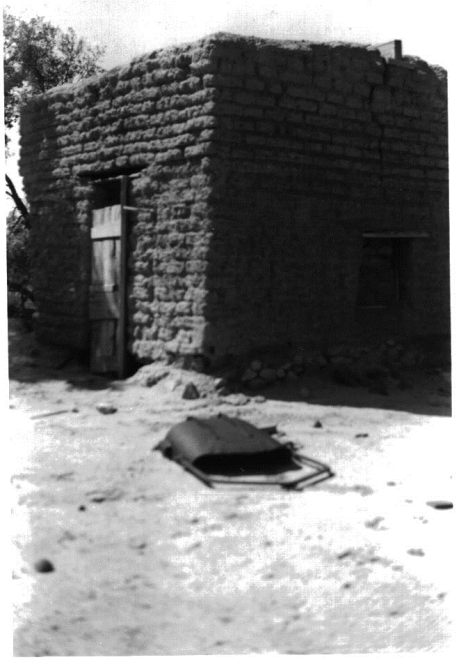
7. Appraisal of properties for Home Owners Loan Corporation.

8. Appraisal of properties for Life Insurance Companies and other lending institutions with Home Office outside of Arizona.

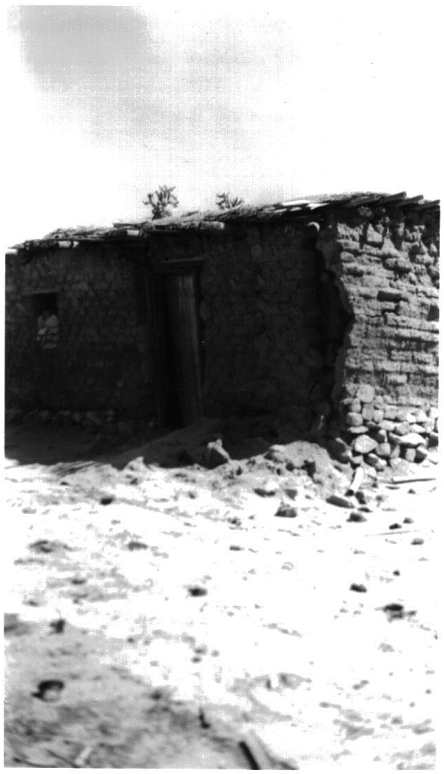
9 Condemnation of lands for Transmission Line rights-of-way for the United States Government through the State of Arizona.

W. FRANK MOSSHAMMER, Staff Appraiser
Phoenix Sub-Office

00-00-0000: two pictures of the dwellings at quitobaquito in orpi



One of the dwellings
at Quitobaquito in
Organ Pipe Cactus Nation
al Monument

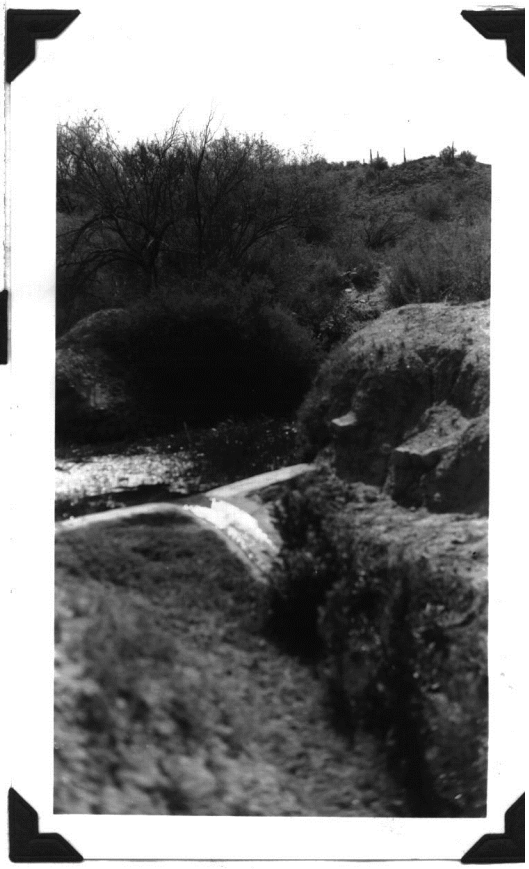


One of the dwellings
at Quitobequito in
Organ Pipe Cactus Nation-
al Monument

00-00-0000: one picture of the dwellings at quitobaquito in orpi and one view of some of the springs at quitobaquito in orpi



One of the dwellings at Quitobaquito in Organ Pipe Cactus National Monument.



View of some of the Springs at Quitobaquito in Organ Pipe Cactus National Monument

00-00-0000: the picture of partial view of corral located at quitobaquito

Partial View of corral located
at
Quitobaquito



Form NPS-L-3

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

TRACT RECORD AND VALUATION DATA OF LAND TO BE ACQUIRED

State Arizona

County Pima

Tract No. Alien WR-1

Deed No.

Civil Subdivision _____ Organ Pipe Cactus (Name of Park or Area) _____ Quitobaquito (Section of Park or Area)

RECORD OF OWNERSHIP

Conveyed to: (Name and address)	Date	Acres	Deed Book	Page	Remarks
Jose Juan Orosco Heirs	1860 ±				

CLASSIFICATION AND VALUE OF LAND

Classification	Area acres	Tax Valuation Year	Tax Valuation Value	Basis % Tax Rate	Basis % Total Tax	Appraisals 1	Appraisals 2	Appraisals 3
Total								

KIND AND VALUE OF IMPROVEMENTS

Spring development, etc., as evidence of water right						
Total						

RECORD OF APPRAISALS

	Name and address of Appraiser	Title	Date
1	A. van V. Dunn	Chief, Water Resources Branch	2/3/48
2			
3			

If tract is required in Project Construction Program (PCP) give reference number No

Will additional personnel. development and/or equipment be needed to administer this tract: No If so, state briefly: _____

Form NPS-L-3
Page 2

Legal Description: Jose Juan Orosco use of water, and occupancy of land by Federal sufferance.

Liens:

Description of existing or outstanding rights, rights of way or reservations, if any:
1. Public water Reserve #85.
2. Reservation of 60-ft. right of way along international boundary by Executive Order of May 27, 1907.

Should they be acquired with the land (____) or are they administratively acceptable:

Description of Improvements: Spring development, irrigation ditch and impounding reservoir or lake.

Special Features: Part of water used in Mexico.

Justification for acquisition: To eliminate private interests in Monument.

Priority in purchase program:

Remarks: Negotiations for acquisition in progress.

If space is insufficient for any particular subject attach additional sheet and mark "See attached sheet for continuation"

25348

C O P Y

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
First National Bank Building
El Paso, Texas

October 17, 1947

Mr. John M. Davis,
Acting Regional Director,
National Park Service,
Region Three.

Dear Mr. Davis:

This will acknowledge receipt of your letter of October 15, 1947, in which you advise that along the route of the fence to be constructed by your agency in accordance with the provisions of my letter of August 25, 1947, there is a small farm at Quitobaquito occupied by Jim Orosco, a Papago Indian, whose residence and farm buildings are in the United States but whose farm lands are situated partly in Mexico. You point out that the construction of the proposed fence will separate Mr. Orosco's residence and farm buildings from his farm land. You also state that Mr. Orosco does not have a permit to graze cattle on monument lands nor does he have title to the land on which his home and spring are located. You request our advice with reference to this situation.

We have had no experience with similar situations in connection with the Western Land Boundary Fence Project. However, if, as we understand, the United States has title to the land to be occupied by the fence, there is no legal obstacle to your constructing the fence even though such construction will result in the situation you mention.

I presume it is possible for the National Park Service to cause the removal of Mr. Orosco's buildings from the National Monument. If, however, as a matter of policy your agency determines that it does not wish to do this and does not wish to divide Mr. Orosco's farm by a fence, you have the permission of this agency to leave a gap in the fence at this point or to construct a gate at this location, within the limits of the expenditures by this agency specified in our letter of August 25, 1947.

This letter will constitute a modification of our letter of August 25 to the extent herein mentioned, with the understanding that it is optional with your agency either to construct the fence at this point or to leave a gap therein, or to build a gate at this location, provided that our maximum obligation will not exceed the sum of $2,500.

Very truly yours,

/s/ L. M. Lawson,
L. M. Lawson
Commissioner

Refer in Reply to the Follo g:

COPY

Land Division
Claims
27859-45

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
CHICAGO 54, ILLINOIS

AUG 14 1945

MEMORANDUM for the Director,
National Park Service.

This will refer to your memorandum of May 23, 1945, concerning Jose Juan Orosco, a Papago Indian residing at Quitobaquito, Arizona, within the Organ Pipe Cactus National Monument grounds. An earlier reply has not been made because of the investigation necessary to furnish you with the information requested.

You state that your attitude toward Mr. Orosco is still as expressed in a memorandum dated August 25, 1938, in which it was stated that the National Park Service had no objection to Mr. Orosco's continuation of his residence and stock raising operations within the monument grounds as he was a Papago Indian. Your memorandum of May 23 states that you understand that Mr. Orosco is irrigating approximately 5 acres of land on the Mexican side of the border and obtains water for this purpose from a small pond on the monument. This pond is on a 40-acre tract which was withdrawn from entry as a public water reserve by Executive Order of November 21, 1923. The ditch required to convey the water to the cultivated land must cross a strip of land 60 feet in width along the border which was reserved by a Proclamation of May 27, 1907 (35 Stat. 2136), for the convenience of the border patrol and on which no structures were to be placed. Both of these withdrawals and the Proclamation of April 13, 1937, establishing the monument are subject to existing rights. You requested, therefore, that you be advised (1) when Mr. Orosco made his development so that you may determine the extent to which it constituted an existing right in 1907, 1923, and 1937, and (2) whether Mr. Orosco is a ward of the United States or a Mexican citizen.

This Office apprised the Superintendent of the Sells Agency, Sells, Arizona, under whose jurisdiction the Papago Tribe is located, of the facts in this matter and requested him to make an investigation with respect to Mr. Orosco's rights. The Superintendent's investigation developed the fact that Mr. Orosco has been residing at Quitobaquito all of his life and is using the spring, pond, and irrigation ditches as he found them and as his father used them. The Superintendent's investigation also disclosed that the pond in question was constructed, the springs developed and the irrigation ditches constructed as far back as 1860, and that in 1887, Mr. Orosco's father took up his residence there and began his use of the pond and irrigation ditches. No changes apparently were made except to keep the premises in repair.

The Papago Tribe of Indians, having organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), has adopted a tribal constitution which now governs its membership. That constitution provides that only those persons whose names appeared on the census of the tribe as of January 1, 1936, were to be enrolled as members of the tribe. Since the census was merely a population enumeration of the reservation, it did not include the names of those Indians residing outside the reservation. Hence Mr. Orosco, who resided at Quitobaquito, away from the reservation, was not listed on the census, and, therefore, did not become an enrolled member of the organized Papago Tribe. His lack of membership in the tribe operates only to deprive him of whatever rights may inure to enrolled members of the tribe but does not change his status as an Indian. Since he is an American Indian, born

in the United States, although not enrolled as a member of the Papago Tribe, he would be entitled to certain benefits from the Federal Government under the provisions of the Indian Reorganization Act, supra, and since the act of June 2, 1924 (43 Stat. 253), conferred United States citizenship upon all non-citizen Indians born within the territorial limits of the United States, he is regarded by this Office as an American citizen.

(Sgd) Walter V. Woehlke

For the Commissioner.

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON 25, D. C.

)248 "F"

SEP 21 1945

MEMORANDUM for the Director,

National Park Service.

Reference is made to the memorandum of the Acting Director of April 26, 1945, concerning the application of the regulations approved August 27, 1925 (43 CFR 292.1C-292.17) and the Act of February 15, 1901 (31 Stat. 790, 43 U.S.C. sec. 959), to lands withdrawn as public water reserves within National Parks or Monuments.

This office is not aware of any permit having been issued for the development, storage, or conveyance of water within National Parks or Monuments under the Act of February 15, 1901, or the regulations above mentioned. Should an application for such permission be filed, the views of the National Park Service would be sought by this office before any action is taken thereon.

In view of the foregoing, your proposal to request the Secretary to amend our regulations for the purpose you mention would seem to be unnecessary.

(Sgd) Fred W. Johnson.
Commissioner.

/54

April 26, 1945.

MEMORANDUM for the Commissioner,
General Land Office.

The proclamation of February 11, 1933 (47 Stat. 2554), establishing Death Valley National Monument made no reference to public water reserves within the boundaries of the area set aside for national monument purposes. The proclamation of March 26, 1937 (50 Stat. 1823), enlarging the Monument, expressly revoked the Executive order of December 1, 1933, creating Public Water Reserve No. 13. In an opinion dated June 15, 1942 (M. 318177), the Solicitor held that the proclamation establishing the Monument superseded and rendered ineffective prior withdrawals for public water reserves within the Monument area.

The proclamations creating Joshua Tree and Organ Pipe Cactus National Monuments (50 Stat. 1760 and 50 Stat. 1827), were issued subject to prior withdrawals, which would include water reserves. There are one parcel in Organ Pipe Cactus National Monument and several in Joshua Tree National Monument which still constitute water reserves.

It is our opinion that the use of these water reserves is still governed by the regulations prescribed in your Circular No. 1028, approved by the Assistant Secretary on August 27, 1925. We assume, however, that before the General Land Office granted a permit to an individual for use of a water reserve within a national monument, it would also obtain approval from this Service as to compatibility with general administration of that monument. We shall appreciate your comments on these views.

There is a provision in the regulations which requires the General Land Office to record any permits for pipe lines or other improvements issued pursuant to the act of February 15, 1901 (31 Stat. 790). See General Land Office Circulars 1237 and 1237a. We should like to know whether you have had occasion to make such entries to date in the case of a water reserve now within a national monument.

The whole procedure seems needlessly cumbersome in the case of water reserves within a national monument, since there is no more opportunity to patent such land or any other public land in the monument. Your reaction is desired to a proposal to request the Secretary to amend the regulations so as to place exclusive jurisdiction of water reserves within a national monument under the National Park Service. In such a case, the applicant would be required to meet the existing requirements of law and regulation, but this Service would replace the General Land Office and the Geological Survey as the administering agency. Records would be available if the Monument area were later restored to the public domain.

(SGD) HILLORY A. TOLSON

Acting Director.

AvVD:sh.
cc: Mr. Dunn.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO, ILLINOIS 54

ADDRESS ONLY
THE DIRECTOR, NATIONAL PARK SERVICE

August 6, 1945.

MEMORANDUM for the Regional Director, Region Four.

Reference is made to Mr. Maier's memorandum of July 26 with a copy of Mr. Cole's memorandum of July 24 for you with regard to water reserves in Joshua Tree National Monument.

It is our opinion that it is a sound safety measure to retain such water reserves as now remain within the area, at least until the development plan of the Service is completed for it. In fact, in areas like Joshua Tree, Death Valley, and Organ Pipe Cactus National Monuments, where there is authorization for alien land use, we are not sure that it would not be desirable to have more of them.

This Service can make use of water from these reserved areas in accordance with the regulations now in force. Of course, so can private individuals. The procedure to be followed, however, has seemed somewhat involved for this Service. As a result, we wrote to the General Land Office some weeks ago to see what the reaction would be if we suggested that full jurisdiction over those reservations within monuments were transferred to this Service, but making the other features of existing regulations applicable. We have had no reply to date. We will advise you, however, when we do.

Meantime, if it is decided that the water of any one reserve is definitely to be used by this Service, and such use is to be beyond the scope of existing regulations, we shall naturally wish to cancel that area of reserve. There will be plenty of time to make the cancellation after the plan is formulated. For this reason, please proceed with plans as though there were no reservation.

(SGD) HILLORY A. TOLSON

Acting Director.

AvVD:sh.

In duplicate.
cc: Mr. Dunn.



C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION THREE
SANTA FE, NEW MEXICO

May 11, 1945.

MEMORANDUM for the Director.

Reference is made to your memorandum of April 16 for the Regional Directors, Regions Three and Four, regarding Public Water Reserves in Death Valley, Joshua Tree and Organ Pipe Cactus National Monuments. The water reserve in Organ Pipe Cactus comprising an area within one-quarter mile of a pond in the SW¼ NE¼ of Section 17, T. 17 S., R. 7 W., G. & S. R. B. & M., was discussed with Custodian Supernaugh during my recent visit to his area.

Regarding the use of this area, Jose Juan Orosco, a Papago Indian, ward of the United States, living off of the reservation, irrigates approximately five acres of land from this pond. The pond, a man-made reservoir of approximately one-quarter acre fed by several small springs, is 250 to 300 feet north of the International Boundary. The land irrigated is largely south of the boundary in Mexico.

By reference to your file, you will find that by letter of August 25, 1938, to the Commissioner of Indian Affairs this Service authorized Jose Juan Orosco to remain in the vicinity of Quitobaquito and to graze approximately 100 head of cattle until further notice.

(Sgd) Charles A. Richey

Charles A. Richey,
Acting Associate Regional Director.

cc: Custodian, Organ Pipe Cactus.

08-25-1938: memorandum to office of indian affairs from nps regarding the operations of jose juan orosco, a papago indian, in the

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON

August 25, 1938.

Memorandum for the Commissioner,
Office of Indian Affairs:

This will refer to Service memorandum of August 8 in reply to your memorandum of July 28, (Forestry and Grazing 12664-38), regarding the operations of Jose Juan Orosco, a Papago Indian, in the Organ Pipe Cactus National Monument.

We are now in receipt of a report from Mr. Frank Pinkley, Superintendent of Southwestern Monuments, in which group the above-mentioned monument is included, informing us that Mr. Orosco is a ward of the Federal Government, and as such is subject to your jurisdiction. Therefore, this Service has no objection to his continuing his operations in stock raising in the monument just as he has been doing in the past, without the formal issuance of a permit, until you receive advice from this Service to the contrary.

A copy of this memorandum is going forward to Mr. Pinkley that he may be informed of our action in this regard.

(SGD) A. E. Demaray
Acting Director.

cc Superintendent, Southwestern Monuments.

In duplicate.

blic Water Reserves 616
ath Valley 660-05.7
shua Tree 660-05.7
gan Pipe Cactus 660-05.7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
CHICAGO, ILLINOIS
54

ADDRESS ONLY
THE DIRECTOR, NATIONAL PARK SERVICE

April 16, 1945.

MEMORANDUM for the Regional Directors,
Regions Three and Four.

Death Valley, Joshua Tree, and Organ Pipe Cactus National Monuments include areas which were previously withdrawn as parcels of Public Water Reserves Nos. 13, 14, 88 and 145. Resulting problems of administration, including those mentioned by Mr. Cole in a memorandum of January 1, suggest a need for the definition of the jurisdiction of the National Park Service.

Copies of the pertinent legislation, Executive orders, and legal opinions are attached. In view of the Solicitor's opinion of June 15, 1942 (M. 31817), the withdrawals for public water reserves in Death Valley National Monument must be considered as canceled. Those in Joshua Tree National Monument and the one parcel in Organ Pipe Cactus National Monument are still in effect since the Proclamations establishing these Monuments expressly recognize and continue existing withdrawals. The dual jurisdiction of this Service and the General Land Office over the land in all public water reserves incorporated in these two National Monuments is the same, but due to differences in the water codes of Arizona and California the administration of individual parcels will require some special consideration.

The parcels of land withdrawn as public water reserves are still open to public use for the purposes for which they were withdrawn. The purposes do not always appear as evident as suggested in attached copies of legal opinions, but they include public use for stock watering and temporary camping by miners and stockmen who are moving across the desert.

The withdrawal of public land for public water reserves does not of itself prevent the operation of the mining laws of the United States (relating to metalliferous minerals) as to the lands so withdrawn. The reservation of public land for national monument purposes under the Antiquities Act, however, removes the land from the operation of the mining laws. By the acts of June 13, 1933 (48 Stat. 139), and October 27, 1941 (55 Stat. 745), the mining laws were extended to the areas embraced in Death Valley and Organ Pipe Cactus National Monuments subject to use of the surface under general regulations to be issued by the Secretary of the Interior. The mining laws have not been so extended to Joshua Tree National Monument, and, accordingly, only those mining claims which were validly initiated prior to the establishment of the Monument on August 10, 1936, can be legally recognized, whether on water reserves or other Federal land within the Monument boundaries.

FOR VICTORY BUY UNITED STATES WAR BONDS AND STAMPS

Under Title 43, U. S. Code, secs. 361-363, and the regulations included in General Land Office Circular No. 1028, approved by the

Assistant Secretary of the Interior on August 27, 1925, the water on the reserved parcels may be developed by the United States or an individual, or it may be conveyed off of the reserved area when such developments or improvements will make the water more accessible to the public and when the agency or person doing so complies with the prescribed regulations. Inclusion of the reserves within the Monuments has not altered the functions of the General Land Office and Geological Survey with regard to the granting and supervision of permits for reserve purposes, but it has added the responsibility of this Service to have such developments comply with the needs and standards of the Monument. The National Park Service can recommend that an application be rejected if the development would conflict with its policy with regard to the Monuments. It can recommend that existing permits, if there are any, be canceled for the same reason. Likewise, if this Service wishes to make a development within the water reserve, it must file the maps and other instruments with the General Land Office and show that such development is compatible with the purposes of the reserve.

Any development must comply with the State water right laws. In California it is possible to make all development on the reserved areas under the riparian doctrine without an appropriative filing. If the water is to be conveyed off of the reserve, a private individual must perfect a right under the appropriative code. The United States may convey it to other Federal land under the riparian doctrine if there is no private land between the diversion and the point where the released water will return to the channel, but it, too, must perfect a right in compliance with the appropriative code if the development will be in conflict with riparian rights of a private landowner between these two points. In Arizona there must be an appropriative filing for any diversion from a spring, stream, pond, or well-defined underground channel regardless of who makes the development. It is not possible to perfect water rights for wells diverting the percolating water in Arizona because that water is considered homogenous with the land and the owner needs no special right to use his land.

In the case of the reserve comprising the Barker Dam at Joshua Tree National Monument, as a general example, Mr. Keys has never made application to the United States for permission to develop the water. In view of the grazing permit issued to Mr. Stocker, it would be contrary to the Federal interest to grant such a permit, if requested, because of its potential conflict with Federal obligations to Mr. Stocker. Therefore, until after the war the matter is closed irrespective of other reasons for granting or denying a permit in normal times. Mr. Stocker, on the other hand, has a grazing permit, but this permit does not authorize him to develop water holes or appropriate water. He may water his stock at existing water holes including that created by Barker Dam. If he wishes to provide more extensive facilities, he should make an application to this Service where the developments will not be on water reserves, and to the General Land Office for those on such reserves. Before any applications are approved, they should be referred to the Director.

There is considerable question as to the public accessibility of the Barker Dam because of the adjacent rugged topography except on land which has been patented by Mr. Keys and his predecessors. This Service could invoke the reservation in patents issued subsequent to the act of August 30, 1890, to construct a pipe line or ditch across the patented land. Under the regulations approved August 27, 1925, it can use the resulting right-of-way to convey water from the Barker Reservoir to a more accessible place for public use. It could approve an application by Mr. Stocker to make the same development provided he did so for the United States in order to enjoy the right-of-way reservation. Any use of water normally made by this Service is for the benefit of the public, and permissible from the waters of a water reserve provided it does not limit the specific uses for which the reserve was created.

The water reserve in Organ Pipe Cactus National Monument comprises an area within one-quarter mile of a pond in the SW¼ NE¼ of Section 17, T. 17 S., R. 7 W., G. & S. R. B. & M. This seems to be close to Monument No. 172 on the Mexican border and near the settlement of Quitobaquito. We should like to know what use, if any, is now made of the pond.

By memorandum of March 22 the Chief, Land Classification Division, General Land Office, advises that "there are no stock driveway withdrawals established under Section 10, of the act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300) within the national monuments named" (Death Valley, Joshua Tree and Organ Pipe Cactus).

(SGD) HILLORY A. TOLSON
Acting Director.

AvVD:RAV:HKS:sh.
Enclosure 222 (in duplicate) (Region Three).
Enclosure 223 (in triplicate) (Region Four).
In duplicate to Region Three.
In triplicate to Region Four.
cc: Mr. Dunn.

Executive Order of January 24, 1914, Creating Public Water Reserve No. 14, a Prior Withdrawal at Time of Proclamation Creating Joshua Tree National Monument. (Quoting letter from Acting Commissioner of the General Land Office to Register and Receiver, Los Angeles, California):

"... withdrawn from settlement, location, sale or entry, and reserved as a public water reserve, subject to all the limitations, provisions, exceptions and conditions contained in the act of Congress entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910 (36 Stat., 847), as amended by the Act of August 24, 1912 (37 Stat., 497)."

There follows description of various parcels of which many are in what is now Joshua Tree National Monument, but not including the Barker Dam Area.)

Letter of July 21, 1943, from Register of General Land Office to A. van V. Dunn:

"This order was modified on November 23, 1914 as to the following, so as to conform the lands to official survey:

T. 1 S., R. 7 E., Sec. 33, S½NE¼

T. 2 S., R. 8 E., Sec. 4, N½NE¼ ..." (Barker Dam Area).

Organ Pipe Cactus National Monument

Proclamation of April 13, 1937: *

"... I, Franklin D. Roosevelt, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the Act of June 8, 1906 (ch. 3060, 34 Stat. 225; U. S. C. title 16, sec. 431), do proclaim that, subject to existing rights, the following-described lands in Arizona are hereby reserved from all forms of appropriation under the public-land laws and set apart as the Organ Pipe Cactus National Monument:"

There follows the description of the land and warning against unauthorized use. Then follows the delegation of the Director of the National Park Service to supervise the area, with the following:

"Provided, that the administration of the monument shall be subject to: (1) Right of the Indians of the Papago Reservation to pick the fruits of the organ pipe cactus and other cacti, under

* See page 25, for copy of act of October 27, 1941, entitled "An Act to permit mining within the Organ Pipe Cactus National Monument in Arizona."

such regulations as may be prescribed by the Secretary of the Interior; (2) Proclamation of May 27, 1907 (35 Stat. 2136); (3) Executive Order No. 5462 of October 14, 1930; and (4) Executive Order of November 21, 1923, reserving a 40-acre tract as a public water reserve.

"The reservation made by this proclamation supersedes as to any of the above-described lands affected thereby the temporary withdrawal for classification and other purposes made by Executive Order No. 6910 of November 26, 1934, as amended."

Proclamation of May 27, 1907 (35 Stat. 2136):

(This proclamation reserves a 60-foot strip along the boundary between the United States and Mexico from all forms of entry for control of smuggling.)

Executive Order No. 5462:

(This order reserves certain lands for customs and immigration improvements.)

Executive Order of November 21, 1923 (Public Water Reserve No. 88):

"Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases', as amended by act of Congress approved August 24, 1912 (37 Stat. 497), it is hereby ordered that the lands hereinafter listed be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 10 of the Act of December 29, 1916 (39 Stat., 862):

ARIZONA

Gila and Salt River Meridian

T. 17 S., R. 7 W., All lands within one-fourth mile of an unnamed pond located in what will probably be when surveyed the SW¼ of NE¼, Sec. 17.

MONTANA ... "

Act of December 29, 1916 (39 Stat. 862) To Provide for Stock-Raising Homesteads, and for Other Purposes:

"Section 10. That lands containing water holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved

under the provisions of the Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe: Provided, That the Secretary of the Interior may, in his discretion, also withdraw from entry lands necessary to insure access by the public to watering places reserved hereunder and needed for use in the movement of stock to summer and winter ranges or to shipping points and may prescribe such rules and regulations as may be necessary for the proper administration and use of such land: Provided further, That such driveways shall not be of greater number or width than shall be clearly necessary for the purpose proposed and in no event shall be more than one mile in width for a driveway less than twenty miles in length, not more than two miles in width for driveways over twenty and not more than thirty-five miles in length and not over five miles in width for driveways over thirty-five miles in length: Provided further, That all stock so transported over such driveways shall be moved an average of not less than three miles per day for sheep and goats and an average of not less than six miles per day for cattle and horses."

General Legislation Relating to Water Reserves

U. S. Code - Title 43 - Public Lands:

"Chapter 6 -- Withdrawal from Settlement, Location, Sale, or Entry.

"Section 141. Withdrawal and reservation of lands for water-power sites or other purposes. The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress. (June 25, 1910, c. 421, Sec. 1, 36 Stat. 847)

"Section 142. Lands withdrawn open to exploration under mining laws; rights of occupants or claimants of oil or gas bearing lands; forest reserves. All lands withdrawn under the provisions of this and the preceding section shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: Provided, That the rights of any person who, at the date of any order of withdrawal, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in thediligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant

or claimant shall continue in diligent prosecution of said work: Provided further, That this and the preceding section shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June 25, 1910: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this and the preceding section all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That no national forest shall be created, nor shall any additions be made to one created, prior to August 24, 1912, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress. (June 25, 1910, c. 421, Sec. 2, 36 Stat. 847; Aug. 24, 1912, c. 369, 37 Stat. 497.)

"Section 143. Reports of withdrawals to Congress. The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals. (June 25, 1910, c. 421, Sec. 3, 36 Stat. 848.)

"Chapter 11 -- Discovery, Development, and Marking of Water Holes, etc., by Government.

"Section 361. Authority to explore for, develop, and mark water holes, etc. The Secretary of the Interior is authorized and empowered, in his discretion in so far as the authorization made herein will permit, to discover, develop, protect, and render more accessible for the benefit of the general public, springs, streams, and water holes on arid public lands of the United States; and in connection therewith to erect and maintain suitable and durable monuments and signboards at proper places and intervals along and near the accustomed lines of travel and over the general area of said desert lands, containing information and directions as to the location and nature of said springs, streams, and water holes, to the end that the same may be more readily traced and found by persons in search or need thereof; also to provide convenient and ready means, apparatus, and appliances by which water may be brought to the earth's surface at said water holes for the use of such persons; also to prepare and distribute suitable maps, reports, and general information relating to said springs, streams, and water holes, and their specific location with reference to lines of travel. (Aug. 21, 1916, c. 360, Sec. 1, 39 Stat. 518.)

"Section 362. Injury to signposts and filling up or fouling water supply. Whoever shall willfully or maliciously injure, destroy, deface, or remove any of said monuments or signposts, or shall willfully or maliciously fill up, render foul, or in any wise destroy or impair the utility of such springs, streams, or water holes, or shall willfully or maliciously interfere with said monuments, signposts, streams, springs, or water holes, or the purposes for which they are maintained and used, shall be fined not more than $1,000 or imprisoned not more than three years, or both. (Aug. 21, 1916, c. 360, Sec. 3, 39 Stat. 518.)

"Section 363. Rules and regulations by Secretary. The Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this chapter into full force and effect. (Aug. 21, 1916, c. 360, Sec. 4, 39 Stat. 518.)"

Act of December 29, 1916 (39 Stat. 862):

See preceding citation under Organ Pipe Cactus National Monument.

Regulations Relative to the Use of Lands Withdrawn as Public Water Reserves (Circular No. 1028, Approved by the Assistant Secretary of the Interior on August 27, 1925):

"1. Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat., 847), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat., 790), in accordance with the regulations governing said act, as found in 36 L. D., page 567, as supplemented by these regulations.

"2. As a condition precedent to the granting of any such permission, the applicant will be required to execute such stipulations and agreements as may be deemed proper and necessary by the Secretary of the Interior, to safeguard the public interests, after investigation of the facts, circumstances, and conditions in connection with each individual case.

"3. Any citizen or association of citizens of the United States, or any corporation, duly created and existing under and by virtue of the laws of any State of the United States, who may desire to improve the productivity of any water hole or source of water supply within the boundaries of any public water reserve, or to conduct such waters from their source within such a reserve to a point or place more convenient for public use, may file in the office of the Register of the U. S. land district, within which the reservation is situated, an application for permission so to use the reserved land or conduct the waters over or through the same.

Circular 1028 subsequently superseded by 237, 237a, 237b & 1825

"Such application should be in the form of an affidavit, duly corroborated, by at least two persons, setting forth in detail the plan of the applicant for the improvement and care of the public water reserve, the public necessity for such improvement, the reasons why such plan will be more conducive to the public good and better conserve the waters for public use, and any other facts and circumstances pertinent thereto.

"4. If the waters are to be conducted from their source within the reserve to a point outside of the reserve, the application should be accompanied by a map and separate field notes in duplicate, the map being delineated upon tracing linen, and prepared in accordance with the regulations of June 6, 1908, governing the submission of applications under the act of February 15, 1901, supra, also evidence that applicant has applied to the proper State official for permission to appropriate the waters to the uses contemplated, and has prosecuted such application in good faith to date of the filing of the application.

"5. Upon receipt of such an application in the General Land Office, the Commissioner will direct the Division Inspector to make careful field investigation as to the facts and circumstances set forth in the affidavit of applicant, as to the public necessity or desirability of the system proposed, and as to all other facts and circumstances germane to the granting of such a permit, together with recommendation as to any stipulations or agreements which to him may seem necessary or proper for the protection of the public interest, and the most economical conservation and use of such waters.

"6. Upon receipt of said report the Commissioner of the General Land Office will transmit a copy of the same, together with the application to the Director of the Geological Survey, for report and suggestion relative to the feasibility of the plan and the terms and conditions upon which the permit should be issued, if at all.

"7. If the place of use of the water is upon unreserved public land the applicant may be called upon to file a reservoir declaratory statement under the Act of January 13, 1897 (29 Stat., 484), as well as the application under the act of February 15, 1901, supra, if deemed advisable.

"8. Each permit shall contain, besides those found necessary in individual cases, the following conditions:

"A. That the right to appropriate the waters of the State to the uses contemplated shall be obtained within one year from and after the issuance of the permit and the permittee shall file a certificate to that effect issued by the proper State authority.

"B. That the proposed system shall be fully completed in substantial conformity with the plan upon which the permit is predicated, within two years from and after the issuance of such permit, unless a different period is specifically provided for in such permit.

"C. That the permittee shall, during the month of January, in each year after the completion of such system, file with the Register of the land district within which the system is located, for transmission to the General Land Office, an affidavit of maintenance, in substantially the following form:

"State of)
County of) ss.

"_____ being duly sworn says that he is the president of the _____ company (or person) to whom permit (give land district and serial number), was issued by the Secretary of the Interior, (give date), in connection with Public Water Reserve No.___. That the system as set forth and described in said permit has been kept in repair and water sufficient for the public needs has been kept therein during the whole of the calendar year of 19__, that the same has been kept open to the public at all times during the year, and that the said permittee has in all things, complied with the provisions of said permit, and the stipulations therein contained and the acts under which said permit was issued.

(Signature).

"Subscribed and sworn to before me this_____day of

_____ 19 __.

Notary Public.

"In the event that the State certificate as to the right to appropriate the water is not filed within one year, or proof of the construction of the system, consisting of the affidavit of the permittee duly corroborated by two witnesses within two years or such other period as may be mentioned in the permit, or affidavit of maintenance is not filed as hereinbefore provided or in case any of the terms, conditions, provisions or stipulations of the permit shall not be well and in good faith performed, observed and carried out, then such permit shall become and be subject to cancellation. Nothing hereinbefore contained, however, is to be construed as limiting the power or authority of the Secretary of the Interior to cancel and determine the permit at any time when in his judgment such action is desirable.

"Permits issued hereunder are transferable only upon the written authority and consent of the Secretary of the Interior.

"11. If, at any time, it becomes necessary for the permittee to change his system or to erect structures other than those authorized by his permit, application for permission so to do, in the form of an affidavit setting forth in detail the reason and necessity for the change must be filed, and no such change shall be made until authorized in writing by the Secretary of the Interior."

Act of February 15, 1901 (31 Stat. 790), An act relating to rights of way through certain parks, reservations, and other public lands:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes, and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park."

Act of March 3, 1921 (41 Stat. 1353), An Act To amend an Act entitled "An Act to create a Federal Power Commission ...", as it modifies the Act of February 15, 1901:

"That hereafter no permit, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as now constituted of any national park or national monument, shall be granted or made without specific authority of Congress, etc."

Regulations Governing the Act of February 15, 1901, supra, found in 36 LD, page 567, as modified in General Land Office Circular 1237a, dated May 23, 1938:

"1. Application.-- No special form is required, but it should be filed at the land office for the district in which the land is located, should state the act invoked and the primary purpose for which the project is to be used. If there is no local land office, the application should be filed with the Commissioner of the General Land Office, Washington, D. C.

"2. Showing required of corporations.-- Application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified to by the proper State official of the State where the corporation was organized; also an uncertified copy.

"A corporation other than a private corporation should file a copy of the law under which it was formed and due proof of organization under the same.

"When the project is in a State other than that in which the corporation was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State in which the project is located, showing compliance with the laws relating to foreign corporations.

"3. Showing required of individuals or association of individuals.-- Application by an individual under any of the acts, except the act of March 3, 1891, and the acts amendatory or supplemental thereto, must be accompanied by affidavit of citizenship if the applicant is native born, or if a naturalized citizen, by proof of naturalization. Application by an association must be accompanied by a certified copy of the articles of association, if any; if there be none, the fact must be stated over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

"4. Evidence which must accompany application.-- Each application must be accompanied by the following data:

"(a) A map prepared on tracing linen, in duplicate, showing the survey of the right-of-way or site, properly located with respect to the public-land surveys so that said right-of-way or site may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

"The scale should be 2,000 feet to the inch for canals, ditches, pipe lines, transmission lines, etc., and 1,000 feet to the inch for reservoirs, except where a larger scale is required to properly represent the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively.

"Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

"The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

"All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats with the subdivisions, section, township, and range clearly marked.

"The width of the canal, ditch, or lateral at highwater line should be given and if not of uniform width, the location and amount of the change must be definitely shown. In the case of a pipe line, the diameter should be given. For reservoirs, the capacity in acre-feet, the area within the highwater line, the source of the water supply, and the location and height of the dam must be shown.

"Each copy of the map should bear upon its face an affidavit of the engineer who makes the survey and the certificate of the applicant. See forms 1 and 2 on page 17 which should be modified so as to be appropriate to the act invoked and the nature of the project.

"(b) Evidence of water right, if the project involves the storage, diversion, or conveyance of water. Control and jurisdiction over the appropriation of water is vested in the State authorities. The applicant, therefore, must file evidence, obtained from the proper State official, that he has the right to appropriate the water to be stored, diverted, or conveyed.

Attorney General's Opinion of April 23, 1927, Relating to the Act of March 3, 1921, Amending the Act Creating the Federal Power Commission:

"I am in receipt of your letter of March 3, 1927, in which you request my opinion as to whether permission may be granted to a concessioner furnishing under contract hotel and other accommodations within the Grand Canyon National Park, to install works for storage and carriage of water incident to providing water supply and generating electricity to the extent necessary for the proper accommodation of the public.

"The following provisions of the proposed contract are submitted as containing all that is pertinent to the question:

"ARTICLE III. The party of the first part (United States of America) authorizes and empowers the party of the second part (concessioner) during the said period of twenty years:

****

"(b) To lay, in accordance with the plans and specifications approved by the Secretary of the Interior, water supply, drain and sewer pipes, conduits and mains necessary for a proper and adequate water supply, drainage and sewer systems necessary for the enjoyment of the privileges herein granted.

"(c) To procure from the Secretary of the Interior when available and at reasonable rates to be hereafter determined, water, electric lights, telephone, and telegraph services at and between its hotels, chalets, inns, lodges, camps, etc., Provided, However, That should any such service not be satisfactory or sufficient, the party of the second part may, with the approval of the Secretary of the Interior and under such regulations as may be prescribed by him, provide the same at its own expense, subject to the following conditions:

"1. That all plans, appliances, and machinery to be used in connection with the privileges granted under this paragraph as well as the location and installation thereof, must first be approved by the Secretary of the Interior.

"2. That all official business of the Government over telephone and telegraph lines, constructed or owned by the party of the second part with the approval of the Secretary in the park, shall be free.

"In the event electric power is generated by the party of the second part under this authority, the needs of the Government in the park shall be free.

"From data accompanying your inquiry it appears that it is not practicable for the Government to undertake the installation of water supply and electric current facilities, owing to the large expenditure of funds involved, and it has been considered advisable and necessary to have this done by some private party who will provide the necessary services at his own expense from the only available source, namely, the Roaring Springs, located within the Park below the North Rim, and which springs gush out of the main wall of the canyon some 3,200 feet below the Rim, the supply from which is adequate for all purposes for many years to come. The water must be pumped to the Rim where it can be stored for use. A small reservoir would have to be built near the springs; a small hydroelectric outfit installed to furnish the power to pump this water to the Rim to furnish the necessary electricity for heat, light, and power for domestic uses on the Rim.

"It seems clear that the Secretary of the Interior has statutory authority to grant concessions for hotels, camps and other privileges in the Park for the accommodation and entertainment of visitors. The Act establishing a national park service (Act of August 25, 1916, c. 408, 30 Stat. 535) provides:

"The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

****

He (the Secretary of the Interior) may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding twenty years; * * * * *

"Section 2 of the Act to establish the Grand Canyon National Park (Act of February 26, 1919, c. 44, 40 Stat. 1175, 1177) provides:

> "That the administration, protection, and promotion of said Grand Canyon National Park shall be exercised, under the direction of the Secretary of the Interior, by the National Park Service, subject to the provisions of the Act of August twenty-fifth, nineteen hundred and sixteen, entitled 'An Act to establish a National Park Service, and for other purposes'; Provided, That all concessions for hotels, camps, transportation, and other privileges of every kind and nature for the accommodation or entertainment of visitors shall be let at public bidding to the best and most responsible bidder.

"It is obvious that hotels, camps and other similar accommodations for the use of visitors to the Park can not be maintained properly without an adequate water supply and reasonable facilities for heating, lighting and cooking. The power of the Secretary to grant concessions for hotels and camps carries with it power to include in the concession such incidental privileges as are reasonably necessary for the enjoyment of the concession and to promote the purpose thereof. The Act of March 3, 1921, c. 129, 41 Stat. 1353, does not deprive the Secretary of such power. That Act is entitled - 'An Act to amend an Act entitled "An Act to create a Federal Power Commission to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," approved June 10, 1920, and provides:

> "That hereafter no permit, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power, within the limits as now constituted of any national park or national monument shall be granted or made without specific authority of Congress, and so much of the Act of Congress approved June 10, 1920, entitled 'An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development

of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes,' approved June 10, 1920, as authorizes licensing such uses of existing national parks and national monuments by the Federal Power Commission is hereby repealed.

"The legislative history of this Act makes it clear that it was not intended to curtail the authority of the Secretary of the Interior to promote public enjoyment of the National Parks, and to that end, to provide facilities for the comfort and convenience of those who visit them. The purpose of the Act was explained by Mr. Esch in calling up the Bill in the House. He said (Congressional Record, 66th Cong., 3d Session, Vol. 60, Part IV, p. 4204):

"Mr. Speaker, the object of the bill is to modify the Federal water power act so as to eliminate from its provisions national parks and monuments. When the act was originally passed we supposed we had sufficiently safeguarded national parks and monuments so that there would not be constructed therein any water power or reclamation projects. However, the President was in doubt as to whether he would sign the bill which was presented to him on the 4th day of June, the day before we adjourned. He referred the bill to the Secretaries of the Interior, War, and Agriculture. The Secretary of the Interior had great doubt as to the policy of giving to a commission control over national parks and monuments in the matter of water-power development. Senator JONES, chairman of the Committee on Commerce, and Senator WALSH of Montana, called upon the Secretary and conferred with him regarding the signing of the bill. The Secretary conferred with Senator UNDERWOOD and the majority leader Mr. MONDELL, and an understanding was reached whereby the bill was to be introduced at this session eliminating the parks and monuments from the operation of the Federal power Act, and this bill carries out that understanding.

"Similar statements were made in the Senate by Mr. Jones of Washington (Congressional Record, 66th Cong., 3d Session, Vol. 60, part I, p. 403) and Mr. Walsh of Montana (Congressional Record, 66th Cong., 3rd Session, Vol. 60, Part II, p. 2002).

"It is quite apparent that the Act applies only to water and power projects, and does not prohibit the accumulation of such quantities of water at hotels and camps as are essential to the health, comfort and convenience of persons visiting the parks for recreation purposes, or the utilization of such power as may be suitable to provide them with light, heat and cooking facilities. It is my opinion, therefore, and I so advise you, that you are authorized to include in any contract which you may make the provisions hereinbefore set forth."

Solicitor's Opinion of July 20, 1937 (M. 28853), relating to Water Rights on Public Water Reserves:

"The following questions contained in proposed instructions for oil and gas Supervisors of the Geological Survey, relating to water wells on public lands which have been conditioned as a source of water under the act of June 16, 1934 (48 Stat. 977), have been submitted for my opinion:

"1. Is it necessary or proper for the Federal Government to obtain a right pursuant to State law to use the water of a well belonging to the United States situated on land included in a public water reserve?

"2. Does the establishment of a public water reserve constitute a reservation to the United States for the purpose of the reserve of the water of a well belonging to the United States within the boundaries of the reserve?

"3. Can a valid right to the use of a well belonging to the United States within the boundaries of a public water reserve be granted by a State official pursuant to State law?

"In two opinions under date of October 22, 1935 (55 I. D. 371, 378), the Solicitor considered several phases of the general subject of water rights, and especially as related to the States of California and Utah. It was noted that California recognizes the common law doctrine of riparian rights in waters, as modified in certain respects, while the State of Utah, on the contrary, provides that the right to the use of waters can be acquired only by appropriation in accordance with State laws. Reference was made to certain legislation whereby Congress surrendered to the States the right to control the appropriation and use of nonnavigable streams on the public lands, but it was held that such grant of authority does not extend to reserved public lands unless the water can be diverted at a point not affected by the reservation, unless a right of way has been obtained in accordance with Federal laws providing for rights of way over certain classes of reservations and under prescribed conditions, there being a clear distinction between water rights and rights of way over land for the use of such waters. It was observed also that each State had the right to determine for itself to what extent the rule of appropriation or the common law rule in respect to riparian rights should obtain; that the Federal grants of authority referred to therein simply recognize and give sanction to State laws with respect to the use and appropriation of waters, and remove what otherwise might be an impediment to the full and successful operation thereof. It was accordingly held with respect

to lands in California that the Government, as riparian owner, is entitled to such water as needed for the beneficial use of the riparian lands without formal appropriation thereof under the alternative procedure provided by State law. But with respect to lands in Utah it was held that no authority appeared for the acquisition by the Federal Government of a dependable water right in underground waters in connection with wells on public lands of the United States, except upon compliance with the water right laws of the State. It was pointed out that while the Government could protect the use of wells on a particular tract by reserving the same and refusing to grant a right of way thereover to private parties, yet if the waters are in flux, either on the surface or underground, they are subject to claim by the first appropriator thereof, under the laws of Utah, for use on private lands or on any public lands properly subject to such use.

"This summary of the said former rulings appears applicable to the questions presented, and further extended discussion of basic principles seems unnecessary except as may be required in consideration of the viewpoint expressed in the proposed instructions above mentioned, from which the following is quoted:

> 'The act of August 21, 1916 (39 Stat. 518, U.S.C. Title 43, sections 361 and 363) authorizes the Secretary of the Interior to discover, develop, protect and render more accessible for the benefit of the general public, springs, streams and waterholes on arid public lands of the United States. He is also authorized to provide ready means, apparatus and appliance for bringing water to the earth's surface at such waterholes. The act prescribes a severe penalty for any person who shall wilfully or maliciously fill up, render foul, or in anywise destroy or impair the utility of said streams, springs, and waterholes. The Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purposes of this law. No reference to any appropriation under State laws is made in this enactment, and apparently the Congress did not consider such an appropriation necessary.
>
> 'The act of June 28, 1934 (48 Stat. 1275, U.S.C. Title 43, Sec. 315, b and c) commonly known as the Taylor Grazing Act, provides that:
>
> > Nothing in this chapter shall be construed or administered in any way to diminish or impair to the possession and use of water * * * vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law.

'But also contains the further provision:

> That fences, wells, reservoirs * * * may be constructed on the public lands within such grazing districts under permit issued by authority of the Secretary * * * No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements.

'A reasonable interpretation of the foregoing law would be that watering places constructed on the public domain within grazing districts are under exclusive control of the Government and that use of wells and reservoirs constructed under Federal permit shall be authorized by Federal permit, subject only to prior rights vested or accrued under law validly affective the public lands.

'The act of June 16, 1934 (48 Stat. 977), adding sec. 40 to the Mineral leasing Act of February 25, 1920, authorizes the Secretary of the Interior to purchase the casing in wells drilled on public lands for oil or gas which strike water of such quantity and quality as to be valuable and usable for agricultural, domestic or other purposes provided the land on which such well is situated is reserved as a waterhole under sec. 10 of the act of December 29, 1916. The Secretary is further authorized to lease or operate such wells for the purpose of producing water, and using the same on public lands or disposing of such water for beneficial use on other lands. The act provides that the proceeds from the sale of such water shall be placed in a revolving fund for future use for the same purpose.

'There can be no question concerning the intention of Congress to provide special Federal procedures for water appropriations under the above mentioned laws without regard to State laws. Where the procedure involves a permanent dedication of the water to a specified purpose the land must be reserved. It is only reasonable to conclude that reservation of the water that is necessary to fulfill the purpose of the reservation of lands is included in the reservation of lands and that thereafter no attempted appropriation under State law in conflict therewith, can be valid.

'In view of the foregoing discussion no State water right filing by the Federal Government or its lessees is necessary to protect the public interest in lands included in a public water reserve. The creation of the reserve includes a reservation of the water needed to fulfill thepurpose of the

reserved lands. No state has power to grant a water right which will adversely affect any prior claim asserted by the Federal Government under its ownership of the public lands.

'In the interest of comity any Federal claim to water may be listed in the local office of record for private appropriations but such listing is not essential and if made should not be accompanied by the payment of any fees.'

"The purport of this reasoning is that Congress, by the acts mentioned and for the purposes thereof, has indicated a departure from the general rule and has authorized the use and disposal of the waters found in such reserves without regard to State laws; that reservation of the land carries with it an appropriation of the waters without resort to State laws, notwithstanding the prior general cession to the States of the right to control the appropriation and use of the nonnavigable waters on the public lands.

"In the case of California Oregon Power Co. v. Beaver Portland Cement Co. (295 U. S. 142), the Supreme Court of the United States, after reviewing Federal legislation and court decisions on the subject, said, inter alia, that:

'If it be conceded that in the absence of Federal legislation the State would be powerless to affect the riparian rights of the United States or its grantees, still, the authority of Congress to vest such power in the State, and that it has done so by the legislation to which we have referred, cannot be doubted.'

"At another place in the same decision, the court said:

'What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became publici juris, subject to the plenary control of the designated states, including, those since created out of the territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain.'

"In a note appended to said decision, it was remarked as not without significance that Congress, since the passage of the Desert Land Act, has repeatedly recognized the supremacy of State law in respect of the acquisition of water for governmental purposes, citing certain instances.

"In view of this general and well established policy where no reservations are concerned, I do not believe that the Department

would be warranted in relying upon the view that a mere reservation of lands for the use of waters constitutes a reservation of the waters also, equivalent to a recognized water right, independently of State laws. To overthrow such a long continued policy of Congress to recognize the efficacy of State laws with respect to water rights would require very clear and specific legislation. I do not regard the acts in question sufficiently specific to warrant the conclusion that the general rule is not applicable. In reaching this conclusion, I have not overlooked certain decisions holding that State laws are not applicable for the appropriation of waters affecting reserved lands. But these are considered as inconclusive or not of general application. There is at least sufficient doubt to make it unsafe to proceed on the assumption that a dependable water right has been secured to the United States by the reservation of the lands. Whether or not, as a practical matter, it be deemed essential that the Government obtain a recognized water right, is an administrative question. It is believed that only a few States undertake to control underground waters, the State of Utah being one. The laws of the particular State concerned should be examined when considering the question of water appropriation therein.

"The above conclusions formulated into answers to the several questions are as follows:

"1. In order to obtain a recognized and dependable water right in a State which undertakes to control the use of underground waters, it is necessary for the Federal Government to apply pursuant to State law for the use of the water of a well belonging to the United States situated on land included in a public water reserve.

"2. The establishment of a public water reserve does not, beyond question, constitute a reservation of the water of a well belonging to the United States within the boundaries of the reserve, so as to prevent others from intercepting the flow at a point outside the reservation and appropriating the water if the State law, as in Utah, authorizes such appropriation.

"3. The water of a well belonging to the United States within the boundaries of a water reserve cannot be appropriated under State law within the confines of the reserve except by the United States itself or by others through its authority."

Organ Pipe Cactus National Monument

Act of October 27, 1941 (55 Stat. 745):

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the Organ Pipe Cactus National Monument in Arizona all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior."

ORGAN PIPE CACTUS NATIONAL MONUMENT - ARIZONA

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

(#2232

WHEREAS certain public lands in the State of Arizona contain historic landmarks, and have situated thereon various objects of historic and scientific interest; and

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument, to be known as the Organ Pipe Cactus National Monument:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the Act of June 8, 1906 (ch. 3060, 34 Stat. 225; U. S. C. title 16, sec. 431), do proclaim that, subject to existing rights, the following-described lands in Arizona are hereby reserved from all forms of appropriation under the public-land laws and set apart as the Organ Pipe Cactus National Monument:

Gila and Salt River Meridian

Beginning at a point on the southern boundary of the Papago Indian Reservation which is the point for the corner of secs. 5, 6, 31, and 32, Tps. 17 and 18 S., R. 3 W.; thence south approximately five and one-half miles to the International Boundary; thence northwesterly along the International Boundary to the intersection with the position for the third meridional section line through unsurveyed T. 17 S., R. 8 W.; thence north on the third meridional section line through Tps. 17, 16, 15 and 14 S., R. 8 W. (unsurveyed), to the point for the corner of

secs. 15, 16, 21 and 22; thence east on the third latitudinal section line through T. 14 S., Rs. 8, 7, 6 and 5 W., to the corner of sections 13, 18, 19 and 24, T. 14 S., Rs. 4 and 5 W., on the west boundary of the Papago Indian Reservation; thence southerly and easterly along the west boundary of the Papago Indian Reservation to the point for the corner of secs. 5, 6, 31, and 32, Tps. 17 and 18 S., R. 3 W., which is the point of beginning, containing approximately 330,690 acres.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of the monument as provided in the act of Congress entitled "An Act To establish a National Park Service, and for other purposes," approved August 25, 1916 (ch. 408, 39 Stat. 535; U. S. C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof; Provided, that the administration of the monument shall be subject to: (1) Right of the Indians of the Papago Reservation to pick the fruits of the organ pipe cactus and other cacti, under such regulations as may be prescribed by the Secretary of the Interior; (2) Proclamation of May 27, 1907 (35 Stat. 2136); (3) Executive Order No. 5462 of October 14, 1930; and (4) Executive Order of November 21, 1923, reserving a 40-acre tract as a public water reserve.

The reservation made by this proclamation supersedes as to any of the above-described lands affected thereby the temporary withdrawal for classification and other purposes made by Executive Order No. 6910 of November 26, 1934, as ıded.

' WITNESS WHEREOF, I have hereunto set my hand and the seal of the United States to be affixed.

Dᵤ 'he city of Washington this 13 day of April in the year of our Lord nineteen hundred and thirty-seven and of the Independence of the United States of Amer- ica the one hundred ıd sixty-first.

Franklin D. Roosevelt

By the President:

Cordell Hull

The Secretary of State.

THE NATIONAL ARCHIVES
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IN THE DIVISION OF THE
FEDERAL REGISTER

2232

11-21-1923: order of withdrawal public water reserve no. 88

C O P Y

ORDER OF WITHDRAWAL

PUBLIC WATER RESERVE NO. 88

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases", as amended by act of Congress approved August 24, 1912 (37 Stat., 497), it is hereby ordered that the lands hereinafter listed be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 10 of the act of December 29, 1916 (39 Stat., 862);

ARIZONA

Gila and Salt River Meridian

T. 17 S., R. 7 W., All lands within one-fourth mile of an unnamed pond located in what will probably be when surveyed the SW¼ of NE¼, Sec. 17.

MONTANA

****

OREGON

****

(signed) Calvin Coolidge
President.

November 21, 1923

C O P Y

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS, it is necessary for the public welfare that a strip of land lying along the boundary line between the United States and the Republic of Mexico be reserved from the operation of the public land laws and kept free from obstruction as a protection against the smuggling of goods between the United States and said Republic;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States, do hereby declare, proclaim and make known that there are hereby reserved from entry, settlement or other form of appropriation under the public land laws and set apart as a public reservation, all public lands within sixty feet of the international boundary between the United States and the Republic of Mexico, within the State of California and the Territories of Arizona and New Mexico; and where any river or stream forms any part of said international boundary line, this reservation shall be construed and taken as extending to and including all public lands belonging to the United States which lie within sixty feet of the margin of such river or stream.

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing, selection or rights of way duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for customs purposes is repugnant; PROVIDED, that these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made, or unless the reservation or withdrawal to which this reservation is inconsistent continues in force; PROVIDED FURTHER, that the said strips, tracts, or parcels of land, reserved as aforesaid, may be used for public highways but for no other purpose whatever, so long as the reservation of same under this proclamation shall continue in force.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 27th day of May, in the year of our Lord one thousand nine hundred and seven, and of
(SEAL) the Independence of the United States the one hundred and thirty-first.

THEODORE ROOSEVELT

By the President:
ELIHU ROOT
Secretary of State.

Hydrogeology of the Quitobaquito Springs and La Abra Plain Area, Organ Pipe Cactus National Monument, Arizona, and Sonora, Mexico

By R.L. Carruth

U.S. GEOLOGICAL SURVEY
Water-Resources Investigations Report 95—4295

Prepared in cooperation with the
NATIONAL PARK SERVICE



Tucson, Arizona
1996

00-00-1996: u.s. geological survey: water-resources investigations report 95-4295: hydrogeology of the quitobaquito springs and la

Hydrogeology of the Quitobaquito Springs and La Abra Plain Area, Organ Pipe Cactus National Monument, Arizona, and Sonora, Mexico

By R.L. Carruth

Abstract

Quitobaquito Springs, in Organ Pipe Cactus National Monument near the south end of the northwestward-trending Quitobaquito Hills, are less than 0.25 mile north of the international boundary between the United States and Mexico. The National Park Service is concerned that the natural flow from Quitobaquito Springs might be reduced by ground-water withdrawals in the adjacent State of Sonora, Mexico.

Quitobaquito and other nearby springs flow from a highly fractured granite that forms the Quitobaquito Hills. Fractures in the granitic intrusive rocks provide conduits for ground water to flow from an alluvial flow system along Aguajita Wash to a line of springs on the southwest side of Quitobaquito Hills. The chemical composition of water from all the springs is similar. Carbon-14 analysis of water from Quitobaquito Springs indicates that the spring water probably is between 500 and several thousand years old. Discharge at Quitobaquito Springs averaged 28 gallons per minute and ranged from 15 to 40 gallons per minute for 1981–92. Rainfall at two gages in the area of recharge to the northeast of Quitobaquito Hills averaged 6.6 inches per year during the 11-year monitoring program ending in September 1992. The lack of correlation between spring discharge and local rainfall indicates that local annual recharge may be small relative to the total quantity of ground water in storage.

Surface-geophysical data indicate that a thin alluvial aquifer overlies the shallow crystalline rocks northeast of Quitobaquito Hills along Aguajita Wash. Results of the study indicate that the ground-water flow system along Aguajita Wash provides a source of water to the springs and may be hydraulically connected to the ground-water system that is pumped for agricultural purposes in Mexico. The altitude and low permeability of the granite bedrock near the international boundary, however, may provide a barrier to and (or) delay the effect of a northwestward propagation of water-level declines caused by pumping near the Rio Sonoyta in Mexico.

INTRODUCTION

The Quitobaquito Springs and La Abra Plain study area encompasses about 100 mi^2 in Organ Pipe Cactus National Monument, Arizona, and north-central Sonora, Mexico (fig. 1). The climate is arid to semiarid. The climate and available ground water provide favorable conditions for irrigated agriculture south of the Organ Pipe Cactus National Monument along the Rio Sonoyta in Mexico. Ground water is being withdrawn from about 30 mi east to about 5 mi west of the springs and within 1 mi south of the springs. Quitobaquito Springs, two of several springs near the south end of the northwestward-trending Quitobaquito Hills, are less than 0.25 mi north of the international boundary. Quitobaquito Springs and the adjacent pond are habitat of the endangered desert pupfish

flow paths from recharge areas of similar geochemical characteristics.

Discharge from Quitobaquito Springs averaged 28 gal/min for 1989–92. Rainfall at two gages in the area of ground-water recharge averaged 6.6 in./yr for 1981–92; however, on two occasions, 24-hour accumulations of rainfall exceeded 4 in. A correlation conducted to measure the strength of the rainfall-discharge relation produced an *r* value of less than 0.2, indicating that spring discharge is not highly correlated with local rainfall. The statistical data are consistent with the conclusion that local annual recharge probably is small relative to the total quantity of ground water in storage. The ground-water storage in the local flow system probably is sufficiently large to dampen the effect of recharge or dry periods on the discharge from the springs.

Ground water moves southward through the local flow system along Aguajita Wash toward the area of shallow bedrock near the international boundary. Fractures in the granitic intrusive rocks provide conduits for ground water to flow to springs on the southwest side of Quitobaquito Hills. Annual recharge from about 25 mi^2 of mountains and alluvium-covered pediment within the boundary of the local flow system is estimated to range from 50,000 to 100,000 ft^3/d. The hydraulic gradient is estimated to be 0.008 ft/ft between Bonita Well and Aguajita Wash, and the hydraulic conductivity is estimated to be about 75 ft/d. Seismic-refraction data indicate that the saturated thickness ranges from 57 to 85 ft along Aguajita Wash for at least a 1-mile section adjacent to Quitobaquito Hills before shallow bedrock is encountered near Aguajita Spring. The transmissivity is estimated to range from 2,800 to 8,500 ft^2/d.

The quantity of ground water in storage in the local flow system probably is constant as evidenced by the absence of long-term trends of increased or decreased spring discharge or rising or declining water levels. The total amount of ground water in storage within the local flow system is estimated to be about 30 times the annual inflow of 50,000 ft^3/d. Interpreted geophysical data indicate that a head of 15 to 50 ft exists upgradient from the spring-discharge points. The total quantity of ground water in storage above the discharge altitude of the springs is estimated to be about 90 times the combined annual discharge of 6,000 ft^3/d for the springs.

Discharge at the springs could be reduced by development within the recharge area for the local flow system. Present (1993) rates of ground-water withdrawals south of the international boundary, however, do not appear to affect water-level conditions in the local flow system or discharge to the springs. The altitude of the granite bedrock near the international boundary indicates a hydraulic connection may exist between the local flow system providing water to the springs and the regional flow system along the Rio Sonoyta. An irregular subsurface topography of the relatively low permeable granite bedrock near the international boundary, however, may provide a semi-continuous barrier to and (or) delay the effect of a northwestward propagation of water-level declines caused by pumping near the Rio Sonoyta. More subsurface topographic data are needed to evaluate the continuity of the hydraulic connection.

Increased pumping in Mexico may affect water levels in the ground-water system in the central part of La Abra Plain. If future pumping rates along the Rio Sonoyta greatly exceed present (1993) rates, it might be possible for the pumping effect to propagate through the ground-water system in central La Abra Plain and reach the recharge area for the local flow system. Monitoring of water levels on both sides of the international boundary and pumpage quantities in Mexico are needed to provide a better understanding of the hydrologic conditions in the study area. In addition, in order to provide current information along the greater monument boundary area with Mexico, periodic water-level measurements may need to be continued at all the wells in the monitoring program.

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00-00-1996: u.s. geological survey: water-resources investigations report 95-4295: hydrogeology of the quitobaquito springs and la

about 25 mi^2. The entire recharge area for the local flow system that provides water to the springs is within Organ Pipe Cactus National Monument.

Discharge at the springs could be reduced by development within the recharge area of the local flow system. Present (1993) rates of ground-water withdrawals south of the international boundary do not appear to affect water-level conditions in the local flow system or discharge to the springs. The altitude of the granite bedrock near the international boundary indicates a hydraulic connection may exist between the local flow system and the regional flow system along the Rio Sonoyta. The irregular subsurface topography of the bedrock, however, may provide a semi-continuous barrier to and (or) delay the effect of a northwest propagation of water-level declines caused by pumping near the Rio Sonoyta.

Increased pumping in Mexico may affect water levels in the ground-water system in the central part of La Abra Plain. If future pumping rates along the Rio Sonoyta greatly exceed present rates, it may be possible for the pumping effect to propagate through the central part of La Abra Plain and reach the recharge area for the local flow system; however, this effect is poorly understood because of the few data that are available. Monitoring of water levels on both sides of the international boundary and pumpage quantities in Mexico needs to be continued to provide information on water-level conditions in the study area. In addition, more detailed analysis of subsurface bedrock topography on both sides of the international boundary is needed to evaluate the continuity of the saturated basin fill in the study area.

SUMMARY AND CONCLUSIONS

This hydrogeologic study was done to define the ground-water flow system in the Quitobaquito Springs and La Abra Plain area, to develop a conceptual model of the flow system that provides water to the springs, and to evaluate the possibility that the natural flow from Quitobaquito Springs might be reduced by ground-water withdrawals in the adjacent State of Sonora, Mexico. Results of the study indicate that a small ground-water flow system, upgradient and somewhat isolated from the flow system along the Rio Sonoyta in Mexico, exists along the Aguajita Wash drainage and provides a source of water to the springs.

The study area encompasses about 100 mi^2 and is bounded by low, jagged, basin-bounding mountains to the north, east, and west, and by the Rio Sonoyta to the south. The area receives about 6.6 in./yr of rainfall, most of which evaporates or is transpired by plants. About 5 to 10 percent of the rainfall infiltrates sediments along the mountain fronts and the stream-channel deposits to become ground-water recharge. Water-level, geophysical, and water-chemistry data indicate that ground-water flow parallels the direction of surface-water drainage in at least the west half of the study area. The largest continuous body of saturated basin-fill deposits probably extends from the central part of La Abra Plain to the ground-water system along the Rio Sonoyta.

To the east of Quitobaquito Hills, a mantle of alluvial-fan deposits covers the shallow crystalline rocks and interfingers with the stream-channel deposits of Aguajita Wash. Ground-water recharge through and storage within these deposits make up the local flow system that provides water to the springs. The local aquifer system also includes some water that is stored and transmitted within the upper zone of the fractured granitic rocks. The recharge area for the local flow system encompasses approximately 25 mi^2 and is entirely within the Organ Pipe Cactus National Monument.

The chemistry of the water from all the springs is similar. The carbon-14 analysis of a water sample from Quitobaquito Springs indicates that the spring water probably is of local origin and is between 500 and several thousand years old. The water type and relatively small concentrations of dissolved solids and fluoride in samples from Bonita Well are similar to those of ground water sampled in recharge areas in other alluvial basins in Arizona. In contrast, the water type and larger concentrations of dissolved solids and fluoride in samples from Pozo Salado Well and Quitobaquito Springs are similar to those of ground water sampled in downgradient areas in other alluvial basins in Arizona. The location of bedrock outcrops and shallow bedrock interpreted from geophysical data support the conclusion that the water probably traveled along similar but divergent

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Other Supporting Information

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)PSW
ORPI/GEN
CORO/GEN
HOPI/GEN

March 22, 1974

Memorandum

To: General Superintendent, Southern Arizona Group

From: Regional Director, Western Region

Subject: Water Resources Problems at Organ Pipe Cactus NM, Coronado National Memorial and Hohokam-Pima NM

Hydrologist William Werrell on his recent trip to your area addressed himself to problems at the subject areas and enclosed are copies of his trip reports. Based on this information, the following regional responses are made to your appropriate Water Resources Proposals (10-250).

ORGAN PIPE CACTUS

If you have no objection it is recommended that the monitoring program utilizing park personnel be initiated in accordance with discussions with the park. Pertinent details of program will be forwarded shortly. The Water Resources Division will review and analysis the data on a yearly basis.

CORONADO

It is suggested that you make the appropriate contact with the Department of Agriculture (Forest Service) regarding pump testing their well. When this has been done, we will make arrangements to pump test this well.

HOHOKAM-PIMA

It is concurred that appropriate action here is to drill a well. In accordance with your priorities for development and availability of funds, the drilling of a well will be programmed.

Enclosures (3)
Trip Rpt for each area

WASO(WR) w/encls, attn: Mr. Berte

cc: Supt., ORPI w/encls
Supt., CORO w/encls
Supt., HOPI w/encls

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)PSW
ORPI/GEN

March 21, 1974

Memorandum

To: Chief, Water Resources Division, Western Region

From: Hydrologist, Water Resources

Subject: Trip Report to Organ Pipe Cactus National Monument (ORPI) February 4-19, 1974

Purpose of the Trip: In response to Form 10-250 from Organ Pipe Cactus National Monument (Pkg No. 119) and a memorandum of December 18, 1972 from Director, Southern Arizona Group, to Director, Western Region, a concluding field trip was made to the park. This trip was made in order to complete work began in July 1973. There is concern regarding the possibility that ground water withdrawal from the Mexican side of the International Border may have adverse effects upon the ground water table within ORPI.

Itinerary: Left San Francisco and arrived in Phoenix on February 4. The following day met with General Superintendent of Southern Arizona Group at SOAR Office in Phoenix to discuss various water problems at ORPI and the pending trip to the park. February 6-18 was spent in ORPI.

Companions: None

Accomplishments and/or Observations: A water resources inventory, both wells and springs, for the entire park was completed. This inventory involved:

A. Completion of a USGS well or spring schedule for each water source. This schedule includes well location, depth, flow (if spring), all water level data, and all chemical or related quality of water data and any reference made to that specific water source in published material or by memorandum. A water level and specific conductance of the water was taken and recorded on the appropriate form during the inventory.

JOHNNY HORIZON 76
Let's Clean Up America For Our 200th Birthday

B. This water resources inventory allows the preparation of a map of the park showing locations and pertinent data of each water source.

Recommendations

1. The effect, if any, upon the ground water table within the park resulting from withdrawal by Mexican irrigation wells can best be determined by a monitoring program of water sources within the park. Such a program is hereby proposed. This program should concentrate on the southern portion of the park, i.e., the portion of the park believed susceptible to influence from irrigation pumpage in Mexico. Water level measurements of various wells within the park could be taken several times a year to delineate both long-term and seasonal fluctuations.

   Within the southern portion of the park and important series or zone of springs is present. This zone extends from Williams Spring southeasterly to Quitobaquito Spring area (the latter being of historical importance within the area and thus a major visitation point). Flow from both Williams and the two major openings in the Quitobaquito Spring area could be taken in conjunction with the park monitoring program. A metal flume was built in the park shop and installed at Quitobaquito during the trip. This flume will allow excellent flow data to be easily obtained for this important water source.

2. The United States Geological Survey, Water Resources Division, could be requested to acquire backup data on the water sources in question on a twice yearly basis.

3. If time permits, another trip to the park could be made to locate and collect data of existing mining test borings. Data collected should be the same as water wells. Upon evaluation of the data some of these borings may be included in the water resources monitoring program at a future date.

Proposals

Several weeks of office work are required to properly record (on the appropriate USGS schedule) the data collected during the field trip. Upon completion of the recording work a complete data packet, including map, will be forwarded to the park for permanent reference.

If possible, a water resources monitoring program should be initiated utilizing park personnel. This proposal has already been discussed with park superintendent and staff. Pertinent details of the proposed monitoring program will be forwarded to the Superintendent in the near future.

Once each year the data collected on the monitor program should be forwarded to this office where a review and analysis of the data will be made. This review will allow recommendation of any necessary changes in the program to be made as useful hydrological data is compiled.

If significant detrimental changes in the water resources of the park are detected, assistance of the USGS should be enlisted so as to present our findings in the most objective manner to all parties concerned.

Conclusions

Due to the present lack of historical hydrological data, no conclusions as to the effects of Mexico irrigation pumpage on the water resources of the park can be made at this time. The proposed monitoring program is needed in order to provide the hydrological data necessary to evaluate any trend the data may show, data should be collected over a period of time e.g., five years. It is highly desirable that the proposed monitoring program be supplemented with data collected by the United States Geological Survey.

If a decline in the ground water table of the park is evidenced by the monitoring program, it may be appropriate to notify the U.S. International Boundary and Water Commission.

SIGNED

William L. Werrell

Concur:

Gerard S. Witucki
Chief, Division of Water Resources

L54-OBL

December 15, 1958

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Activity at Quitobaquito, Organ Pipe Cactus

The water developments in Mexico, involving international flow of Quitobaquito Springs, are of the type I have anticipated. I am sure that I discussed them with both Messrs. Barton and Sanders during the early consideration of the acquisition of the Orosco interests, but with no resulting conclusions as to the legal status. Attached is a copy of a letter of October 17, 1947, from Mr. Lawson of the International Commission, of which your copy may have gone to Archives, which suggests that the situation may be unique.

The springs are on Public Water Reserve No. 88 as established by Executive Order of November 21, 1923. The water would naturally flow or seep, to the extent not consumed by evaporation and transpiration, at least onto, if not across the 60 foot border patrol strip on the international bundary in the U.S. which was established by Proclamation of May 27, 1907 (35 Stat. 2136), and a similar strip along the Mexican side of the boundary which was established by Mexico. There is no authority in the Proclamation to permit planting or irrigation on the 60 foot strip, and I assume that the same is true of the Mexican reservation. However, the Orosco irrigated cultivated areas were largely if not entirely on those strips. The water is technically tributary to the Sonota River; which flows into the Gulf of Mexico, and not into the Colorado River.

You will also recall that the Sonota River drainage was excluded from the Lower Colorado River Basin in Arizona vs. California, at least partially as a result of my comments to the Department of Justice when preparing our map.

The Mexican treaty of February 3, 1944, Treaty Series 994 covers the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande. Article 2 gives the International Boundary Commission jurisdiction of the"limitrophe parts of the Rio Grande and the Colorado River, to land boundary between the two countries, and to works located upon their common boundary, each section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country." I believe that we sent you at least one copy of the Treaty, just a few years ago.

So far as I can determine the Sonoto River drainage is not specifically mentioned in the Treaty, but it is along the boundary between the Rio Grande and Colorado River. Article 24 of the Treaty gives the Commission jurisdiction over international waters not specified in the Treaty. I believe that the Commission is the administrative unit with which to resolve any water right problems at Quitobaquito, but the attached letter of October 17, 1947, from the Commissioner, concerning the fence, suggests that there may be no precedent for any of the minor problems of the type now arising.

[SIGNED]

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Organ Pipe
Assistant Solicitor Sanders
Mr. Dunn

AvVDunn:lct

11-14-1958: memorandum to orpi from regional director regarding activity at quitobaquito, orpi

L-2435
X-L-54

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

NOV 14 1958

Memorandum

To: Superintendent, Organ Pipe Cactus

From: Regional Director

Subject: Activity at Quitobaquito, Organ Pipe Cactus National Monument

We have read with interest Chief Ranger John T. Mullady's report of October 18 to you transmitted with your memorandum of October 20.

The problem of use of overflow water at Quitobaquito is one that was anticipated when title to the property interests was cleared by condemnation against Jim Orosco in Civil No. 905 in the U. S. District Court, Tucson Division. We have reviewed this matter with Field Solicitor Barton and we think our Service should make as much beneficial use of the water at Quitobaquito as possible, but we should not deliberately spread the water in order to prevent its accustomed flow outside the Monument boundaries.

We are unable to find Mr. Dunn's report based on his examination and study of water use in 1950. We would appreciate a loan of your copy from which we can make copies for permanent retention in our files. However, Mr. Barton accompanied Mr. Dunn and has a fairly clear recollection of what the report contains. The pond, being fed by the inlet ditch, normally overflowed through the outlet ditch which crossed the 60-foot strip at an angle and continued across the International Boundary into Mexico. The ditch did not then flow any considerable distance into Mexico, being in a state of disrepair. However, a considerable acreage had at one time or another been cultivated in Mexico, and there were then about 15 acres of more or less recent corn stubble. The corn had

presumably been raised by irrigation, although it is doubtful whether as much as 15 acres was raised during any one year. It was understood that the people who raised the irrigated crops were relatives or acquaintances of the Orosco family, probably Papago Indians. We had no information as to the period of time over which crops had been raised in Mexico. It may have extended back before 1919.

If a right could be established to the overflow water from the pond, that is, the right to have the overflow continued, it was possibly established before 1919. There has been no appropriation of record since the Arizona law requiring prior applications to the State Land Commissioner.

There appears to be no known precedent involving an appropriation for use in Mexico with the point of diversion on the Arizona side. In case of an application to the State Land Commissioner, he would have discretion to refuse a permit under the provisions of Arizona Revised Statutes, Section 45-153. The provisions of that section apply to interstate operations and are of doubtful application to international ones.

The problem is wider than the use of water within the 60-foot strip and includes use of water in Mexico. Probably both aspects are within the cognizance of the International Boundary and Water Commission. The use of the 60-foot strip is undoubtedly within the Commission's jurisdiction. The strip was reserved from all forms of use except public highways by Proclamation of May 27, 1907, 35 Stat. 2136. The presence of foreign nationals within the 60-foot strip would appear to be within the jurisdiction of the Immigration and Nationalization Service, regardless of the purpose for which they enter.

We expect to take the matter up with the International Boundary and Water Commission. In the meantime we think it is proper to consult with the local immigration officials regarding the unauthorized entry.

We would like to have an expression of your views as to the desirable status of the lands in Mexico opposite Quitobaquito. We have no information regarding the title and right to possession of those lands.

We do not think the water rights now vested in the United States are unduly jeopardized by our failure to prevent the water from flowing across the International Boundary, as it has done for a very long time. In any event, the natural drainage from Quitobaquito is generally southeastward. The springs are capable of being developed to produce several times the amount of water which has been produced by the one spring which now feeds the pond. Aside from the waste of water, there would be the possibility of an international complication should we now interrupt the accustomed flow of the outlet of the pond. We hope that it will not be necessary to resolve the problem finally at the international level, although that is a possibility which must be kept in mind. The treaty-making power of the Federal Government is a very broad one and this includes executive agreements.

Hugh M. Miller
Regional Director

Copy to Director (2)
with copy of Mullady's report

10-15-1958: memorandum to superintendent from chief ranger regarding activity at quitabequito

Organ Pipe Cactus National Monument
Box 38
Ajo, Arizona

October 18, 1958

Memorandum

To: Superintendent

From: Chief Ranger

Subject: Activity at Quitobaquito

A patrol along the southern side of the Monument on October 17 disclosed a recently started activity at Quitobaquito. A group of three Mexicans were found clearing land of all brush and trees, with the exception of pomegranate and fig trees, on the south side of the border fence. The land has been cleared between the fence and the San Luis Road - a distance of several hundred feet. Most of the debris has been burned on site. The group were in the process of digging post holes near the San Luis Road so as to fence a piece of land along the strip between the American fence and the San Luis road. They plan a small farm utilizing the overflow waters of Quitobaquito for irrigation. I talked with the apparent leader of the group and although he was reluctant to discuss very much of his plans he apparently intends to put in a small house and to grow corn and beans.

As you know, the fince line is located at least sixty fe t within the actual international boundary. The strip of land in this sixty feet is reserved by law and is precluded from any development other than a road. This fact is not common knowledge of most local Americans or Mexicans. I pointed out to the Mexican that he had actually cleared some United States land and that he was an illegal entrant into the United States whenever he came on that strip. He told me that he had permission from "the men at the port" meaning, I think, from the Mexican officials at Lukeville. I rather doubt that he actually has permission to squat on this land. I informed him that he must stay off this strip of United States property. The talk was amiable and polite but I doubt that he will follow my instructions.

His situation is such that he cannot irrigate without the overflow water from Quitobaquito which runs across U.S. lands into Mexico through the irrigation ditch built by Orosco family many years ago. In order to maintain this water supply he will undoubtedly attempt to service the length of the ditch to the pond at Quitobaquito. He will, of course, be on United States land when he does so.

The aspects of this development are unpredictable but it is desirable that we discourage the project within such close distance to Quitobaquito if it is possible to do so. There may be little we can do other than to divert the overflow channel so that the water is dispersed on U.S. lands. It is my feeling that it would be well for us to get this man off this project by means other than water diversion and then, at a later date, divert the flow so as to discourage a resumtion of the farming idea. We should determine if there would be any international difficulty in doing so.

If you concur, I intend to take the immediate action of discussing this activity with local immigration officials to determine their interest in assistance. They may, perhaps, offer a simple solution to the situation without involving us in a good relationship along the border.

[redacted]
John T. Mullady
Chief Ranger

Water Resources Branch

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

August 1, 1951.

Report on Orosco Interests

in

Quitobaquito Area

Organ Pipe Cactus National Monument

by

A. van V. Dunn
Chief, Water Resources Branch

Introduction

The Quitobaquito area of Organ Pipe Cactus National Monument was inspected by Messrs. Merritt Barton, Regional Attorney, William R. Supernaugh, Superintendent, and A. van V. Dunn, Chief, Water Resources Branch, during their investigation of the water claims of the Gray Partnership, on December 9 and 10, 1950.

The Quitobaquito area was visited to obtain data from which to determine the interests which Jim Orosco, as heir to Jose Juan Orosco, might have in the lands and waters as a Papago Indian squatter on the lands. The water claims of the Gray Partnership and Mrs. Birdie Del Miller were investigated to obtain information for use in the Federal protest of applications which the members of the Partnership and Mrs. Miller have filed with the Arizona State Land Commissioner for the appropriation of the waters of certain wells and springs on the Federal land in the Monument.

The two problems are being considered independently and the investigations are therefore covered by separate reports, the other being "Report on Water Claims, Organ Pipe Cactus National Monument." However, all of the land and water use stems from common local practices and involves many of the same administrative problems. Accordingly, the two reports should be considered together.

Objectives and Conclusions

It was found, from the investigation, that final determination of the property values of Jim Orosco will require further legal study, and consideration by an ecologist and an expert on resort hotel operation. A tentative value of about $10,000 is suggested, but this report is primarily to serve as a guide for the detailed study.

Residency

The following historical notes on the use of the lands and waters at Quitobaquito were supplied by Mr. Lusher of the Indian Service in a memorandum of August 29, 1945. This has a different point of view, but does not conflict with history in Water Supply Paper No. 499, by Kirk Bryan.

Papago Indians were living at Quitobaquito in 1830, and killing passing Spaniards for their possessions. Accordingly, the Spaniards drove them away temporarily, but later permitted some, including Louis Orosco, the father of Jose Juan Orosco, to return. The United States acquired the area from Mexico in the Gadsden Purchase of December 30, 1853.

Andrew, or Adolph Dorsey settled at Quitobaquito in the sixties, and constructed the pond, "developed" the springs, and dug the irrigation ditches. Jose Juan, and his sons, Tomas and Jose Augustine, were among the Papago Indians living there at that time, and they left as a result of rumors that they were to be killed by a Mexican outlaw named Cipriano Ortega. Jose Juan Orosco claimed that Dorsey was also instrumental in driving them away. He also claimed that no one has ever changed the fields and irrigation system put in by Dorsey, but that his family has kept them up as so constructed. The springs, and apparently the pond, are in the Monument, in the United States, but the distribution ditches and cultivated land extend into Mexico.

The wife of Tom Childs is the daughter of Tomas Jose, and is a cousin of the late Jose Juan Orosco. (Tom Childs now does most of the talking for the Orosco family.)

In the seventies two Americans, Steinfeld and Waterman, had a mill and store at Quitobaquito, and the Papago Indians were living about one-fourth of a mile below the spring in Mexico, but got their water from it. After Steinfeld and Waterman left, a

Mexican family, named Lopez, lived at Quitobaquito for a few years, and had some goats but did not "work on" the pond or ditches. In 1887, after the departure of the Lopez family, Louis Orosco, father of Jose Juan Orosco, moved back to Quitobaquito from the Indian village one-fourth mile to the south.

From about 1888 to 1891 or 1892, Mikul Levi, a Mexican Jew, lived at Quitobaquito and ran a small store. Also from about 1885 to 1898 or 1899, Louis Ortega, a Papago, and the husband of the youngest daughter of Jose Juan, lived at Quitobaquito. In 1898 or 1899 Louis Ortega moved to Ajo, and was still living at the Darby Well in 1945.

Tom Childs, Rube Daniels, and John Merrill, all Americans married to Papago Indian sisters, and Jose Juan Orosco and his family, were all living at Quitobaquito when Hornada and Jeff Milton stopped there (date not given). Tom Childs rebuilt the ditches at the pond in 1903 or 1904, as they had all washed out. All residents moved away in the spring of 1907, but Jose Juan Orosco returned in the fall of 1907, and lived there continuously with his family until his death, in 1948.

Jose Juan Orosco advised that his son Jim, the present heir, was born at Cipriano Well in what is now part of the Monument. Jim's wife (and apparently cousin), Maria Antonio, is the daughter of Augustine Antonio, and was born at Quitobaquito.

Until the U. S. Border Patrol established a camp there, a few years ago, Jose Juan Orosco and his family were the sole residents at Quitobaquito after 1907.

State Water Laws

Arizona was admitted to the Union on February 14, 1912, and its present water code became effective on June 12, 1919, subject to valid rights existing prior to 1919. The riparian doctrine was never recognized in the area which now constitutes the State of Arizona. Prior to June 12, 1919, a water right could be established either (1) by the mere application of the water to beneficial use; or (2) by posting notice of appropriation at the point of diversion, and filing a copy of the notice of appropriation in the County Recorder's Office. Any rights established under any of the three methods are subject to lapse after five years of nonuse of the water.

Reserved Public Lands in Monument

By Proclamation of May 27, 1907 (35 Stat. 2136) a strip of land 60 feet in width along the Mexican border was withdrawn from entry, and reserved for the sole purpose of a border patrol highway--see OPC-45. A similar strip was reserved by the Republic of Mexico. These strips include part of the ditches and the irrigated lands, but all cultivated land found in December 1950 was on the Mexican strip and continuing southerly, deeper into Mexico. Thus, the border patrol strips were established at about the time that the Papago Indian colony abandoned the Quitobaquito area, and at least the United States strip had been reserved for several months when Jose Juan Orosco moved his family back that fall.

Under the act of June 25, 1910 (36 Stat. 847), as amended by act of August 24, 1912 (37 Stat. 497), one parcel of Public Water Reserve No. 88 was established by Executive Order of November 21, 1923, and described as all land within one-quarter mile of an unnamed pond located in what will probably be the SW¼ of NE¼ of Sec. 17, T. 17 S., R. 7 W., G. & S.R.M., when surveyed. The pond at Quitobaquito, photograph OPC-44, is that pond; and the springs extend to the northwesterly, a distance of between 1,000 feet and a quarter of a mile as shown on photograph OPC-43.

It is significant that the Executive Order of November 21, 1923, reserved all land within a quarter of a mile of the pond, with the implication that at least part of the pond was in the United States. On December 8, 1950, the International Boundary fence was observed to be approximately 50 feet south of the pond, and was said to be on the 60-foot Border Patrol reservation in the United States, in order to leave the actual International Boundary, still further south, for the proposed, permanent fence which is still to be constructed. Accordingly, no actual check of the location was made at the time of inspection. The need for such a check has since arisen because Mr. Kirk Bryan reports in Water Supply Papers Nos. 490D of 1922, and 499 of 1925 that the pond was believed to be in Mexico and the springs in the United States, when he made his study in 1917. In the following analysis the pond will be considered to be in the United States, on the assumption that the Executive Order is based on data obtained subsequent to Mr. Bryan's study of 1917. The verification should be made when practical.



OPC-45 - by William R. Supernaugh

Part of Orosco irrigated fields in Mexico, looking northerly, December 9, 1950.

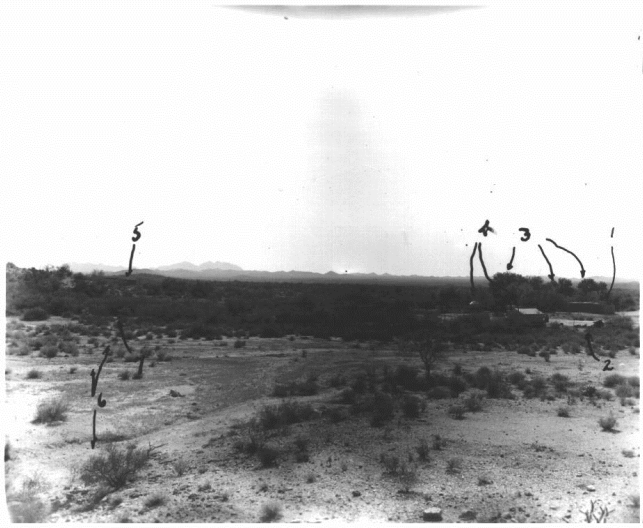
1. Large tree in dike on south side of pond.
2. Border Patrol building in United States.
3. Low ridge in which springs originate.
4. Gate in east-west fence in 60-foot strip of land reserved along United States side of International Boundary.



OPC-44 - by William R. Supernaugh

Quitobaquito Pond, looking southeasterly, December 9, 1950. Large tree on right is growing out of dike built by Adolph Dorsey in 1860's.

12-09-1950: photograph opc-43-quitobaquito area



OPC-43 - by William R. Supernaugh

Quitobaquito area from hill to northwest, looking southeasterly, December 9, 1950

1. Adobe house in which Jose Juan Orosco lived and died.
2. Corral.
3. Trees on west and south sides of pond.
4. Buildings of Border Patrol camp.
5. Saguaro rib house of Jim Orosco, built about 1947 or 1948.
6. Washes from springs.
7. Approximate site of one spring.

In the Blue Point Spring case, relating to applicability of Public Water Reserve No. 107, established by Executive order of April 17, 1926, under the acts of June 25, 1910, and August 24, 1912, the Solicitor made the following statement in his decision of November 7, 1950, M. 33969:

> "Assuming that Blue Point Spring is a spring or water hole that was in existence on April 17, 1926, and was on vacant unappropriated, unreserved public land, any water in the spring or water hole unappropriated as of April 17, 1926, was withdrawn by the Executive order of April 17, 1926, and the ruling in the Medd case is squarely applicable."

On the same basis, Public Water Reserve No. 88, as established by Executive order of November 21, 1923, seems to be applicable to only the vacant, unappropriated, unreserved public land, and to the unappropriated waters on those lands. The preceding discussion, and historical introduction, suggest that very little public water reserve was established:

1. The pond is so close to the 60-foot border strip reserved in 1907 that only half of the designated circular area is reserved as a water reserve.

2. The Orosco family was in occupancy with all rights of Indian occupancy which may have accrued under both Mexican and United States laws between about 1830 and 1923.

3. The Orosco family occupied the unsurveyed land with any rights which might accrue, to homestead under the act of February 8, 1887 (24 Stat. 388) when the land is surveyed. (The township has not yet been surveyed.)

4. A large part of the water had been appropriated by diversion and application to beneficial use since the 1860's, the development having been made by Andrew or Adolph Dorsey; and preempted by the Orosco family between the date when the ditches were reconstructed by Tom Childs in 1903 or 1904, and when taken over by Jose Juan Orosco in the fall of 1907.

Spring Flows and Diversions

Water Supply Paper No. 499 indicates that there were two main springs from which the combined ditch flow was 43 gpm, or about 0.067 second-foot on September 30, 1917, and that this was probably not half as much as escaped from the ground by evaporation. On

December 8, 1950, there seemed to be more than two springs, and there was a great deal of diffused surface flow over the hillside. There were only two main diversions: one by ditch, to the pond, and one by pipe, to the Border Patrol Camp, presumably from the springs described by Mr. Bryan in the water supply paper. By rough float measurement, the main ditch seemed to be carrying about 0.116 second-foot, or about 175% of the total flow found by Mr. Bryan. There was certainly considerably more than twice that amount of total surface flow in December 1950. A pipe from the ditch also delivered a good stream to the corrals, to the west of the main ditch; there was an unknown flow in the pipe serving the Border Patrol Camp, and there was considerable sheet flow on the hill to the east of that ditch and north of the pond.

Past Irrigation Use as Measure of Spring Flow

Superintendent Supernaugh advised that Jose Juan Orosco irrigated about 15 acres of land. No attempt was made to check the figure by measurements in December, but this area seemed like a reasonable possibility. In fact, the topographic map prepared by the War Department in 1912 shows a rectangular, 80-acre tract to exist at that time. Irrigating at 1 second-foot to 70 acres, a fairly average practice, would mean that Mr. Orosco has diverted about 0.214 second-foot. As cultivated by the son, Jim, in 1950, the land was planted to pomegranites, figs, corn, and melons. Considering climate, soil, and the crops, it is probable that the duty of water is about 5 acre-feet per acre per annum.

Pacing the circumference of the pond, and noting the depth of water where cattle were standing, it seemed to have a surface area of about 1.22 acres, a depth of about 2 feet, and a capacity of not more than 2.4 acre-feet. At 5 acre-feet per acre on 15 acres of land, the annual water demand would be 75 acre-feet. From Irrigation Practice and Engineering, by B. A. Etcheverry, slightly less than 14% of the annual water appropriation was used on the Yuma and Salt River projects in any one month, at the time of publication. With the same ratio, the maximum demand at Quitobaquito would be 10.5 acre-feet per month, of which 7.06 acre-feet would be produced by the uniform spring flow of 0.116 second-foot, found in the main ditch alone, in December 1950.

If 15 acres have been irrigated, as outlined, a uniform spring flow of at least 0.156 second-foot has been diverted. The

growth around the pond (see OPC-44) does not indicate fluctuating water levels to permit storage, or even the draining of the normal pool. It follows that the spring flow in the irrigation season must be greater than that measured in December 1950 since there is negligible storage, and the Orosco interests should have the benefit of the doubt, by assuming that between 0.156 and 0.214 second-foot of water has actually been used for irrigation.

Approximate Property Values

Water right values vary greatly in different parts of the West. Many, for agricultural purposes in California, were sold for $10 per acre-foot in the 30's, but as much as $250,000 per second-foot has been paid in the Los Angeles area. The Department of Justice obtained a $35,000 appraisal of the Nevares tract at Death Valley National Monument in December 1950, and that 480-acre tract was appraised on the basis that there was a spring flow of about 0.44 second-foot, that 15 acres could be irrigated, and that most of the rest of the land was worthless except as a site for a resort development, and that there are now limited improvements on the ground. The property is comparable with the land at Quitobaquito except that Mr. Nevares has at least twice as much water, and has recorded title to 480 acres of land while Mr. Orosco has not established title. The comparison does imply a maximum value for the Quitobaquito area of $17,500, less $400 for difference in acreage, at this time, if title can be established, and if the value of the Nevares property is confirmed in the pending condemnation.

In 1947, under Contract No. I-100mp-52, the United States obtained an option to purchase 0.167 second-foot of decreed Priority No. 1 in the Mancos River of Colorado from F. E. Reddert for $4,000 for use at Mesa Verde National Park. The option was not taken up because the Department of Justice ruled that an inferior flood water right would serve the Federal needs equally well, but the option is an expression of the vendor's idea of the value of an agricultural water right in 1947 in southwestern Colorado. The value, like land values and construction costs, would probably be about 25% higher, or $5,000 in 1951. On this basis, the rights to 0.214 second-foot of water at Quitobaquito should be worth about $6,400 today.

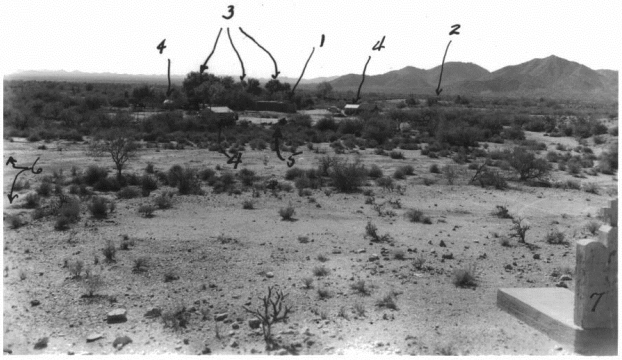
Pacing the dike which was formed by excavation from the pond by Dorsey in the sixties, it was estimated that about 350 cubic yards of earth had been moved. Such construction could be done quickly and easily with mules or tactor and scraper at not over $1.50 per cubic yard, to give a reproduction cost of $525.

It was estimated that there were about 1,200 feet of ditch, about 10 inches wide, and 6 inches deep, between the springs and the pond, corral and other improvements in the United States. They could probably be dug at 50 cents per foot, to give a total value of $600. There are probably also about 2,000 feet of similar ditch between the pond and irrigated areas in Mexico, partially in the United States, and partially in Mexico. Although the best irrigable land has been selected as that in Mexico, photographs OPC-51 and 43 indicate that an American citizen might obtain the same agricultural values in the United States with several hundred feet less ditching. Therefore, the United States might recognize a $500 value for distribution ditches, regardless of their present location. There are also about 500 feet of 2-inch pipe, largely exposed in the main ditch, serving the Border Patrol Camp. The ownership of this pipe was not determined, but, with diversion works, it would probably cost $350 to replace it.

The buildings occupied by the Border Patrol were clearly of Federal construction and ownership, and may be disregarded in this evaluation. The following buildings were constructed, or pre-empted by the Orosco family:

1 single-roomed adobe house in United States - approximate value -	$300
1 double-roomed adobe house in United States - with broken wall of room in which Jose Juan Orosco died - approximate value -	500
1 saguaro rib house in United States, built by Jim Orosco about 1947 or 1948 - approximate value -	300
2 corrals, about 57 ft. x 100 ft., in United States - approximate value -	300
1 adobe house in Mexico - approximate value -	500

There were at least 30 pomegranite trees, and 8 fig trees. It was believed, at the time of inspection, that part were in the United States, but that is now debatable. They should be worth at least $25 each, or a total of $950.



-51 - by William R. Supernaugh

Quitobaquito area, looking southerly from grave of Jose Lorenzo Sestier (born Brest, France, died at Quitobaquito, Feb. 9, 1900).

1. Adobe house in which Jose Juan Orosco lived and died in United States.
2. Adobe house of Jose Juan Orosco in Mexico (irrigated land in low lands between 2 and 4).
3. Trees on west and south sides of pond.
4. Buildings of Border Patrol Camp.
5. Part of one corral stockade.
6. Washes from springs which are just left of picture.
7. Grave of Jose Lorenzo Sestier.

Clearing and grading of 15 acres at about $15 per acre gives a partial land value of about $225, in Mexico. It is probable that any patent which might be issued to Jim Orosco under the Indian Homestead Act of 1887 would be for 160 acres at a cost of $1.25 per acre, which has not been paid, for all but the 15 acres just listed at $225. This value, whether paid or not, at a total of $181.25, would probably be the price Mr. Orosco would charge if he sold his interests to another.

In the Hults appraisal, a considerable value was allowed for the potentiality of developing the Nevares tract as a small lodge area. The location was considered favorable for such an enterprise because of the number of Monument visitors, and the present lack of accommodations at prices below those charged at the Furnace Creek Ranch, but of a more convenient type than is provided free at the public campgrounds. One asset was the view. A drawback was poor accessibility. The Quitobaquito area has an attractive setting, although not the equal of the Nevares tract. It is even less accessible, the road being equally unimproved and about five times as long. Finally, while there were 226,864 visitors at Death Valley in 1950, there were only 155,875 visitors at Organ Pipe Cactus National Monument. However, while there are hotel accommodations in Death Valley, there are none in Organ Pipe Cactus at this time.

Considering all of these factors together, it seems probable that the same value for a potential resort site might be recognized in each case, being the difference between $17,100 and the other values just listed. The summary of value is then broken down as follows, between items for which the United States might pay to buy out Jim Orosco, and those which it could not pay:

	Property Item of Orosco Estate	Value Subject to Federal Purchase	Value Not Subject to Federal Purchase
1.	Squatter rights on 160 acres	$ 200	
2.	Clearing and grading of 15± acres of irrigated land in Mexico		$ 225
3.	Value of land for resort purposes due to location in Monument, scenic setting, relation to Mexican holdings		5,450
4.	Water rights	6,400	
5.	Reproduction cost of pond	525	
6.	Reproduction cost of ditches	600	500
7.	Reproduction cost of 2-inch pipe if owned by Orosco	350	
8.	Reproduction cost of buildings	1,400	500
9.	Orchard of figs and pomegranites		950
		$9,475	$7,625

An article in the American Hereford Journal for July 1, 1951, "What's Ahead for the Western Cattle Ranch," by Mont H. Saunders, offers a basis for appraising the alternative value of the Orosco interests as a stock ranch. It is stated that there are three main kinds of cattle ranches, being those located respectively on the Great Plains grasslands, in the western mountains and foothills, and in the semi-desert area. Many of the latter are said to be nearly submarginal. Prior to the war, the net income per 100 pounds of beef varied from $10 for animals on the western mountain ranch to $6 for animals on the semi-desert ranches. The net income is now $55 and $20, respectively, with that from stock on the grassland ranch about midway between. The average ranch that would support

150 head of breeding stock, under those conditions, was worth from $40 to $80 per head of stock before the war, and the values now range from $200 to $1,000. These values include all facilities for the ranch operation.

The area of Federal land in Organ Pipe Cactus National Monument is 328,162 acres, or 512.75 square miles. Disregarding the few head of stock now owned by the Orosco family, the Gray Partnership has been authorized to graze a herd of 1,050 cattle, or an average of 2 head per square mile. Assuming that the cattle will range within a 6-mile radius of a water hole, the Quitobaquito pond provides 113 square miles for a herd of 226. The range and stock capacity is about equally divided on lands in Mexico and the Federal lands in the Monument because the pond is close to the International Boundary. There is the implication that the Orosco family might have interests in a cattle ranch worth $9,040 before the war, and now worth about $45,200--if there is a valid land entry, and if there are vested water rights.

There seems to be no question as to the right of the Orosco family to use the water. There is considerable question as to the right of continued occupancy of the Federal land. There is also considerable question as to what consitutes a cattle ranch with adequate facilities. The stock in the Monument is scrawny, far below marketing condition, and would require fattening, for which the feed cannot be produced locally.

From these considerations, it seems probable that the gross ranch value should be reduced from $45,200 to $22,600 for lack of fattening feed. The value should be halved again, to $11,300 if grazing on the Monument land is denied. It is also debatable whether the particular area will support the Monument average of 2 head per section. It may thus be concluded that the value of the Orosco interest is roughly $10,000, whether those interests are in a resort business or stock raising.

H Reddy 12/28

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Region Three
Santa Fe, New Mexico

December 21, 1950

Memorandum

To: The Director

From: Assistant Regional Director

Subject: Investigation of water rights at Quitobaquito, Organ Pipe Cactus National Monument

On December 9, Regional Counsel Burton and Mr. A. Van V. Dunn, accompanied by Superintendent Supernaugh of Organ Pipe Cactus National Monument, inspected the area and the water developments at Quitobaquito. They found that the possibilities of water development in that area are considerable. A diversion from one of the several springs feeds the pond which, according to information in the files, was originally constructed by one of the predecessors in interest of the Orosco family. Rough measurements indicated a flow of approximately one-tenth of a second foot. A pipe from the same spring is in temporary use for supplying domestic water for the camp of the Border Patrol, which is established there. The water is of good quality, and there is a possibility of developing considerably more water than has yet been developed or utilized.

It is recommended that every effort be made to acquire all property interests belonging to Jim Orosco, who lives in a shack on monument land. From information in the files, and the inspection of the area, we believe that he has property interests consisting of a water right which was confirmed to his predecessors by section 9 of the act of July 26, 1866 (14 Stat. 253), or by the act of March 3, 1877 (19 Stat. 377; 43 U.S.C., 1946 ed., sec. 321). In addition, we believe his rights include an easement to maintain the pond for storage of his irrigation water, the embankment which retains the pond, the feeder ditch, and the outlet ditch traversing the short distance from the storage pond to the Mexican border. It may be difficult to describe such property rights for the purpose of including them in an option to purchase, and even more difficult to secure satisfactory evidence of title in case a contract to purchase is executed. We think it is entirely probable that condemnation will be necessary to acquire the outstanding property interests. It is understood that Mr. Dunn will make an estimate of the valuation of the property, including calculations based on the irrigable land which the Orosco family has cultivated intermittently across the border in Mexico.

We are informed that Jim Crosco gained title to the property in question through the probate of the estate of his father, José Juan Crosco. We shall endeavor to obtain a copy of the decree of distribution, to assist us in making a description of the property interests located within the national monument.

Jim Crosco has objected to the establishment of the Border Patrol camp, on the ground that it is a trespass on his real property. We have taken the position that he owns no land within the national monument, except the incorporeal interests consisting of the easements mentioned above.

(SIGNED)

P. P. Patraw
Assistant Regional Director

Copy to: Gen. Supt., [redacted] (2)
Mr. A. V. Van Dunn, Washington Office

Lands Division

09-28-1950: memorandum to regional director, region three from acting assistant director franke regarding proposed acquisition of

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

In reply refer to:
L54 ORGA

SEP 28 1950

Memorandum

To: Regional Director, Region Three

From: Acting Assistant Director Franke

Subject: Proposed Acquisition of the Water Rights and Other Interests of the Heirs of Juan Jose Orosco, Organ Pipe Cactus

In his memorandum of August 10 Mr. Patraw suggested that he would arrange for Mr. Supernaugh to have an appraisal made of the Orosco properties if so authorized by this Office.

It would not be possible to appraise the interests properly until we know exactly what rights have accrued. Mr. Dunn plans to make a trip to the area during the winter. Accordingly, we suggest that no further action be taken until he can go into the matter on the ground.

(SGD.) PAUL R. FRANKE
Acting Assistant Director

In duplicate

Copy to: Mr. Dunn

AvanVDunn:sh

C O P Y

In reply refer to:
L54 ORGA

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

August 10, 1950

Memorandum

To: Director

From: Associate Regional Director

Subject: Purchase of Water Right and Other Interests of the Heirs of Juan Jose Orosco, Organ Pipe Cactus

There is attached a copy of Superintendent Supernaugh's memorandum of July 26 in reply to mine of the twenty-first requesting his comments regarding the possible acquisition of the Juan Jose Orosco water right at Organ Pipe Cactus.

Mr. Supernaugh believes that the right could be purchased but he explains that it will be exceedingly difficult because of the time lag which occurs between the agreement with the Orosco heirs and the actual delivery of the check. Mr. Supernaugh feels that the individuals involved would probably change their minds and not be willing to accept the check when it arrived. If we are successful in obtaining the water right, we believe that a part of the contract that must be clearly understood by the Orosco heirs is that they must move from the present location within a specified time after the title to the water right passes. Mr. Supernaugh has explained that it may be possible to resettle this family on the Papago reservation or at a small Indian village near Ajo where the remaining Sand Papago live. We request your advice as to whether an exchange could be made for the water right at Quitobaquita.

If you feel it is advisable and will authorize us to do so, we will have Mr. Supernaugh have an appraisal made of the water right. We plan to have a representative of our office meet with Mr. Burton A. Ladd, Superintendent of the Papago Indian Reservation, at Sells, Arizona, and discuss the matter with him. Mr. Ladd might be able to suggest a solution regarding the movement or resettlement of the family if we are able to acquire the right.

Another question on which we are not at all certain is what steps are necessary regarding the perfecting of the right which is to be sold. There seems to be no doubt about the right except that we presume it has never been formally recorded. Would it be necessary to have the right recorded in State records before we could actually buy the right?

/s/ P. P. Patraw

P. P. Patraw
Associate Regional Director

Attachment

Copy to: Supt., Organ Pipe Cactus

C O P Y

In reply refer to:
L54 ORGA

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

ORGAN PIPE CACTUS NATIONAL MONUMENT

P. O. Box 38, Ajo, Arizona

July 26, 1950

Memorandum

To: General Superintendent, Southwestern National Monuments

From: Superintendent, Organ Pipe Cactus

Subject: Purchase of the Water Right and Other Interests of the heirs of Juan Jose Orosco, Organ Pipe Cactus

Mr. Patraw is correct in his memorandum of July 21, 1950, in that the Orosco heirs have no patented land at Quitobaquito. They undoubtedly do have a water right from continuous use since about 1830, by Indians. The pond and ditches were developed about 1860 by a man named Dorsey. The Orosco family has been there ever since, and have lived in the present site since 1907.

I think that it will be possible to purchase the Orosco right; however, it will be exceedingly difficult because of the method we must use for government purchase. If we could write a check when he is ready to sell, it would not be too hard, but to take the time as required, he will not be of the same mind.

He may resettle on the Papago reservation, or perhaps arrangements could be made to assist him to settle at Darby Well, a small Indian village near Ajo where the remaining Sand Papago live.

Would there be any possibility of an exchange of land outside the Monument for the water right at Quitobaquito?

If we can buy him out, it could be stipulated that he vacate the land within a reasonable time.

William R. Supernaugh
Superintendent

06-06-1948: memorandum to regional director, region three from custodian regarding boundary fence at quitobaquito

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
ORGAN PIPE CACTUS NATIONAL MONUMENT

P. O. Box 38, Ajo, Arizona

June 6, 1948.

MEMORANDUM for the Regional Director, Region Three.

In reply to Mr. Davis' memorandum of April 20, 1948 we have cut a gate in our boundary fence at Quitobaquito for use of Jim Orosco.

Before building the fence I used the Indian Service interpreter and believed he understood that no gate was to be put in and at that time was reconciled with the situation. I am sure that any dissatisfaction has been caused by Tom Childs talking to him.

In accordance with past correspondence with your office Jim Orosco was told that he could live at Quitobaquito and use the water for his farm. Since Mr. Orosco does not have a grazing permit I have tried to get him to dispose of his cattle ever since the death of Jose Juan. He has claimed that his cattle ran in Mexico and were not on the monument. This of course was partially true and little could be done about it since there was no fence there. When the fence was built I informed him that he would have to make some other arrangement for his cattle but he was given permission to gather his cattle on this side of the line so that he could dispose of them which he has made no effort to do. He is using a well 5 miles north of Quotobaquito also for watering his cattle and quite a number of horses which he claims.

I would like information from your office just what course to follow with Jim Orosco. Anything we do in all probability will be opposed by Tom Childs. I have been unable in the past to get any satisfactory talk with Mr. Childs since he is very much opposed to the National Park Service. I shall make another effort to see him and try to take him to Quitobaquito to interpret for us if you will get a policy from the Director's Office that they will stand behind.

I think that the grazing should be terminated but if it is decided to allow him to run his cattle all horses must be disposed of except those absolutely necessary to his work--not over a team and two saddle horses.

We are attaching a history of Quitobaquito as we have been able to gather it. While I believe it has recently been submitted to your office, we are enclosing it to be sure you have it on record.

William R. Supernaugh,
Custodian.

In duplicate.
Attachment.

History of Quitobaquito

As given by Mr. Lusher, U. S. Indian Service, in memorandum of August 29, 1945.

A statement by Tom Childs, pioneer resident of this area, follows:

"About 1830, there were Papagos living at Quitobaquito, but they started killing Spaniards for their possessions as they passed through as this was one of their main routes of travel. As a result the Spanish came and took those whom they caught to Caborca and the others fled into the sands toward Yuma and Gila City. Later, these same Indians drifted back and the Spanish did not bother them as they had stopped their killing. Louis Orosco, Jose Juan Orosco's father, was one of this group.

"In the sixties, an American named Andrew or Adolph Dorsey settled at Quitobaquito. He built the pond, developed the springs, and dug the ditches. Juan Jose, a Papago, and his two sons Tomas and Jose Augustine were there during this time. They left because a Mexican named Cipriano Ortega, an outlaw, told Juan Jose he would kill him if he wouldn't tell him the location of a gold mine. The father of Tom Child's wife was Tomas. She is a cousin of Jose Juan Orosco.

"In the seventies, two Americans, Steinfeld and Waterman had a mill at Quitobaquito and a store. During this time the Papagos were living about ¼ of a mile below the spring but got their water from it.

"After Steinfeld and Waterman left, a Mexican family named Lopez moved to the pond and lived there for a few years. They had some goats and did not work on the pond or ditches.

"In about 1887, after the Lopez family had left, Jose Juan Orosco's father, Louis, moved to the pond from his place about ¼ of a mile below.

"About 1888, there was a Mexican Jew named Mikul Levi living at Quitobaquito and he had a little store there. He stayed for three or four years. A Papago named Louis Ortega married Juan Jose's youngest daughter and lived at Quitobaquito from about 1885 until about 1898 or 1899. He then moved to Ajo and stays at Darby Well.

"Tom Childs, Rube Daniels and John Merrill, all Americans married to Papago sisters, were living at Quitobaquito when Hornaday stopped there with Jeff Milton in his party. Jose Juan Orosco and his family were also there.

"Tom Childs rebuilt the ditches at the pond as they had all washed out. This was in 1903 or 1904.

"Tom Childs and all the others, including Jose Juan Orosco, moved away from Quitobaquito in the spring of 1907. In the fall of 1907, Jose Juan Orosco moved back to Quitobaquito and has been there since that time. No other family has lived at the spring since that time."

A Statement by Jose Orosco, Papago in question follows:

"Born at Quitobaquito. Louis Orosco was his father. He has relatives at Santa Cruz and Dirt Burn on the Reservation. Adolph Dorsey build the dam which resulted in the pond at Quitobaquito. Cipriano Ortega lived there for a while after Dorsey left.

"There were Papago people living at Quitobaquito before Dorsey came and he drove them out from the spring. He, Jose Juan Orosco, has made no change in the fields, ditches, or pond but has kept them up.

"He has a son named Jim about 40 years of age who was born at Cipriano Well about five miles north of Quitobaquito on what is now the Monument. Jim is his only living son and he is married to a Papago woman who was born at Quitobaquito. Her name is Maria Antonio. Her father lived at Quitobaquito for many years and was there before Dorsey came. His name was Augustine Antonio. Tomas, his brother, also lived here and their father's name was Juan Jose."

JUL 25 1941
ROUTING Date
FILE

Reg IV

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
HEADQUARTERS, SOUTHWESTERN MONUMENTS
COOLIDGE, ARIZONA

July 22, 1941.

MEMORANDUM for the Regional Director, Region III.

Reference is made to Mr. Van Dunn's memorandum of June 24 to Associate Attorney Albert L. Johnson, with respect to the possible purchase of the Albert I. Long property in Organ Pipe Cactus National Monument. Complying with the request contained in the third paragraph of Mr. Van Dunn's memorandum, we are pleased to submit the following statement of water sources at Organ Pipe Cactus National Monument.

Bates Well. Original well dug about 1880 and second well about 1915. Both wells located in NW¼ of Sec. 35, T 14 S, R 7 W. Both wells have been in continuous use and are now held by Henry Gray who filed homestead entry on this land. The entry has been disallowed, but Gray continues to use the wells in connection with the Gray grazing permit. Either well will probably produce over 20,000 gallons per day.

Growler Mine. Sec. 34, T 14 S, R 7 W. This is held at present under patented mineral claims by Albert I. Long. It was first developed as a mine which later ran out, and was then used as a water supply for ranching purposes. At present little use is being made of the water supply. Supply seems to be unlimited.

Cipriano Well. About five miles north of the international line on the Quitobaquito-Bates well road; approximately on line between ranges 7 and 8. Little information can be had on this well. It was developed as a cattle watering place and has been abandoned for several years. Seems to have been a limited supply.

Well located about one mile north of Cipriano well. This has been used and still is by Jose Juan Orosco to water cattle grazing in this area.

Quitobaquito. Located nearly on international boundary at monument 172. Indian settlement for many years and at present is the home of Jose Juan Orosco. This water is used for stock watering and irrigation of a small farm which is across the line in Mexico. Combined flow of four springs is undetermined but the supply is good.

Rincon Spring. Two miles northwest of monument 172. Once used for ranching but at the present is unclaimed. Yields a constant supply of water for wildlife and cattle.

Childs Well. About three miles west of Quitobaquito on the International Boundary. This well is about 40 feet deep with an unlimited supply of water; used at one time for stock watering and ranch purposes, but has been abandoned for several years.

Aguajita. Small spring undeveloped about one mile east of monument 172. Water may be had by digging about 18 inches into the wash. Is used by wildlife and cattle.

Jenkins Well. 1½ miles northeast of monument 172. Dug and used by Mr. Jenkins, a squatter, until the time of his death early in 1940. Since that time the well has been abandoned but the supply seems to be unlimited.

Montgomery Well. Dug by Elmer Montgomery in 1938, who tried to hold a squatter claim here. Never used, but plentiful supply.

Bonito Well. Six miles northeast of Quitobaquito. Dug by Henry Gray in 1936. Operated by Mr. Gray for cattle watering. Good well but got rather low during exceptionally dry period in 1940. Probably could be increased by deepening. At lowest produced about 1500 gallons daily.

Dripping Springs. Located in Dripping Springs Mountains in about the center of the monument. Has been claimed by prospectors but at the present time is not held legally. Produces about 25 gallons daily from seam drips in cave.

Acuna Well. Dug by John Cameron for cattle watering but was abandoned about 1937. Small well producing about 300 gallons daily. Location is about three miles northwest of Dripping Springs.

Cheroni Well. Five miles north of Dripping Springs. First well dug by Daniels 1916. Second well drilled by John Cameron 1926. Neither well produced except in wet weather and both wells have been abandoned.

Dowling Well. Two miles west of Sonoyta on International line. Dug by Lon Blankenship 1917. The well produced at least 50,000 gallons daily at one time for an ore mill. Is now operated by Robert Gray for stock watering.

Gray Ranch Wells. One well is near the International line about three miles east of Sonoyta road. Another well is at the boundary, monument 165, and on the present headquarters ranch of Robert Gray, grazing permitee. No data is available on these wells but both are strong and supply water for stock at a rate of about 25,000 gallons each. These wells were dug by Lon Blankenship and bought by Mr. Gray about 1921.

Customs Service Well. Dug by Syde Kalil on his homestead entry and later taken over by Customs Service on their reserve at the Port of Entry near the international line.

Luke Well. Drilled in 1941 for cattle entry port on private land held by Mr. Luke. Will produce at least 25,000 gallons daily.

Alamo Canyon. Located in Ajo Mountains four miles east of Sonoyta road and nine miles south of north boundary. During wet weather water runs freely in the canyon. A well dug on the creek bank gets low in dry weather. This water was filed on by William Miller at one time. Miller's rights were bought by the Gray family and the source is used by them for stock watering and ranch use.

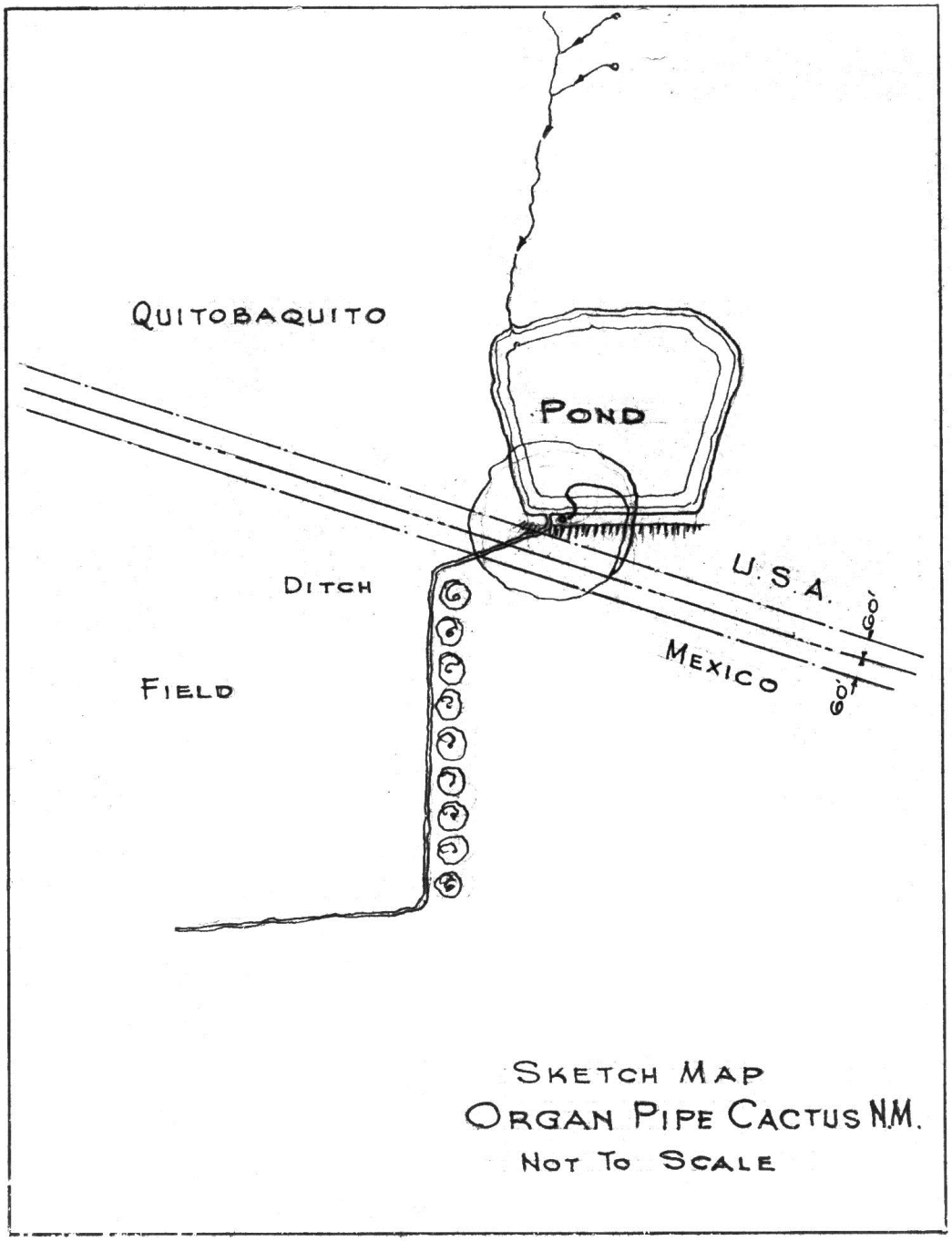
Miller Well. This is on private land in Sec. 10, T 15 S, R 4 W. Limited supply but could be deepened to plentiful. Miller ranch at present time leased by Gray family.

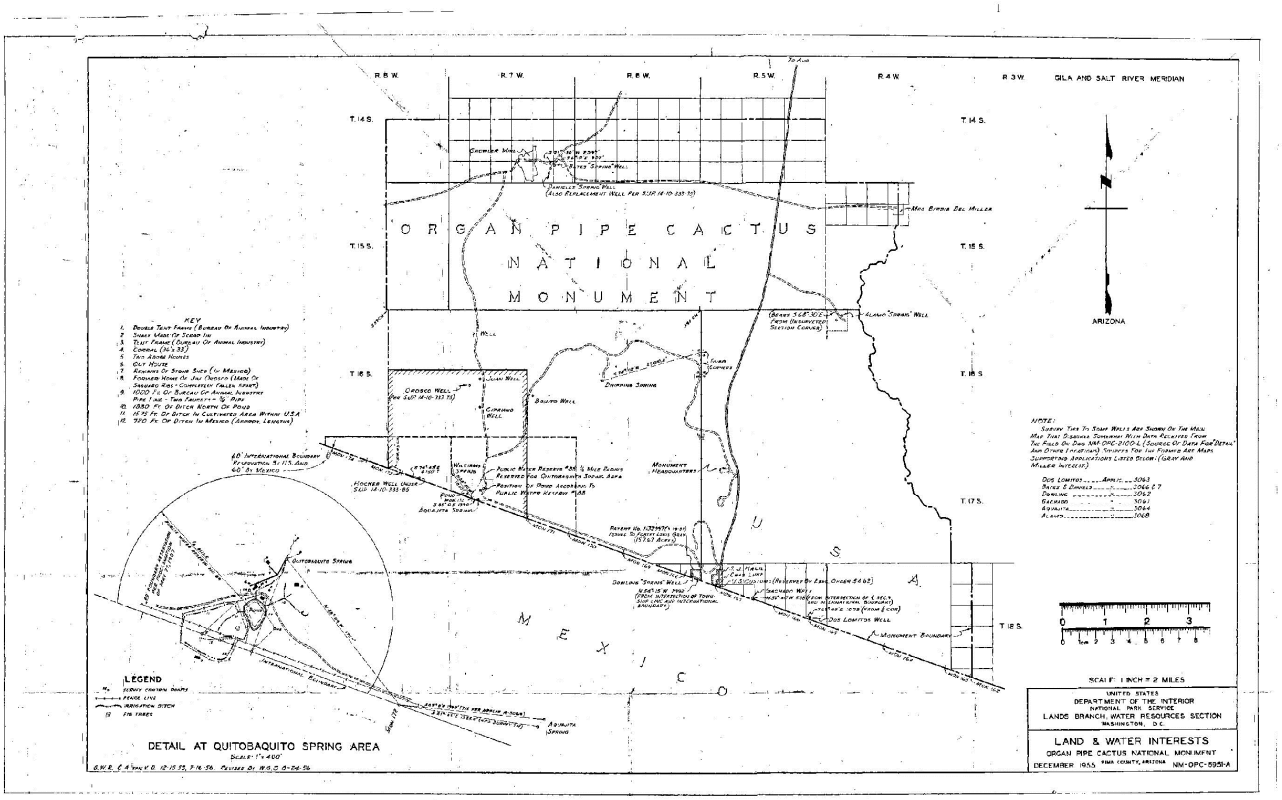
We are waiting to get prints on which these wells can be shown at least approximately on a map. The map will be forwarded as soon as it can be prepared.

Superintendent.

cc: Mr. Van Dunn, Region Four.

07-22-1941: sketch map





Docket Information

Number of Documents in Docket 112

Documents Dated from 5/27/1907 to 6/15/1996

Docket Compiled: 6/3/2016