WATER-RIGHT DOCKET

Pecos National Historical Park

Docket No: 2

PECOS RIVER BASIN ADJUDICATION

State Water Rights Documentation

05-26-1999: fax to margaret vick from terry hudgins regarding alternative h water requirements

05/26/1999 16:34 602-829-3990 MVICK PAGE 01
MAY.26. 1999 1:10PM

QUICK FAX OfficeMax

Date:	# Of Pages: 2
To: Bill Hansen	From: M Vick
Co./Dept.	Co./Dept.
Fax:	Fax:
Phone:	Phone:
Note:	E-Mail:

Canyon Forest Village
7610 E. McDonald, Suite L
Scottsdale, AZ 85250
(602) 991-7930
FAX (602)-991-8375

ittal

To: Margaret Vick, Brad Ack, Dave Simon, Chuck Clusen, Bill Staudenmaier Fax:

From: TERRY HUDGINS Date: 05/26/99

Re: Alternative H Water Requirements Pages: 2

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

In the last couple weeks the NPS stated that they no longer were considering bringing their own water to supply their 500 units of housing associated with the lease of about 20 acres of land that will be part of the project. They went ahead and decided that CFV would supply water to their housing. So, as a result I took the same criteria that applies to the rest of our project and applied it to their housing mix. The upshot is that the overall water requirement of the project has been increased. Attached is the new spread sheet regarding the water requirements of this alternative. Remember this assumes that we will be able to use recycled wastewater to flush all toilets in the development, and requirements an advanced set of fixture performance requirements.

PAGE 02
P. 2/2
No.0809
MVICK
602-829-3998
05/26/1999 16:34
MAY.26.1999 1:11PM

TABLE 5

ALTERNATIVE H

MAXIMUM CONSERVATION
WITH DUAL PLUMBING
5/6/1999; TDH

	RESIDENTIAL					LODGING	DAY USE	TOTAL
	MULTI FAMILY	DORM	SINGLE FAMILY	NPS Multi-fam	Concession Dorm	LIMITED SERVICE		
UNITS	500	550	50	100	400	1270		2870
FULL OCCUPANCY POPULATION	900	925	190	180	640	2159	9000	
MAY–SEPTEMBER OCCUPANCY	100%	100%	100%	100%	100%	95%	100%	
NOVEMBER & DECEMBER OCCUPANCY	75%	75%	100%	100%	75%	80%	25%	
OCTOBER & APRIL OCCUPANCY	80%	80%	100%	100%	80%	85%	50%	
JANUARY–MARCH OCCUPANCY	75%	75%	100%	100%	75%	80%	25%	
PER CAPITA WATER USE (GAL/DAY)	35	35	40	35	35	30	4.0	
WATER USE ESTIMATES								
JANUARY	0.73	0.75	0.24	0.20	0.52	1.61	0.28	4.32
FEBRUARY	0.66	0.68	0.21	0.1764	0.47	1.45	0.25	3.90
MARCH	0.73	0.75	0.24	0.1953	0.69	1.61	0.28	4.50
APRIL	0.76	0.78	0.23	0.19	0.54	1.65	0.54	4.68
MAY	0.96	1.00	0.24	0.20	0.69	1.91	1.12	6.13
JUNE	0.95	0.97	0.23	0.95	0.95	1.85	1.08	6.98
JULY	0.96	1.00	0.24	0.20	0.69	1.91	1.12	6.13
AUGUST	0.96	1.00	0.24	0.20	0.69	1.91	1.12	6.13
SEPTEMBER	0.95	0.97	0.23	0.19	0.67	1.85	1.08	5.93
OCTOBER	0.78	0.80	0.24	0.20	0.56	1.71	0.56	4.84
NOVEMBER	0.71	0.73	0.23	0.19	0.50	1.55	0.27	4.18
DECEMBER	0.73	0.75	0.24	0.20	0.52	1.61	0.28	4.32
ANNUAL (MILLION GALLONS)	9.92	10.20	2.77	3.06	7.50	20.60	7.97	62.02
ANNUAL (ACRE FEET)	30.45	31.30	8.51	9.38	23.03	63.20	24.44	190.31

RESTORING THE COLORADO RIVER

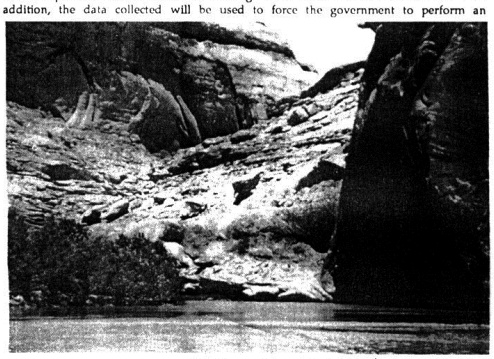
An Update from the Glen Canyon Institute

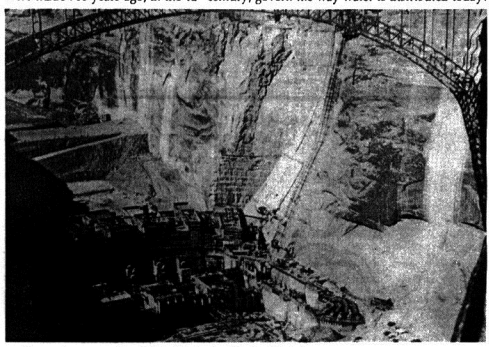
BID TO DRAIN LAKE POWELL GAINING MOMENTUM

Richard J. Ingebretsen, M.D., Ph.D.
President of Glen Canyon Institute

What was considered almost laughable two years ago, has now become a serious proposal among recreationists, environmentalists and politicians. The Glen Canyon Institute's proposal to drain Lake Powell reservoir and restore the Colorado has great merit. I want to take a moment and update you on what is happening in the bid to drain Lake Powell. Space won't allow me to discuss everything, but here are some highlights of what is happening.

We are well into our citizen's environmental assessment (CEA) to collect reliable data that will provide the scientific basis and arguments needed to drain the reservoir. In addition, the data collected will be used to force the government to perform an environmental impact statement (EIS). The CEA is well underway. With several studies completed and more being conducted.





Glen Canyon at the mouth of the Escalante River. 1958 Glen Canyon Dam under construction. 1959. ***Photos by Charles Kreischer***

We have just hired an Executive Director. She is Pamela Hyde. Most recently she was director of the Southwest Office of American Rivers. She received her J.D. from Duke University School of Law. We are challenging the Bureau of Reclamation's efforts to alter the temperature of the water released from Glen Canyon Dam without first performing an Environmental Impact Statement. We are looking at dam safety, water quality and sediment problems. We are building a constituency of other environmental groups form a united front on restoring the Colorado River.

This past October, we held our 4th annual conference in Salt Lake City on the University of Utah Campus. It was a very successful day long conference. In the morning was the scientific session. In the afternoon we held the artists session where leading artists and writers came together from around the United States to present their views on this work. The evening general session was attended by 1,300 people and there actor Woody Harrelson attended to give his support to the restoration of the river. Below are some of the common questions that people ask.

Don't we need the water stored in Lake Powell?

This is one of the biggest misconceptions. Even with the worst drought situation, water from Lake Powell would only be required one year out of 100 to meet the Lower Basin's needs. Every year, however, one million acre feet are lost to evaporation and seepage into the reservoir's sandstone banks. The lower basin can store water needed for those rare drought conditions.

How would we make up the lost power from the dam?

The generators at Glen Canyon Dam produce, on average, 1.4% of the electrical energy administered by the Western Area Power Administration. Currently there is a surplus of power on the grid. These facts are not disputed by power officials.

The Bureau of Reclamation states that the reservoir won't silt in for another seven hundred years. Shouldn't we use it while it lasts?

To ask how long it will take the reservoir to silt in is an exercise in futility .More recent studies have predicted the life of the reservoir at 250 or 300 years. In any case, the river is unpredictable and a single 500-year flood could change all figures. More significant is that when silt reaches the "river outlet work" valves that allow the reservoir to be drawn down, for safety or other reasons, the dam will have to be retrofitted for new tubes. This could happen in less than 100 years. Such scenarios are complex and hypothetical, but none of them bode well for the future of the dam. More to the point, how many laws that were made 700 years ago, in the 12th century, govern the way water is distributed today? The next fifty years are going to see rapid, frightening growth in the West, and meanwhile many cleaner, less damaging technologies will be coming on line. Water laws as we know them will be obsolete. The best thing we can do for the future is to deliver a world that is starting to heal from past mistakes.

Isn't Glen Canyon already destroyed? Won't it be a mess if it's drained? Can it be restored?

A better question to ask is where the reservoir is headed if we don't drain it. Year after year the incoming river deltas create more mud flats and the lake surface shrinks. Pollution, including bacteriological contamination, of the stagnant trapped water steadily increases. But a drained Glen Canyon would go through the following metamorphoses. (1) The impounded soils and sediments would flush out quickly. Annual floods would soon deposit the material down the Grand Canyon where it is so desperately needed. (2) The white layer would quickly dry and flake off. (3) In the hundreds of miles of canyon and side canyon bottoms—a breathtaking burst of life! The estimated 15 million acre feet of water that have been forced back into the sandstone over the past 35 years would trickle back. Cottonwoods, hackberry trees, box elders, mesquite, and acacia would quickly populate the rich soil. Oaks would sprout and spread their crowns within two generations. With the abundance of water, year around, Glen Canyon would be more luxuriant than it was when it was flooded.

Nearly three million people visit Lake Powell each year. Won't draining the reservoir prevent many people from seeing at least part of that area?

Glen Canyon is the only long, uninterrupted section in the Colorado River's 700-mile route through the canyon country that does not have any rapids, only a couple of mild riffles. Unlike the situation in Grand Canyon, and the canyons above Glen, highly

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Dave Wagstaff

Dave prepares for the MILLENIUM



SAME COMMITMENT NEW LOOK



DEED OF GIFT

E. E. POGELSON and GREER GARSON POGELSON, his wife, grant to the UNITED STATES OF AMERICA the following described real estate in San Miguel County, New Mexico:

SE¼ of Section 5;

S½SW¼ of Section 5;

W½E½SW¼ of Section 5;

E½NE¼NW¼ of Section 8;

E½W½NE¼NW¼ of Section 8;

N½NE¼SE¼NW¼ of Section 8;

NE¼NW¼SE¼NW¼ of Section 8;

N½NE¼ of Section 8;

N½N½S½NE¼ of Section 8;

all in Township 15 North, Range 12 East, New Mexico Principal Meridian, New Mexico, but excepting from the above-described lands all that portion thereof lying to the east of the west right-of-way line of State Road No. 63;

Containing 341.3 acres, more or less, as shown on that certain map prepared by the United States Department of the Interior, National Park Service, in December of 1964, entitled: "PROPOSED PECOS NATIONAL MONUMENT NEW MEXICO SHOWING POGELSON DONATION," said map being identified as Drawing No. SA-PEC 7101 B, DEC. 1964; said map is filed for record with the County Clerk of San Miguel County, New Mexico.

Actual Conveyance 278.733 acres

This deed is subject to the following conditions and reservations:

1. The lands conveyed hereby are given by Grantors to Grantee in the expectation and on the condition that the same will be included in a certain proposed national monument known as the Pecos National Monument, to be operated and maintained by the National Park Service of the United States Department of the Interior, and on the further condition that, subsequent to the creation of said monument, said lands be used, solely and exclusively, maintained and preserved as a part of said monument, for the benefit and enjoyment of the public, in perpetuity.

2. There shall be no development of any oil, gas or other minerals on the lands conveyed hereby unless such development be essential to the public welfare in time of national emergency.

PECOS N.M. D 1

3. Grantors reserve the right to use the lands conveyed hereby for the purpose of grazing livestock owned by them, until such time as Grantee shall erect a permanent and substantial fence around the exterior boundaries of said land; Except that this reservation to Grantors is neither attached nor appurtenant to that certain part of the land conveyed herein within the designated "Existing Boundary of State Monument" on map identified as Drawing No. SA-PHC 7101 B, Dec. 1964.

4. Grantors reserve the right to take water for domestic and irrigation purposes from the lands conveyed hereby, and shall have the right to explore for water, to drill wells and to install, maintain and replace pumps, pipelines, flumes and other apparatus, together with the right of ingress and egress as may be necessary or convenient to the exercise of the right reserved hereby; Provided, however, that Grantee may also explore for water, drill wells, install, maintain and replace pumps, pipelines, flumes and other apparatus, or otherwise obtain water from the lands conveyed herein and any such water obtained by Grantee will be used solely for purposes connected with the administration and maintenance of the national monument; Except that this reservation to Grantors is neither attached nor appurtenant to that certain part of the land conveyed herein within the designated "Existing Boundary of State Monument" on map identified as Drawing No. SA-PHC 7101 B, Dec. 1964.

WITNESS our hands and seals this 15th day of December 1964.

E. E. Fogelson

Greer Garson Fogelson

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 15th day of December 1964, before me personally appeared E. E. FOGELSON and GREER GARSON FOGELSON, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[NOTARY PUBLIC SEAL]

D. Audrey Prichard
Notary Public

D. AUDREY PRICH

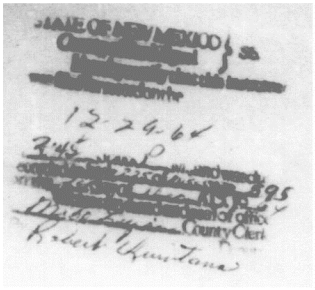
The within deed is hereby accepted on behalf of the United States under authority delegated in 245 DM 1.1 (27 F.R. 6395) and Amendment 19 of National Park Service Order 14 (28 F.R. 12288) delegating authority to Regional Directors of the Service to accept deeds.

Daniel B. Beard

Daniel B. Beard, Regional Director
Southwest Region, National Park Service

Date: 12/29/64

2746



John E Kell
Box 776

05-25-1966: letter to secretary of the interior from attorney general regarding examination of title evidence and related paper regar

Office of the Attorney General
Washington, D. C.

May 25, 1966

Honorable Stewart L. Udall
Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

Re: File No. 33-32-311
Tract No.
County San Miguel State New Mexico

An examination has been made of the title evidence and related papers pertaining to certain land in which interests have been acquired under authority of existing legislation. The land and estate acquired by the United States are more particularly described in the enclosed deed.

The title evidence and accompanying data disclose valid title to be vested in the United States of America subject to the rights and easements noted in Schedule A attached hereto which your Department has advised will not interfere with the proposed use of the land.

The title evidence and related papers are enclosed.

Sincerely yours,

Nicholas deB. Katzenbach

Attorney General

4

SCHEDULE A

File No.: 33-32-311

Project: Pecos National Monument located in San Miguel County, New Mexico

Estate Acquired: Fee simple

Acreage: 278.733

Total Consideration: Donation

The deed to the United States of America was executed by E. E. Fogelson, ot ux., on December 15, 1964, filed for record on December 29, 1964, and recorded in Miscellaneous Record 225 at page 595.

The abstract was last satisfactorily certified as of March 16, 1966, by The Las Vegas Title Guaranty Company.

The title is subject to the following:

1. **Existing easements for roads, highways, railroads, and public utilities, including an existing right of way traversing the subject land between State Route 63 and the lands of The Board of Regents of the Museum of New Mexico.**

2. **Reservations by the donors that the land shall be used exclusively as a National Monument, that there will be no development of any oil, gas or other minerals, except under certain circumstances, the right to graze livestock until fencing has been constructed and the right to the water for domestic and irrigation purposes, together with certain rights to explore for water as set forth in the deed to the United States.**

5

STATE OF NEW MEXICO)
County of San Miguel) SS.
I hereby certify that this instrument was filed for record on

DEC 16 1965

at 2:15 o'clock P. M., and was duly recorded in Book 226 of Deeds, page 272
Witness my hand and seal of office
County Clerk
By Deputy

6238

QUITCLAIM DEED

THIS DEED, Made the 13th day of December, 1965, between Daniel T. Kelly, Jr., as trustee of Gross, Kelly & Company, a New Mexico Corporation, hereinafter referred to as Grantor, and the United States of America, hereinafter referred to as the United States.

WITNESSETH, That the Grantor hereby donates and quitclaims to the United States and its assigns his entire mineral interest as trustee in all minerals, mineral rights and privileges and other minerals in the following described real estate in San Miguel County, New Mexico:

Tract D. Mineral interests in the following described property near the Town of Pecos in the County of San Miguel, State of New Mexico, to-wit:

Beginning at a point S. 65° 22' E. 500 feet from the center of the transcept of the old Pecos Church; thence by magnetic bounds N. 19° 58' W. 1517 feet; thence S. 88° 43' W. 984 feet; thence S. 6° 30' W. 1831 feet; thence S. 23° 32' E. 577 feet; thence N. 57° 25' E. 1754 feet to the place of beginning, containing 80 acres more or less.

The purpose of this quitclaim deed is to remove any cloud of title on the above land that may have been created by that certain quitclaim deed from Gross, Kelly & Company, a New Mexico Corporation, to Daniel T. Kelly, Jr., as Trustee, dated April 1, 1964 and recorded April 21, 1965 in Deed Record 226 at Page 176, Santa Fe County, New Mexico.

The interest herein is acquired for the use of the National Park Service, Department of the Interior, pursuant to the Act of June 28, 1965 (79 Stat. 195).

Witness my hand and seal, this 13th day of December, 19 65.

FILED IN MY OFFICE
AT O'CLOCK M
DEC 16 1965
COUNTY CLERK & RECORDER
SAN MIGUEL COUNTY
BY DEPUTY

Daniel T. Kelly Jr.
DANIEL T. KELLY, Trustee
Successor to Gross, Kelly and Co.

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 13th day of December, 19 65, by Daniel T. Kelly, Jr., as Trustee of Gross, Kelly &

PECOS NM DEED 2

QUITCLAIM DEED

THIS INDENTURE, made the 13th day of December, 1965, between the Board of Regents of the Museum of New Mexico, by and through W. J. Keller, President of the Board of Regents of the Museum of New Mexico, hereinafter referred to as Grantor, pursuant to Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.), and as authorized by the State Board of Finance at a meeting held September 11, 1962, and the United States of America, hereinafter referred to as the United States.

WITNESSETH, That Grantor for consideration paid of one dollar plus other benefits which will be received by the State of New Mexico and its population by the establishment of Pecos National Monument, quitclaims to the United States and its assigns the following described real estate in San Miguel County, New Mexico:

Beginning at the corner common to Sections 4, 5, 8 and 9 of Township 15 North, Range 12 East, New Mexico Principal Meridian, thence by magnetic bounds, South seventy-seven degrees forty-six minutes West, thirteen hundred fifty-five and eighty-nine one hundredths feet to a fallen brass cap, the true point of beginning; thence North nineteen degrees fifty-eight minutes West, fifteen hundred and seventeen feet; South eighty-eight degrees forty-three minutes West, nine hundred and eighty-four feet; South six degrees thirty minutes West, one thousand eight hundred and thirty-one feet; South twenty-three degrees thirty-two minutes East, five hundred and seventy-seven feet; North fifty-seven degrees twenty-five minutes East, one thousand seven hundred and fifty-four feet, to the place of beginning, containing eighty (80) acres, more or less; being and intended to be the same premises conveyed to Grantor from A. T. Daeger, as Roman Catholic Archbishop of the Archdiocese of Santa Fe, a corporation sole, by deed dated January 28, 1921, recorded on March 14, 1921 in book 93, page 64, of the deed records of San Miguel County, New Mexico: and also described on National Park Service Drawing No. NM-PEC-7103 attached hereto as a part hereof.

The interest herein is conveyed to the United States for the maintenance of a National Monument on the above described site, and is acquired by the United States for the use of the National Park Service, Department of the Interior, pursuant to the Act of June 28, 1965 (79 Stat. 195).

Witness my hand this 13th day of December, 1965.

W. J. Keller

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 13th day of December, 1965, by W. J. Keller, President of Board of Regents of the Museum of New Mexico, Santa Fe, NM, on behalf of said Board.

Corinne [illegible]
Notary Public

My commission expires March 23 1966.

STATE OF NEW MEXICO)
County of San Miguel) ss.
I hereby certify that this instrument was filed for record on

DEC 16 1965

at 4:05 o'clock P. M. and was duly recorded in Book 224 of Misc. page 241
Witness my hand and seal of office
[illegible] County Clerk
By [illegible] Deputy

698
(226-316)

QUITCLAIM DEED

THIS INDENTURE, made the 30 day of December, 1965, between the Roman Catholic Church of the Archdiocese of Santa Fe, a corporation sole, by and through James P. Davis, Roman Catholic Archbishop of the Archdiocese of Santa Fe, hereinafter referred to as Grantor, and the United States of America, hereinafter referred to as the United States.

WITNESSETH, That the Grantor hereby donates and quitclaims to the United States and its assigns the following described real estate in San Miguel County, New Mexico:

Beginning at a point South Sixty-five degrees, twenty-two minutes east, five hundred feet from the center of the transcept of the old Pecos Church;

Thence by Magnetic bounds, North nineteen degrees, fifty-eight minutes West, fifteen hundred and seventeen feet;

South eighty-eight degrees, forty-three minutes West, Nine hundred eighty-four feet;

South six degrees, thirty minutes West, One thousand eight hundred and thirty-one feet: South twenty-three degrees, thirty-two minutes East, five hundred and seventy-seven feet; and North fifty-seven degrees, twenty-five minutes East, one thousand seven hundred fifty-four feet, to the place of beginning;

Containing Eighty (80) acres, more or less.

The purpose of this quitclaim deed is to remove any cloud of title on the above land that may have been created by that certain warranty deed from Edwin V. Byrne, Roman Catholic Archbishop of the Archdiocese of Santa Fe to the Roman Catholic Church of the Archdiocese of Santa Fe, a Corporation Sole, dated July 27, 1955 and recorded May 21, 1957 in Deed Record 192 at Page 278, Santa Fe County, New Mexico.

The interest herein is acquired for the use of the National Park Service, Department of the Interior, pursuant to the Act of June 28, 1965 (79 Stat. 195).

Witness my hand and seal, this 30 day of December, 1965.

James P. Davis

Roman Catholic Archbishop of the

12-30-1965: quitclaim deed

A C K N O W L E D G M E N T

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 30 day of December, 19 65, by James P. Davis, Roman Catholic Archbishop of the Archdiocese of Santa Fe, a corporation sole, on behalf of said corporation.

NOTARY PUBLIC

Notary Public

My commission expires 10-10-68.

STATE OF NEW MEXICO)
County of San Miguel ss
I hereby certify that this instrument was filed for record on

MAR 16 1966

at [illegible] o'clock [illegible], and was duly recorded in Book [illegible] of [illegible], page [illegible]
Witness my hand and Seal of Office
[illegible] County Clerk
By [illegible] Deputy

05-27-1966: letter to secretary of the interior from attorney general regarding examination of title evidence and relater papers regar

Office of the Attorney General
Washington, D. C.

May 27, 1966

Honorable Stewart L. Udall
Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

Re: File No. 33-32-314
Tract No.
County San Miguel State New Mexico

An examination has been made of the title evidence and related papers pertaining to certain land in which interests have been acquired under authority of existing legislation. The land and estate acquired by the United States are more particularly described in the enclosed deed.

The title evidence and accompanying data disclose valid title to be vested in the United States of America subject to the rights and easements noted in Schedule A attached hereto which your Department has advised will not interfere with the proposed use of the land.

The title evidence and related papers are enclosed.

Sincerely yours,

Nicholas deB. Katzenbach

Attorney General

6

Schedule A

File No.: 33-32-314

Project: Pecos National Monument located in San Miguel County, New Mexico

Estate Acquired: Fee simple

Acreage: 62.567

Total Consideration: Donation

The deed to the United States of America was executed by The Board of Regents of the Museum of New Mexico, on December 13, 1965, filed for record on December 16, 1965, and recorded in Book 226, at page 281.

The abstract was last satisfactorily certified as of March 16, 1966, by The Las Vegas Title Guaranty Company.

The title is subject to the following:

1. Existing easements, if any, for roads and highways, railroads, pipelines and public utilities.

05-12-1956: warranty deed

WARRANTY DEED

103094

KNOW ALL MEN BY THESE PRESENTS, that the MUSEUM OF NEW MEXICO, established by Chapter 4, Section 1, Laws of New Mexico, 1909 (Section 4-12-1, N. M. Stat. 1953), acting pursuant to Chapter 109, Laws of New Mexico, 1953, by and through Alexander V. Wasson, the President of its Board of Regents, and the UNIVERSITY OF NEW MEXICO, established by Chapter 138, Section 1, Laws of the Territory of New Mexico, 1889 (Section 73-25-1, N. M. Stat. 1953), acting by and through Finlay MacGillivray, the President of the Regents of the University, in and for consideration of the exchange of certain lands under Section 8 of the Act of Congress approved June 28, 1934, as amended (43 U.S.C. Sec. 315g), grants to THE UNITED STATES OF AMERICA and its assigns, the following described real estate located in Torrance County, New Mexico:

S½SE¼ Sec. 34; S½SW¼ Sec. 35, T. 1 N., R. 8 E., N.M.P.M., containing 160 acres more or less

with warranty covenants.

WITNESS OUR HANDS AND SEALS this 12th day of May 1959.

MUSEUM OF NEW MEXICO

By: Alexander V. Wasson
President, Board of Regents

UNIVERSITY OF NEW MEXICO

By: Finlay MacGillivray
President of the Regents

STATE OF NEW MEXICO
SS
COUNTY OF Santa Fe

The foregoing instrument was acknowledged before me this 12 day of May 1959, by Alexander V. Wasson, President of the Board of Regents of the Museum of New Mexico, on behalf of said Museum.

Notary Public

My commission expires Oct. 4, 1961.

STATE OF NEW MEXICO
SS
COUNTY OF

The foregoing instrument was acknowledged before me this 12th day of May 1959, by Finlay MacGillivray, President of the Regents

GRAN QUIVIRA NM DEED No. 3

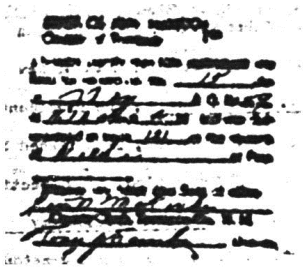
I, Lawrence H. Wilkinson, Secretary of the Regents of the University of New Mexico, a corporation, established by Chapter 138, Section 1, Laws of the Territory of New Mexico, 1889, do hereby certify that at a meeting of said Board of Regents, duly held on May 9, 1959, at which a quorum was present and acting throughout, the following resolution was unanimously adopted and is now in full force and effect:

A warranty deed, executed by the Museum of New Mexico and the University, and providing for the transfer of certain land to the United States Government, was presented to the Regents for approval. The land in question, described as "S½ SE¼ Sec. 34; S½ SW¼ Sec. 35, T. 1 N., R. 8 E., N.M.P.M., containing 160 acres more or less," would be transferred to the Government in exchange for other land.

It was moved by Mr. Bratton and seconded by Dr. Wilkinson that the warranty deed be approved. Carried.

In witness whereof I have hereunto set my hand and the official seal of the Regents of the University of New Mexico this 3rd day of July, 1959.

L. H. Wilkinson
Secretary



EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS:

THIS EASEMENT DEED made this 5 day of November 1959, by and between Jack L. Kite and Louise P. Kite, husband and wife, as grantors and the United States of America and its assigns, grantee.

WITNESSETH:

That for the consideration of Twenty-Five Hundred Dollars ($2,500.00) the grantors herein do hereby grant to the United States of America and its assigns, with warranty covenants, a permanent easement across the real property hereinafter described. The purpose of the easement will be to maintain a well, a fenced area in square form 210 feet square around the well, and for the installation of a pipe line and power line leading from the well in a general northeasterly direction to the south boundary of Gran Quivira National Monument, Socorro County, New Mexico, including necessary ingress and egress to install, maintain and repair the pipe line and power line; also, an access road from the public highway between Sections 3 and 4, T. 1 S., R. 8 E., leading to the site of the well as located. The pipe line will be installed at least three feet below the surface of the ground.

The description of the property subject to this easement in Socorro County, State of New Mexico is as follows:

Location of the well: In the Northwest quarter of the Northeast quarter of the Southwest quarter of Section Four (NW¼NE¼SW¼, Sec. 4), Township One South, Range Eight East, New Mexico Principal Meridian, whence the quarter corner common to Sections Four and Nine(4 and 9) in Township One South, Range Eight East, bears South 29°30' East a distance of 2427.60 feet.

Gran Quivera N.M. D. #4

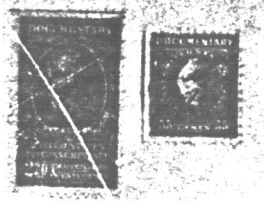
The description of the access road from the public highway between Sections Three and Four (3 and 4), Township One South, Range Eight East, leading to the site of the well is parallel to the center line of the easement for the pipe line and power line as described above.

The width of the above-described easement for pipe line and power line and the above-described easement for access road shall be twenty feet on each side of the above-described center line for the pipe line and power line. Easements for pipe line, power line and access road shall be construed as one easement forty feet in width.

The grantors herein covenant that for themselves, their heirs and assigns, that they will not drill or permit the drilling of any water well within a radius of 1,000 feet from the center of the casing of said well as herein described.

The interests in real property herein granted shall not be construed to grant to the United States of America the right to fence the above-described easements for pipe line, power line and access road, but shall be construed to grant to the United States of America the right to fence the above-described square form area 210 feet square. The grantors herein shall have the right to use the area of the pipe line, power line and access road easements for all purposes not inconsistent with the rights and privileges of the United States of America to construct, operate and maintain said easements as herein granted. The grantors relinquish all rights to occupy and use the above-described square form area 210 feet square for any and all purposes whatever, for so long as the United States of America occupies said area for the purposes hereby granted.

IN WITNESS WHEREOF the grantors have executed the above instrument the day and year first above written.



Jack L. Kite
Jack L. Kite

Louise P. Kite
Louise P. Kite

State of New Mexico)
County of Socorro)s.s.
Torrance

The foregoing instrument was acknowledged before me this 5 day of November, 1959, by Jack L. Kite and Louise P. Kite, husband and wife.

Everett L. Court
Notary Public

My commission expires:
December 28, 1959

STATE OF NEW MEXICO }ss
SOCORRO COUNTY
THIS INSTRUMENT OF WRITING WAS FILED FOR RECORD AT 10:20 O'CLOCK A M. ON
NOV 5 1959
AND DULY RECORDED IN VOL. 208 OF Misc. Rec. PAGE 195-198
Julia Blessing County Clerk
By Gracie Vance Deputy

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

The within deed is accepted on behalf of the United States as of January 15, 1960, under the authority of the Interior Department Appropriation Act, 1959 (72 Stat. 152) and the act of August 7, 1946 (60 Stat. 885; 16 U.S.C. 17j-2), and delegated by section 7 of Secretary's Order No. 2640, dated June 11, 1951 (16 F. R. 5846), as amended by Amendment 2, dated January 10, 1952 (17 F. R. 482).

Jackson S. Price
Assistant Director
National Park Service

33-32255
INTERIOR DEPT.
JAN 19 1960
SOLICITOR

Office of the Attorney General
Washington, D. C.

January 15, 1960

Honorable Fred A. Seaton
Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

A re-examination has been made of the title data relating to certain land described in Contract No. 14-10-0100-1051, Gran Quivira National Monument in Socorro County, New Mexico. An easement for a water well, a pipe line, a power line and an access road over this land was conveyed to the United States of America under the provisions of existing legislation by Jack L. Kite and Louise P. Kite, husband and wife, under deed dated November 5, 1959, filed for record on November 5, 1959, and recorded among the land records of the county in Volume 208 of Miscellaneous Records at page 195. The file number of this Department is 33-32-255.

The easement is described in the aforesaid deed, which recites a consideration of $2,500.00.

The title insurance policy, No. Y 275679, dated as of November 19, 1959, was prepared by Lawyers Title Insurance Corporation and countersigned by New Mexico Title Company and is satisfactory.

The title policy, recorded deed and accompanying data disclose valid title to an easement to be vested in the United States of America, subject to easements for public roads, and for an electric power line noted in the certificate of possession, which your Department has advised will not interfere with the contemplated use of the land.

It is to be noted that the purchase price for the land has not been paid.

The title insurance policy, deed and related papers are enclosed.

Sincerely yours,

William P. Rogers

Attorney General

5

Deed No 2
267.17 Ac

GRAN QUIVIRA NATIONAL MONUMENT
NEW MEXICO
(Second Proclamation)

By the President of the United States of America

A Proclamation

WHEREAS it appears that the public good will be promoted by adding to the Gran Quivira National Monument certain lands in the State of New Mexico containing ruins of archaeological value:

NOW, THEREFORE, I, WOODROW WILSON, President of the United States of America, by virtue of the power vested in me by section two of the Act of Congress approved June 8, 1905, entitled "An Act for the Preservation of American Antiquities" (34 Stat., 225), do proclaim that said lands, to-wit, the tracts described as the S½ SW¼ and S½ SE¼, Sec. 34, the S½ SW¼ Sec. 35, T. 1 N., R. 8 E., and unsurveyed lands which by protraction of the lines of the public survey in T. 1 S., R. 8 E., would probably be described as the N½ NW¼ Sec. 2 and the N½ NE¼ Sec. 4, in T. 1 S., R. 8 E., New Mexico Principal Meridian, are hereby reserved from appropriation and use of all kinds under the public land laws, subject to all prior valid claims, and set apart as an addition to the Gran Quivira National Monument, and that the boundaries of said national monument are now as shown on the diagram hereto annexed and forming a part hereof.

Warning is hereby given to all unauthorized persons not to appropriate or injure any natural feature of this monument or to occupy, exploit, settle, or locate upon any of the lands reserved by this proclamation.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this 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 (39 Stat., 535).

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

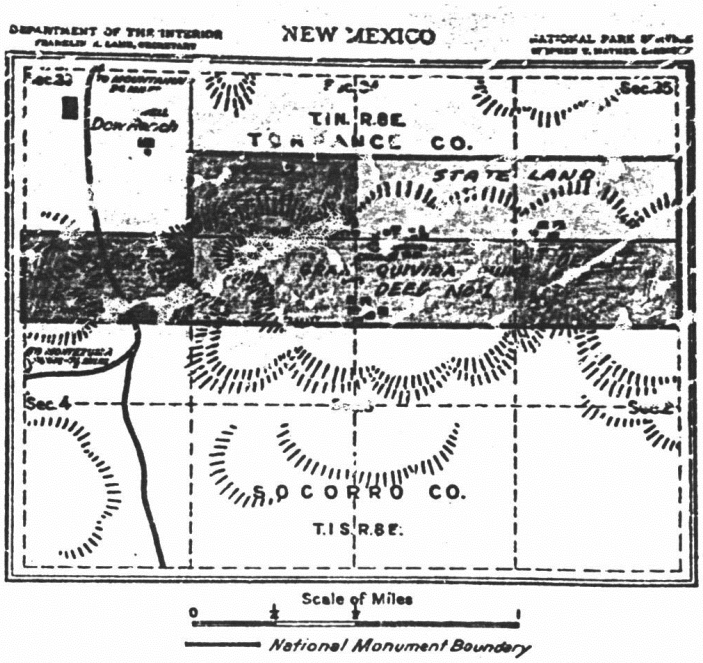
DONE in the District of Columbia This 25th day of November, in the year of our Lord one thousand nine hundred and nineteen, [SEAL.] and of the Independence of the United States of America the one hundred and forty-fourth.

WOODROW WILSON

By the President
ROBERT LANSING
Secretary of State

[No. 1545.]

Gran Quivera N. Mon D. 21



GRAN QUIVIRA
NATIONAL MONUMENT

2

Other Supporting Information

RECEIVED
NATIONAL PARK SERVICE
WASHINGTON OFFICE
JUL 1 8 37 AM '82

L54(SWR-OM)

JUN 23 1982

~~VIC CARS~~

MEG:
Please file in
PECOS Water Rights
General Corres. File

Memorandum

To: Southwest Region Superintendents

From: Associate Regional Director, Park Operations, SWR

Subject: Outline for a Water Resources Profile

Enclosed is an outline for a Water Resources Profile, and a copy of the draft plan for Pecos National Monument. This is intended as a guide in the preparation of a report on the water situation at your area.

The report focuses on actual and potential water-related problems. It is viewed as a separate section of the Resources Management Plan. To the extent that you have already covered the topics listed in the attached outline in your Resource Management Plan, they need not be reworked in this profile. The purpose of developing a separate plan on the subject of water resources is to call attention to the fact that water resources in the National Parks and Monuments in the Southwest Region are vulnerable from both NPS and non-NPS activities, and they are frequently critical to the Park Service's ability to fulfill its mandate.

Accordingly, the Water Resources Profile can be a useful tool in developing a strategy to cope with existing and foreseeable water problems.

Please take the time to look over the enclosed outline and sample Water Resources Profile. If you have the staff time to prepare your area's Water Resources Profile by the end of the fiscal year, so much the better; if you could use some assistance from the Regional Office, we are prepared to assign a hydrologist/planner to assist you. A Regional Water Resources staff member will be in touch with you soon to discuss preparation of your Water Resources Profile.

In the meantime, if you have any further questions, please contact Garland Moore at FTS 476-6368, or 505 988-6368.

Jack Neckels

Enclosures

cc:
WASO/497 w/enclosures

Water Resources Management Plan Outline

I. Map

A. Identify and name all park surface waters, including springs and reservoirs.

B. Indicate whether perennial or ephemeral.

C. Locate all wells, both NPS and other; differentiate between functional and abandoned wells.

D. Classify all water sources with a code or symbol to indicate whether it serves one or more of the following functions for the park:

1. Public water supply: drinking water, fire-fighting etc.

2. Non-public water supply: household usage for NPS employees, etc.

3. Maintenance of ecosystem, general.

4. Habitat maintenance for threatened and endangered species indigenous to the park.

5. Habitat maintenance for biota of special interest but not threatened or endangered.

6. Aesthetics

7. Perpretuation of historic setting: i.e., water in irrigation ditch, water available for mixing adobe in maintenance of historic structures, etc.

8. Recreational purposes, body contact.

9. Recreational purposes, non-contact.

10. Agricultural, irrigation source.

11. Agricultural, livestock.

12. Disposal of sewage effluent.

13. Other

II. Physical Description of the Resource

A. Relationship to Region in terms of climate, watersheds, soils, and aquifers.

B. Quantification of resource on basis of existing data (tables or lists sufficient).

C. Quality, on basis of existing data: compare to state and federal water quality standards. Indicate if any waters have been designated Outstanding National Resource Waters, in which no degradation will be allowed. (Again, tables or lists.)

D. Contribution of the water resource to supporting the purposes of the park: ecosystem maintenance, historic character etc.

E. Floodplain (100-year and 500-year event) identification and management.

F. Other: e.g., erosion situation

III. Management of Water Resource and Legal Aspects

A. Historical and present water management within park boundaries.

B. Identify water quality management planning area and responsible agency(ies) where park is located.

C. Identify legal jurisdictional authority(ies) for water resource management.

D. Discuss interrelationship, if any, between park and larger Regional water authorities.

E. Describe water rights held by park.

IV. Water Resources Problem (Actual/Potential)

Specific problems involving management of park waters for their protection and use will be identified. Problem categories include:

A. Insufficient supply

B. Poor quality

C. Threat to quality or quantity from activity by landowners adjacent to park

D. Legal problems - water rights issue

E. Drainage

F. Erosion

G. Flooding

V. Recommended Strategies for Water Protection

These may be developed through discussion between the park staff and Southwest Regional Office consultant. They need not be fully developed proposals, but

simply sketches of ideas from which the staff may develop more complete proposals as the need dictates.

VI. References Cited

Water Resources Profile

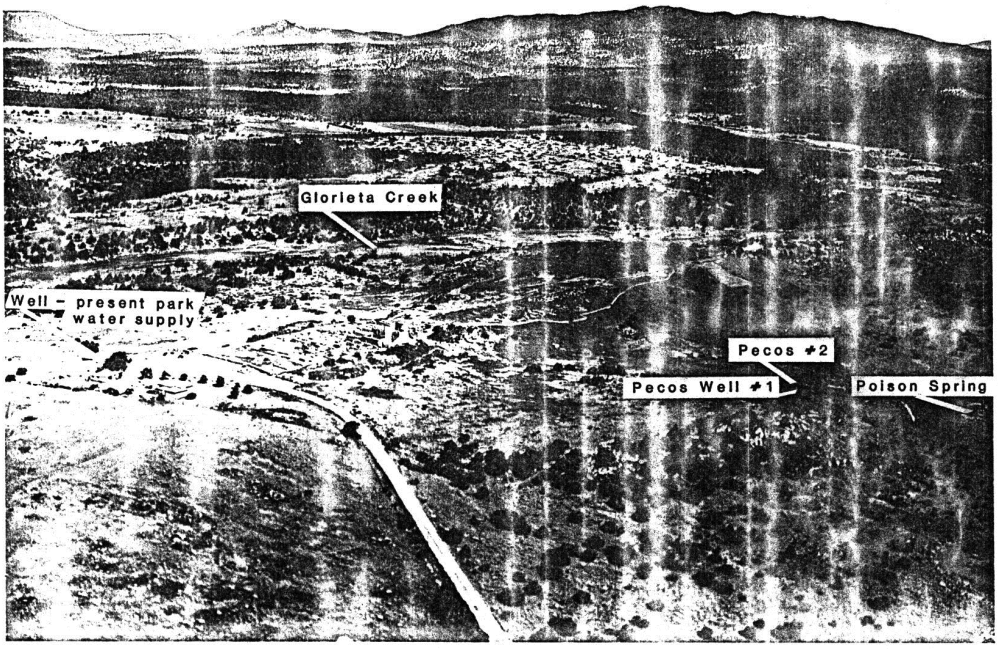
for

Pecos National Monument

Recommended by: _____
Superintendent, Pecos National Monument

Approved by: _____
Regional Director, Southwest Region

Fig. 1: Pecos National Monument Water Resources



All water sources perennial.

893/400
5682882

II. Physical Description of Water Resource

1. Watershed: The monument sits in the watershed of Pecos Horseshoe, the southernmost extension of the Sangre de Cristo Range of the Rocky Mountain chain. It is bounded on the west by Glorieta Mesa and drains to the Pecos River.

2. Climate: The monument receives roughly 12 inches of rain annually. Precipitation increases with elevation to approximately 35 inches at the summit of the Sangre de Cristo Range (Trujillo, 1982). Precipitation in the Sangre de Cristo Range contributes both surface runoff and recharge of the aquifers which underlie Pecos Monument.

   Summer temperatures rarely exceed 90°F and winter temperatures seldom fall below 0°F. Class A pan evaporation averages approximately 70 inches annually, and actual sunshine duration is roughly 70% of theoretical. Winds are generally southwesterly, and are strongest in the spring (Ag. Exp. Station, 1972).

3. Geology: Pecos National Monument is located on alluvial fill dating from when the site was occupied by the Pecos River, now flowing along the western flanks of the Tecolote Range a mile to the east (Trujillo, 1982). The alluvium in turn rests on the Sangre de Cristo formation, described by Johnson (1973) as "brownish-red and gray conglomeratic sandstone, red siltstone, red and greenish-gray shale and gray limestone." The Sangre de Cristo formation is encountered at roughly 25 feet, occasionally outcropping from the alluvium within the monument grounds. It has the capacity to provide a minimum sustained yield of 25 gpm (Moore, 1973). Underlying the Sangre de Cristo formation at about 200 feet is the Madera member of the Magdalena limestone group. The driller's log from construction of Pecos Well #2 (see Figure 1) reveals this formation as "white to gray very fine-to fine-grained limestone interbedded with gray shale" from 200 to 280 feet, followed by very fine-to coarse-grained quartz limestone veined with calcite, and below 350 feet, "light-gray to light-brown very fine-to coarse-grained feldspathic limestone and gray to reddish-brown shales" (Christensen, 1979).

4. Soils: appear to be of the Carnero-Redmun-Bernal Association. The soils are sandstone-derived, bearing a grassland vegetation with pinon-juniper woodland on the areas of shallower soils. Most soils in the association are well drained (Ag. Exp. Station, 1972), so erosion hazard from surface runoff is fairly slight so long as the vegetation cover is reasonably well protected.

5. Estimate of Quantity: Total groundwater withdrawal from the well adjacent to park headquarters (see Figure 1) is estimated at 2.7 acre feet per year (Moore, 1973). This amount is not expected to affect surface water supplies in Glorieta Creek or Poison Spring. Its effect on the recharge area is unknown but presumed to be non-existent.

The flow of Glorieta Creek through the western portion of the park has not been evaluated to date. At low flow, an ocular estimate places the flow at less than 1 cubic foot per second (cfs).

Poison Spring is reduced to a muddy seep prior to being recharged by the summer rains and winter precipitation. It is apparently an expression of flow along a local, fairly shallow aquiclude which underlies the moist meadow west of the spring. The flow of the spring has not been evaluated.

Pecos wells #1 and #2, located in the meadow between the mission and Poison Spring, are unused. Some difficulties were encountered in drilling Pecos #1, and the hole was capped and abandoned. Pecos #2 was drilled 30 feet north of Pecos #1, to a depth of 560 feet. It was sealed off at 350 feet, to tap an artesian perched aquifer in the Madera limestone. Static water level in the well is 120 feet below land surface. During a pump test, the water level was drawn down 75.8 feet in 241 hours at a pumping rate of 42.8 gallons per minute (g.p.m.). The water level continued to drop throughout the pump test, but it returned to 80% of its static water level within 110 minutes after pumping ceased. The quality and taste of the water was good. The well was capped after testing (Christensen, 1979). It is suitable for an additional water supply for the park if necessary.

6. Water Quality: Glorieta Creek: There is reason to believe that the creek is polluted with discharge of insufficiently treated sewage from a plant operated by the Glorieta Baptist Center roughly 12 miles upstream. There is heavy algal growth and organic sludge deposits in the monument section of the stream. In May 1982, the New Mexico Environmental Improvement Division obtained an Assurance of Discontinuance from the Baptist Center which set up a schedule for bringing the effluent releases into compliance with State and Federal standards.

   The well that presently serves as the park's water supply is tested twice a month for potability, and is consistently in compliance with health standards.

   No quality data exists on Poison Spring, but the name suggests that the quality of its water may be suspect.

   Historically, there have been problems with well water quality at Pecos National Monument. A letter from the director of the monument dated 8/7/51 discusses the drilling of a well to serve a caretaker's house: "The water gradually began to have a very peculiar odor and taste: the caretaker felt ill and some of his poultry died. The caretaker broke out with a rash all over his body." The well was subsequently deepened and struck a "satisfactory" water source.

7. Water as it supports the park's purposes: Glorieta Creek and Poison Spring: critical for perpetuation of the historic environment of the pueblo and mission, as well as for aesthetics.

Functioning well: provides water for park visitors and staff as well as maintenance of historic structures and irrigation of a "priest's garden".

8. Floodplain Identification and Management: Flood hazard at Pecos has not been studied. However, it does not appear to be a high-priority issue: the principal cultural resources sit well above the apparent floodplain of Glorieta Creek (judging from terrace development, soil and vegetation indicators and high-water marks); and visitors are not allowed near the stream channel. Hence there is little threat to visitor safety or park property by flood damage.

III. Management of Water Resource and Legal Aspects

1. The history of water management at Pecos is discussed in the attached "Briefing Statement of Archeological Significance of Glorieta Creek in Pecos National Monument Water Rights Adjudication."

   At present, water management is limited to providing water for visitors and for park staff, for maintenance and for irrigation of a model "priest's garden".

2. Various administrative entities have authority over water use at Pecos:

   Pecos National Monument falls within the Upper Pecos Declared Groundwater Basin. Hence, water claims are subject to approval by the New Mexico State Engineer. The monument's claim for 20 acre feet annually from its present well (Declaration No. UP-500, priority date prior to December 7, 1941) was filed July 18, 1978. The claim is under adjudication and has yet to be decided.

   The Park Service would also like to lay claim to a certain amount of instream flow of Glorieta Creek, for maintenance of the historic character and riparian habitat at Pecos National Monument. This claim is somewhat problematic, as the State does not clearly recognize claims for instream flow. See further discussion of this issue under Part IV: Strategies.

   Water quality comes under the administration of the New Mexico Water Quality Control Commission and the State Environmental Improvement Agency; and at the federal level, under the Environmental Protection Agency and the National Park Service. (It is NPS which requires biweekly water quality tests; but the standards to be met are set by the State.)

IV. Water Resources Problems (Actual/Potential)

1. Proposed vegetation management through prescribed burning could have negative effects on runoff chemistry and potential increased erosion.

2. Problem of sewage pollution in Glorieta Creek. In addition to the identified pollution source, the sewage treatment plant at Glorieta Baptist Center, there may be some polluted discharge from the small community between the Baptist Center and the park.

3. If the Fogelson Ranch which presently surrounds the monument should be subdivided in the future, there could be problems associated with a change in land use, such as a change in runoff patterns possibly triggering flooding and/or erosion, surface or groundwater pollution, or alteration of surface or groundwater quantity.

4. There has been no inventory to date of the flora and fauna of the monument. Such a study may point up a need for water for habitat maintenance.

5. The monument's water sources cannot be considered secure until the rights thereto are formally assigned to the Park Service.

V. Recommended Strategies for Water Protection

PECO-W-1. Take surface water effects into account in planning a prescribed burn regime for Pecos.

PECO-W-2. Collect and test water samples from Glorieta Creek. Compare with State data. If results are comparable, simply monitor progress of Glorieta Baptist Center sewage plant cleanup project through contact with State Environmental Improvement Agency. If data from monument indicates an additional pollution source, report to State and request followup on their part to protect park resources.

PECO-W-3. Monitor development proposals in land adjacent to monument.

PECO-W-4. Conduct inventory of flora and fauna of park. Assess requirements of flora and fauna for water.

PECO-W-5. Instigate streamflow monitoring program to establish flow record in park section of Glorieta Creek prior to making claim for instream flow rights.

VI. References Cited:

Agricultural Experiment Station, N.M. State University, 1972. Soil Associations and Land Classification for Irrigation, San Miguel County. Ag. Exp. Sta. Report No. 221.

Christensen, P.K., 1979. Hydrogeology of the Pecos National Monument Well No. 2. Water Resources Report No. 80-4, NPS Southwest Region.

Johnson, R.B., 1973. Geologic map of the Pecos Quadrangle, San Miguel and Santa Fe Counties, New Mexico. U.S. Geological Survey publication.

Moore, G., 1973. Memorandum to W. Brown, Chief, Division of Historical Properties, NPS, SWR 11/21/73.

Trujillo, D.M., 1982. Geology of the Pecos National Monument. Internal report in Water Resources files of Southwest Regional Office of the National Park Service, in Santa Fe, New Mexico.

Interviews:

Charles Nylander, Anthony Drypolcher, New Mexico Environmental Improvement Agency, 5/26/82.

John Bezy, Superintendent, Pecos National Monument, 6/14/82.

Determination

It is determined that none of the actions outlined above signigicantly affect the natural environment nor cause controversy.

NO ENVIRONMENTAL ASSESSMENT WILL BE PREPARED

Recommended by: _____
Southwest Regional Hydraulic Engineer

Concurred by: _____
Superintendent, Pecos National Monument

Concurred by: _____
Associate Regional Director, Park Operations, SWR

Approved by: _____
Regional Director, Southwest Region

ATTACHMENT
BRIEFING STATEMENT OF ARCHEOLOGICAL
SIGNIFICANCE OF GLORIETA CREEK IN PECOS
NATIONAL MONUMENT WATER RIGHTS ADJUDICATION

Generally speaking, water management in the Southwestern United States is an age-old phenomenon, principally because the inhabitants of this arid land had an economy based largely upon farming. The earliest inhabitants were hunting and gathering peoples who found that abundant game and high uncultivated plant yields were likely to be encountered in the more mesic areas of the landscape, including streams, rivers, and springs. Although the time of transition from a foraging subsistence to farming varies considerably from area to area, the bulk of archeological literature suggests that it occurs by A.D. 500-600, or perhaps even earlier. At Pecos the transition occurred ca. A.D. 800. Thus, all throughout the human use of the Southwest, waterways held a magnetic attraction for the inhabitants.

In situations analogous to Pecos, water management by farming groups has produced field systems, composed of check dams, terraces, and reservoirs, associated with field houses. The latter are small temporary domiciles used seasonally while people tended crops and harvested them. Although individually of small size, such field systems reliant upon water management are of substantial importance for several reasons:

(1) They demonstrate the technological inventiveness, resourcefulness, and perseverance of people faced with a harsh environment.

(2) They constitute the physical remains of the ways in which the occupants of larger pueblos such as Pecos earned their daily living.

(3) They show long-term adaptation which permits steady population growth through centuries of development. To archeological researchers, and hence to the development of National Park Service interpretive programs, this fact has consequences which range beyond the spatially small size of individual sites:

   a. A sizable investment in labor is required to establish and care for these systems. Necessitated is a large labor force and thus, by extension, a large population.
   b. A complex social and ideological control mechanism is needed in order to enforce the compliance of all individuals for the common wealth. Therefore, it has been asserted that the entire political, social, religious structure of the population are a direct result of ancillary water management needs.

Archeological researchers in the Southwestern United States have been cognizant of these facts to the point wherein water use and management have become a central focus in evaluating the behavior of prehistoric human populations.

At Pecos, these same situations have been borne out by archeological and historical research. During the occupation of Pecos Pueblo, Glorieta Creek and the Pecos River were the two examples of permanent stream flow. Considering what has already been presented, the location of the following large major habitation centers is directly dependent upon the presence of the creek: Pecos Pueblo (and the Pecos missions and attendant Spanish secular structures) Forked Lightning Ruin, Loma Lothrap Ruin, Arrowhead Ruin, and another large unnamed pueblo adjacent to the creek. The Service does not own the last two of these structures. Other non-Service large habitation sites in the vicinity, and which are located adjacent to permanent waterways are Rowe Pueblo and Dick's Ruin. The salient point regarding large archeological sites in the Pecos area is that, without exception, all are located immediately adjacent to water.

Returning now to the field systems of both historic and prehistoric periods, the initial systems of true water management appear ca. A.D. 1100-1200. (Actually, sedentary horticulturalists had arrived and were probably using small scale water diversion systems by A.D. 800). Manifestations of these systems include check dams, terraces, and perhaps reservoirs, plus the ubiquitous field houses. None of these structures are found on the present flood plain of Glorieta Creek, which is characterized by an entrenched channel containing the creek. Atop the first terrace, however, these features quickly begin to become apparent. They are also found adjacent to ephemeral natural drainages and arroyos. The Monument contains about 90 archeological sites, with a high proportion being farming/field system associated units. At least one large reservoir has been tenuously identified on the ground. Historical references to irrigation practices and reservoirs and practices also appear.

A few miscellaneous thoughts regarding riparian floral and faunal use:

Materials recovered from archeological contexts that show exploitation of the riparian environment include those listed below. Removal of the waters of Glorieta Creek would damage the historic scene as established by the archeological presence of these plants and animals:

fauna:	flora:
turtles (species unidentified)	cottonwood/willow (Populus sp.)
Sandhill crane (Grus canadensis)	grape (Vitis sp.)
	cattail (Typha sp.)
	marsh elder (Iva sp.)

In conclusion, without the proximity of Glorieta Creek to Pecos Pueblo, neither that site nor other large sites adjacent to it, probably would ever have been built. If somehow they would have been built, they would have been limited in size and altered in form to something ultimately alien to the structures that now are being preserved for their national significance.

L54(SWR-OM)

JUN 16 1982

Memorandum

To: Superintendent, Pecos National Monument

From: Associate Regional Director, Park Operations, SWR

Subject: Water Rights/Water Pollution Problem in Pecos

Enclosed you will find a 1980 memorandum which deals in part with the water rights at Pecos. To give you an update on what is discussed in that memorandum: the case of New Mexico v. Lewis et al. is still in process, with no decision in sight. The principle of federal reserved water rights does not apply to Pecos, as the land has not always been under federal ownership. The United States must therefore resort to the State courts in determining Pecos' water right. We assume that the State will act favorably on the Park Service's present claim to 20 acre-feet per year of well water, which is under adjudication in the above-named case.

As to rights to instream flow in Glorieta Creek: it is not advisable to apply to the State for such rights at this time. The State of New Mexico does not recognize instream flow as a beneficial use of water (State Ex Reynolds vs. Miranda), which means that for the Park Service to request such a right would be a test case. Accordingly, it would be better for the Park Service to choose a case that was more clear-cut in terms of the existence of historical records that would support our claim. If you are interested in pursuing the issue, it would be advisable for us to begin the process of quantifying the streamflow to which Pecos may eventually claim a right if and when the political climate changes regarding rights to instream flow. The back-up information which accompanies the 1980 memorandum (copy enclosed) is an excellent beginning towards quantification of the water right; however, a streamflow gaging station should be constructed and continuously maintained for at least seven years before a reasonable and legally defensible quantification of streamflow can be determined. If you are interested in pursuing this course of action, it is recommended that a 10-238 be prepared.

Please note that the foregoing discussion on water rights and related enclosure is confidential.

The second enclosure which accompanies this letter is a copy of the Assurance of Discontinuance which was drawn up between the Glorieta Baptist Church and the State Water Quality Control Commission. The standards which the church

must meet in its effluent discharges, and their reporting requirements, are clearly defined in the Assurance. To determine if sewage effluent is reaching the monument, Regional water resource personnel will conduct a minimum of two tests of the water in Glorieta Creek approximately midway in its course through the monument. The first sample will be taken at low flow and the second at an elevated flow level during the summer rainy season (both samples to be collected between now and September 1982). The samples will be analyzed for BOD (biological oxygen demand), suspended solids, pH, and fecal coliform bacteria, and the results compared with New Mexico Water Quality Control Commission tests in Glorieta Creek for that period. We will apprise you of what we learn through this monitoring effort.

Should you have any questions on the above topics, please contact Paige Grant or Garland Moore at 505-988-6368.

Jack Hoskets

Enclosures

cc:
Chief, WASO/497 w/enclosures

bcc:
GMoore; OM, SWR
PGrant:pm 6/14/82

L54(SWR)OM

OCT 16 1980

Memorandum

To: Associate Director, Science and Technology, WASO
Attention: Vic Berte', Air & Water Resources Division

From: Acting Regional Director, Southwest Region

Subject: State of New Mexico v. L.T. Lewis, et al., Civil No. 20, 294 - District Court of Chaves County, New Mexico

We have reviewed Assistant Solicitor Watts' August 20, 1980, recommendations concerning interrogatories filled by this office relative to the above-captioned case. Responses to each recommendation are presented in the same order as outlined in his memorandum.

I. Pecos National Monument

A. Ground Water

Recommendation: We should negotiate with the state to try and perfect a water right in the well pursuant to state law. If this is unsuccessful, then a request should be made to the Assistant Secretary for permission to claim a non-reserved right.

Response: It appears that it is untimely for the National Park Service to begin negotiation with the state on this matter as the National Park Service (U. S. Government) is now party to the referenced case.

It is recommended that the National Park Service await the State Engineer's decision in this case. Should the decision be unfavorable, the National Park Service can always appeal the decision within the courts.

This office concurs in the recommendation to request the Assistant Secretary for permission to claim a non-reserved right if the above is not legally sound.

B. Surface Water - Arroyo del Pueblo

Recommendation: A filing with the state may prove futile but one should be attempted to determine once and for all if the state will recognize instream flow for ecosystem maintenance as a beneficial use. If not, then this seems a clear case for the assertion of a federal non-reserved water right and a request should be made from the Assistant Secretary to assert it.

Response: This office concurs with the recommendation to file for an instream flow for ecosystem maintenance in the Arroyo del Pueblo. Before filing, however, it should be noted that no flow records exist from which an educated estimate can be made to quantify the amount of water needed to maintain the historical, natural, and archaeological integrity of the monument. In addition, we have learned that the waters of Arroyo del Pueblo have historically been in use and are presently being used by Jemez Pueblo in their religious and ceremonial activities.

Enclosed are briefing statements prepared by historians, natural scientists, and archaeologists which show the dependence of the natural and cultural resources to waters which flow within the Arroyo del Pueblo.

C. Poisoned Spring

Recommendation: Unlike Arroyo del Pueblo, Poisoned Spring arises and terminates completely within the monument boundaries and the U. S. controls access to the waters, thus the issue of quantifying an instream flow is largely academic. For this reason, we have nothing to lose by either filing with the state for a water right or asserting a non-federal reserved right.

Response: We recommend not filing.

Recommendation for Fort Union and Gran Quivira National Monuments: By letter dated March 4, 1980, from the Regional Director, he notes that both of these monuments are not within the watershed that is being adjudicated even though underground waters may be hydrologically connected. Therefore, there is no need to assert any water right claims to these two monuments.

Response: Concur with the recommendation.

/s/ Earl A. Hassebrock

Enclosures

cc: Supt., Pecos, Fort Union, Gran Quivira w/copy of enclosures
bcc:
Chief, Division of Interpertation (Atten: Joe Sanchez) (each w/copy of
Chief, Division of Cultural Resources (Atten: Larry Norby) enclosure)
Chief, Division of Natural Resources (Atten: Keith Yarborough)
Moore, OM, SWR w/c of enclosure

Notes for Inclusion in Pecos National Monument -

Water Rights Protection

Any decreases in the present flows in the arroyos adjacent to Pecos, New Mexico could alter the riparian vegetation community. This, in turn, could affect the associated animal community. However, these changes are best judged in the historic context for the purposes of cultural resources interpretation. From the natural resources aspect, the riparian changes should not affect the overall natural scene.

Nevertheless, if development upstream should lead to more sustained flows in the arroyos from deforestation or ground water use and subsequent used water effluent flows, increased erosion might result. This could alter the natural scene, as well as impacting cultural resources and their interpretation. Furthermore, potential development which encroaches on the natural scene could sharply alter the overall plant/animal communities.

BRIEFING STATEMENT OF ARCHEOLOGICAL SIGNIFICANCE OF GLORIETA CREEK IN PECOS NATIONAL MONUMENT WATER RIGHTS ADJUDICATION

Generally speaking, water management in the Southwestern United States is an age-old phenomenon, principally because the inhabitants of this arid land had an economy based largely upon farming. The earliest inhabitants were hunting and gathering peoples who found that abundant game and high uncultivated plant yields were likely to be encountered in the more mesic areas of the landscape, including streams, rivers, and springs. Although the time of transition from a foraging subsistence to farming varies considerably from area to area, the bulk of archeological literature suggests that it occurs by A.D. 500-600, or perhaps even earlier. At Pecos the transition occurred ca. A.D. 800. Thus, all throughout the human use of the Southwest, waterways held a magnetic attraction for the inhabitants.

In situations analogous to Pecos, water management by farming groups has produced field systems, composed of check dams, terraces, and reservoirs, associated with field houses. The latter are small temporary domiciles used seasonally while people tended crops and harvested them. Although individually of small size, such field systems reliant upon water management are of substantial importance for several reasons:

(1) They demonstrate the technological inventiveness, resourcefulness, and perseverance of people faced with a harsh environment.

(2) They constitute the physical remains of the ways in which the occupants of larger pueblos such as Pecos earned their daily living.

(3) They show long-term adaptation which permits steady population growth through centuries of development. To archeological researchers, and hence to the development of National Park Service interpretive programs, this fact has consequences which range beyond the spatially small size of individual sites:

   a. A sizable investment in labor is required to establish and care for these systems. Necessitated is a large labor force and thus, by extension, a large population.
   b. A complex social and ideological control mechanism is needed in order to enforce the compliance of all individuals for the common wealth. Therefore, it has been asserted that the entire political, social, religious structure of the population are a direct result of ancillary water management needs.

Archeological researchers in the Southwestern United States have been cognizant of these facts to the point wherein water use and management have become a central focus in evaluating the behavior of prehistoric human populations.

At Pecos, these same situations have been borne out by archeological and historical research. During the occupation of Pecos Pueblo, Glorieta Creek and the Pecos River were the two examples of permanent stream flow. Considering what has already been presented, the location of the following large major habitation centers is directly dependent upon the presence of the creek: Pecos Pueblo (and the Pecos missions and attendant Spanish secular structures) Forked Lightning Ruin, Loma Lothrap Ruin, Arrowhead Ruin, and another large unnamed pueblo adjacent to the creek. The Service does not own the last two of these structures. Other non-Service large habitation sites in the vicinity, and which are located adjacent to permanent waterways are Rowe Pueblo and Dick's Ruin. The salient point regarding large archeological sites in the Pecos area is that, without exception, all are located immediately adjacent to water.

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A few miscellaneous thoughts regarding riparian floral and faunal use:

Materials recovered from archeological contexts that show exploitation of the riparian environment include those listed below. Removal of the waters of Glorieta Creek would damage the historic scene as established by the archeological presence of these plants and animals:

fauna:	flora:
turtles (species unidentified)	cottonwood/willow (Populus sp.)
Sandhill crane (Grus canadensis)	grape (Vitis sp.)
	cattail (Typha sp.)
	marsh elder (Iva sp.)

In conclusion, without the proximity of Glorieta Creek to Pecos Pueblo, neither that site nor other large sites adjacent to it, probably would ever have been built. If somehow they would have been built, they would have been limited in size and altered in form to something ultimately alien to the structures that now are being preserved for their national significance.

09-26-1980: memorandum to hydraulic engineer from united states government regarding opinion on the significance of the arroyo

UNITED STATES GOVERNMENT

memorandum

DATE: 09/26/80 L54(SWR)OIV

REPLY TO ATTN OF: Interpretive Specialist (Historian)

SUBJECT: Opinion on the significance of the Arroyo del Pueblo

TO: Hydralic Engineer

Although there is a dearth of literature that exists pertaining to the prehistorical and historical uses of Arroyo del Pueblo, sufficient documentation and archeological evidence supports the land-water practices of the Pecos in the arroyo.

Early Spanish travelers to Pecos recorded their descriptions of the pueblo and its agricultural practices. In particular they often noted the agricultural production of the pueblo. Evidence of farming within the arroyo suggests that the water flow of Glorietta Creek was used to irrigate their crops. Above the arroyo along the pueblo's westside perimeter is a water catchment for irrigation purposes and control of water sources. Thus, agricultural production and practices resulted in creative irrigation practices and water uses.

In addition to the use of the creek and catchment for irrigation purposes, the water flowing through the arroyo sustained the water level as well as provided water for household uses. Undoubtedly, Pecos women washed clothing in the creek, rather than at the Rio Pecos which is approximately two miles to the east of the pueblo. Also the creek did provide water for drinking and cooking purposes. Cultural practices suggest that water, probably from the creek or some nearby spring, was used by headmen for religious purposes.

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During the prehistorical and historical periods the appearance of the environment was ever changing. Due to practical uses, wood was cut in the arroyo and the general vicinity and cattails were taken for matting and thatchwork on the pueblo roof tops. Today cottonwoods, cattails, and other plants represent the remaining flora of the historical scene. Any changes to the water flow of Glorietta Creek would indeed affect the appearance of the Arroyo del Pueblo and possibly the general pueblo environment with respect to the historic scene. Certainly the appearance of the environment in relation to the interpretive storyline of Pecos is essential to the preservation of the resources there.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

* GPO : 1978 O - 261-647 (3523)

The Arroyo del Pueblo with its accompanying water flow is part of the interpretive program at Pecos. Without that resource, historians and archeologists would be unable to determine what went on at Pecos, and consequently social history would be lost. In short, the Arroyo del Pueblo and Glorietta Creek should be preserved because they are necessary components for the interpretation of the resource, and because they are necessary for the historic and natural scenes.

Joseph P. Sanchez

United States Department of the Interic
NATIONAL PARK SERVICE

Pecos National Monument
P. O. Drawer 11
Pecos, New Mexico 87552

IN REPLY REFER TO:
L54

September 25, 1980

Memorandum

To: Regional Director, Southwest Region
Attention: Gary Moore, Division of Maintenance

From: Acting Superintendent, Pecos NM

Subject: Arroyo del Pueblo

As a follow-up to our meeting yesterday in Santa Fe, Arnold contacted Roger Madalena, Pecos Governor of Jemez Pueblo, regarding the present-day religious use of the waters from the Arroyo del Pueblo. After a brief explanation of the water rights situation at Pecos, he responded without hesitation that the waters in question have historically been in use and are presently being used by Jemez Pueblo in their religious and ceremonial activities.

We also informed him that if we go to litigation, we may need his testimony. His response was positive.

Berta S. Ulibarri

Berta S. Ulibarri

254 Pecos

United States Department of the Interior
OFFICE OF THE SOLICITOR
Field Office, Southwest Region
331 Sandoval Street
P.O. Box 1042
Santa Fe, New Mexico 87501

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
OCT 27 1981

October 27, 1981

Memorandum

To: Regional Director, Southwest Region
Attention: Garland Moore

From: Field Solicitor, Santa Fe

Subject: Interrogatories - New Mexico v. Lewis, et al., Consol. Numbers 20,294 and 22,600 (D. Ct. N.M., Chaves County filed 1955)

Enclosed is a copy of a letter from the U.S. Attorney's office requesting replies to interrogatories "m, n, and o." Please contact this office if you have any problems with the responses.

Gayle E. Manges
Field Solicitor, Santa Fe

Enclosure

cc:
Regional Solicitor, Southwest Region

(x) L54 Peco

(x) 1818 & 5 Peco

10-23-1981: letter to u.s. dept. of the interior from united states attorney district of new mexico regarding the filed interrogatories

U.S. Department of Justice

United States Attorney
District of New Mexico

Post Office Box 607
Albuquerque, New Mexico 87103

October 23, 1981

Gayle E. Manges, Esq.
Field Solicitor
U.S. Dept. of the Interior
P. O. Box 1042
Santa Fe, N.M. 87501

RECEIVED
OCT 26 1981
Department of the Interior
FIELD SOLICITOR
Santa Fe, New Mexico

Re: Lewis

Dear Gayle:

Pursuant to ourphone conversation of 23 October 1981 please find the interrogatories filed in the above-captioned matter; also enclosed is the information previously furnished this office with respect to the interrogatories.

The applicable interrogatories are: letters m-n- o. Could you have them answered based on the material previously furnished this office and any other information pertinent thereto. Upon completion, have someone from the agency or your office sign them.

Lastly, in view of Coldiron's withdrawal of Krulitz's opinion, agencies, where applicable, should comply with the State's filing requirements as soon as possible. In doing so, a disclaimer should be inserted to the effect that the filings are without prejudice to whatever additional existing water rights they have under federal law.

If you have any question about this, please contact me.

Sincerely,

R. E. THOMPSON
United States Attorney

Herbert A. Becker

HERBERT A. BECKER
Assistant U.S. Attorney

HAB:ibs
Enclosures
cc: Thomas A. Garrity, Field Solicitor, Dept. of the Interior
Box H-4393, Herring Plaza, Amarillo, Texas 79101

11-20-1980: letter to land and natural resources division from office of the solicitor regarding the interrogatories

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
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3 OM
Files

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Mr. James W. Moorman
Assistant Attorney General
Land and Natural Resources Division
Attn: Mr. Myles Flint
Department of Justice
Washington, D.C. 20530

RE: State of New Mexico v. L.T. Lewis et al.,
Civil No. 20, 294, Chavez County, Supreme Court of
New Mexico

Dear Mr. Moorman:

This is in response to a June 30, 1980 letter from Mr. Ken Marra concerning answers to interrogatories in the above-captioned case. I apologize for the delay in the response, but we wanted to obtain the views of our client and Nick Estes has assured us that the State has not been pressing for the information.

We have attached a revised copy of the answers to interrogatories reflecting our suggested response. Please notice the following. First, references to Fort Union National Monument and Gran Quivira National Monument have been deleted, as these national monuments do not appear to be in the Pecos River watershed.

Second, concerning interrogatory O, we have left the proposed answer intact, since the interrogatory does not ask for the legal basis (e.g. reserved water right, federal non-reserved water right, State-granted water right) for the water right claim. Instead, the interrogatory asks only what water rights claims or uses we have, and what federal authority authorizes the use of water. Thus, the issue of the legal basis for these claims can be saved for later development.

As you will notice from the attached November 10, 1980 transmittal through the Assistant Secretary for Fish and Wildlife and Parks, our client desires to adopt different strategies for the groundwater (await the State Engineer's decision on whether NPS's December 1977 declaration of use filing with the State grants us a state water right, and if unfavorable possibly seek a non-reserved federal water right), Arroyo del Pueblo (file for instream flow under State and, if necessary, possibly federal law), and Poisoned Spring

W1254 PECO

W1823 PECO

(no filings required because United States controls access) water uses at Pecos National Monument.

We would appreciate your efforts in negotiating State-granted water rights for the groundwater and Arroyo del Pueblo water uses at Pecos National Monument to avoid federal non-reserved water rights claims. By copy of this letter, we are requesting that the Field Solicitor's Office in Albuquerque assist you in this regard. If such efforts fail, please contact us so that we may determine if federal non-reserved water rights claims should be made.

Sincerely,

(Sgd.) Gary Widman

Gary Widman
Associate Solicitor
Conservation and Wildlife

Attachments

cc: Nick Estes, Asst. U.S. Attorney, Albuquerque
Field Sol., Albuquerque
Director, NPS
NPS, Southwest Regional Director
(ALL w/attachments)

10-30-1980: memorandum to associate solicitor from director regarding answers to interrogatories

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
L54 (492)

OCT 30 1980

Memorandum

To: Associate Solicitor, Conservation and Wildlife

NOV 10 1980

Through: Assistant Secretary, Fish and Wildlife and Parks

From: ACTING Director

Subject: New Mexico v. Lewis, Answers to Interrogatories

In accordance with Assistant Solicitor Watts August 20, 1980, memorandum, enclosed is a copy of Acting Regional Director Hasselbrock's October 16, 1980, memorandum outlining the Region's position relative to the assertion of water right claims in the subject case.

We concur with the Region's position which is in general agreement with the recommendations of Assistant Solicitor Watts and the recommendations of this office which were transmitted to the Region by Acting Director Hutchinson's memorandum of September 10, 1980, a copy of which was previously furnished your office.

Accordingly, we would appreciate your revision of the responses to the draft interrogatories to reflect for the present the non-assertion of reserved rights for Pecos N.M. and the dropping of water right claims in this proceeding for Fort Union and Gran Quivira National Monuments.

Please furnish our Regional Office and this office with copies of your response to the Justice Department on this matter.

Gun J. Hutchinson

Enclosure

Year of the Visitor

United States Department of the Interior
NATIONAL PARK SERVICE
SOUTHWEST REGION
P.O. Box 728
Santa Fe, New Mexico 87501

RECEIVED
NATIONAL PARK SERVICE
OCT 20 8 23 AM '80

IN REPLY REFER TO:
L54(SWR)OM

OCT 16 1980

Memorandum

To: Associate Director, Science and Technology, WASO
Attention: Vic Berte', Air & Water Resources Division

From: Acting Regional Director, Southwest Region

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Response: Concur with the recommendation.

G Kaarelrock

Enclosures

cc: Supt., Pecos, Fort Union, Gran Quivira w/copy of enclosures

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09-26-1980: memorandum to hydraulic engineer from interpretive specialist regarding opinion on the significance of the arroyo del

UNITED STATES GOVERNMENT

memorandum

DATE: 09/26/80 L54(SWR)OIV

REPLY TO ATTN OF: Interpretive Specialist (Historian)

SUBJECT: Opinion on the significance of the Arroyo del Pueblo

TO: Hydralic Engineer

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

* GPO : 1978 O - 261-647 (3523)

The Arroyo del Pueblo with its accompanying water flow is part of the interpretive program at Pecos. Without that resource, historians and archeologists would be unable to determine what went on at Pecos, and consequently social history would be lost. In short, the Arroyo del Pueblo and Glorietta Creek should be preserved because they are necessary components for the interpretation of the resource, and because they are necessary for the historic and natural scenes.

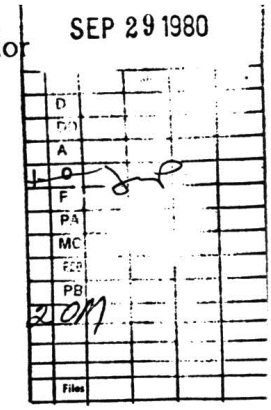
Joseph P. Sanchez

09-25-1980: memorandum to regional director from acting superintendent regarding arroyo del pueblo: religious use of the waters

United States Department of the Interior
NATIONAL PARK SERVICE
Pecos National Monument
P. O. Drawer 11
Pecos, New Mexico 87552

IN REPLY REFER TO:
L54

September 25, 1980



Memorandum

To: Regional Director, Southwest Region
Attention: Gary Moore, Division of Maintenance

From: Acting Superintendent, Pecos NM

Subject: Arroyo del Pueblo

As a follow-up to our meeting yesterday in Santa Fe, Arnold contacted Roger Madalena, Pecos Governor of Jemez Pueblo, regarding the present-day religious use of the waters from the Arroyo del Pueblo. After a brief explanation of the water rights situation at Pecos, he responded without hesitation that the waters in question have historically been in use and are presently being used by Jemez Pueblo in their religious and ceremonial activities.

We also informed him that if we go to litigation, we may need his testimony. His response was positive.

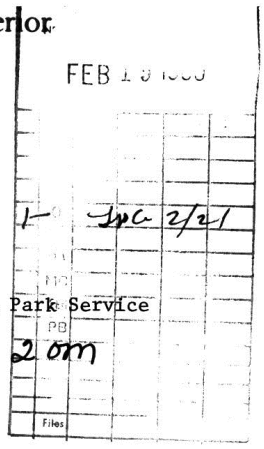
Berta S. Ulibarri
Berta S. Ulibarri

254 Pec

02-13-1980: memorandum to regional director from field solicitor regarding pecos watershed

United States Department of the Interior

OFFICE OF THE SOLICITOR
FIELD SOLICITOR
RM. 224, U.S. COURTHOUSE
P.O. BOX 1042
SANTA FE, NEW MEXICO 87501
February 13, 1980



Memorandum

To: Regional Director, Southwest Region, National Park Service

From: Field Solicitor, Santa Fe

Subject: Pecos Watershed

Enclosed is a letter dated February 8, 1980 as to the above water adjudication. Please respond to this office as to the matter raised by Assistant U.S. Attorney Estes.

Gayle E. Manges
Field Solicitor, Santa Fe

Enclosure

(X) L54 Pecos

W1823PBOO

United States Department of the Interior

~~BUREAU OF RECLAMATION~~
WATER AND POWER RESOURCES SERVICE
SOUTHWEST REGION
714 S. TYLER
AMARILLO, TEXAS 79101

RECEIVED
OCT 26 1981
Department of the Interior
FIELD SOLICITOR
Santa Fe, New Mexico

FEB 1
Department of the Interior
FIELD SOLICITOR

REPLY REFER TO: 430

FEB 1 2 1980

Memorandum

To: Field Solicitor, Amarillo, TX

From: Acting Regional Supervisor of Water, Land, and Power

Subject: State of New Mexico et al. v. L. T. Lewis et al., District Court for Chaves County No. 20284, State of New Mexico--Carlsbad Project, NM

The following information is provided in response to Mr. J. P. Sheldon's telephone inquiry of February 8, 1980, concerning interrogatory "0." which pertains to subject suit in regard to waters originating upstream of Avalon Dam.

The United States claims water rights for the Carlsbad Project as follows:

1. Water use began from the original Avalon Dam and diversion headworks in 1888. Avalon Dam and related structures were reconstructed in 1907 to serve land through the carriage facilities.

2. Carlsbad's main canal headworks is located in the SW¼ sec. 12, T. 21 S., R. 26 E.

3. The water is used primarily for irrigation with only minor amounts being used for domestic and livestock watering. Records to identify amounts used for domestic and livestock watering have been included with the total allotment provided through the irrigation system.

4. The water is used on the 25,055 irrigable acres within boundary of the Carlsbad Irrigation District.

5. Hope Community Decree dated May 8, 1933.

W. M. Colvin

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
FIELD SOLICITOR
BOX H-4393, HERRING PLAZA
AMARILLO, TEXAS 79101

February 13, 1980

RECEIVED
FEB 15 1980
US ATTORNEY'S OFFICE
Albuquerque, New Mexico

Charles N. Estes, Jr.
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87103

Re: State of New Mexico v. L. T. Lewis, Civil Nos. 20294 and 22600

Dear Nick:

In response to your letter of February 4, 1980, we are enclosing a copy of a memorandum from Water and Power Resources Service providing information for answering interrogatory "0."

If you need additional information or if we can be of further assistance, let us know.

Sincerely,

Thomas A. Garrity
Field Solicitor

Enclosure

cc:
Regional Director, SW Region, WPRS

07-03-1979: in the united states district court for the district of new mexico: state of new mexico, ex rel., s.e. reynolds, state engine

RECEIVED
OCT 26 1981
Department of the Interior
FIELD SOLICITOR
Santa Fe, New Mexico

RECEIVED
JUL - 5 1979
U.S. ATTORNEY'S OFFICE
Albuquerque, New Mexico

IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel.,
S. E. REYNOLDS, State Engineer,
and PECOS VALLEY ARTESIAN
CONSERVANCY DISTRICT,

Plaintiffs,

vs.

L. T. LEWIS, et al.,
UNITES STATES OF AMERICA,

Defendants.

Nos. 20, 294 and 22,600
Consolidated

Pursuant to Rule 33, New Mexico Rules of Civil Procedure, the Plaintiff State of New Mexico submits the following interrogatories to the Defendant United States of America, to be answered fully under oath within one hundred twenty (120) days of service thereof.

DEFINITIONS AND INSTRUCTIONS

A. Where a complete answer to a particular Interrogatory is not possible, the Interrogatory should be answered to the extent possible and a statement should be made indicating why only a partial answer is given.

B. As used herein the terms "person" and "persons" include natural persons, private corporations, governmental entities or agencies, partnerships, associations and joint ventures. The singular and plural forms are used interchangeably, as are the masculine and feminine forms.

C. As used herein the term "identify":

1. When used in reference to a natural person, requests the following information with respect to such person: his full name, his present or last known business and residence address, his present or last known employer's name, his title or job designation, and, if applicable, his civil service classification.

2. When used in reference to any form of entity, requests the following information: the full legal name and form of organization, its address, or if the entity is a governmental entity, its full name and address.

3. When used in reference to a document, the term "identify" requests the following information with respect to such document: its date, its author, the type of document (e.g., letter, memorandum, telegram, chart, invoice, statement, photograph, sound reproduction, etc.), the nature and substance of the document, its present location and the name of each of its present custodians.

D. As used herein, the term "document" means all written or otherwise recorded matter (e.g., tape recordings and any other mechanical or electrical transcriptions) and includes (a) copies of the same writing which differ from the original or other copies thereof due to notations made thereon and (b) material attached to any such writings.

E. As used herein, "you" and "your" mean the United States and all agencies, officers and employees thereof.

F. As used herein, the word "location" means the location according to the New Mexico coordinate system or the rectangular survey in quarter-sections unless the context calls for a response in the form of a street address.

G. As used herein, the term "month" means calendar month, and the word "year" means calendar year.

H. Each interrogatory is to be answered for the period January 1, 1965, to date of answer unless it asks an historical date, or the context otherwise indicates. If the facts have been changed during the period, the answer should disclose the state of affairs from time to time in effect during the period.

I. If you claim that the attorney-client privilege or attorney-work product doctrine is applicable to any document, identify the document and identify each person who has ever been in possession of the document or any copy thereof or has seen, heard of or otherwise come to know the contents thereof.

J. If you claim that any document is exempt from disclosure pursuant to the Freedom of Information Act, identify the document, state the provision of the Freedom of Information Act under which it is claimed that the document is exempt from disclosure, and state why the document is exempt from disclosure.

K. If you claim that the attorney-client or attorney-work product doctrine is applicable to any meeting or conversation, provide its date and place and inentify each person present at the meeting or conversation.

L. As used herein, the word "permitee" means any person or entity authorized by you or any agency to conduct any activity in a National Forest or other federal reservation.

M. As used herein, the term "watershed of the Pecos River" is the area shown on Attachment A to these interrogatories. Under court order, the adjudication extends to Avalon Dam, and to waters tributary to the Pecos River at or above Avalon Dam. For purposes of these interrogatories only, the southerly boundary of the Pecos River watershed involved in this adjudication is fixed by a line having one point at the SE corner, T. 23 S., R. 21 E., and another at the SE corner, T. 23 S., R. 21 E., projected to the limits of the watershed. Generally, Rocky Arroyo and Dunniway Canyon and tributaries are north of this line, and Dark Canyon and tributaries are south of it. Cf. Plate 3, Ground-Water Report 3, Geology and Ground-Water Resources of Eddy County, New Mexico, Hendrickson & Jones, N.M. Ins. Min. & Tech., 1952. In any instance in which the United States claims lands of a federal reservation shown as included within the "watershed of the Pecos River" are not in fact included therein, such claims should be stated in response to questions concerning such reservation.

INTERROGATORIES

A. Identify the person or persons principally responsible for answering these Interrogatories.

B. Identify all reservations of the United States within the watershed of the Pecos River, excluding therefrom the Lincoln National Forest, Rio Hondo -Bonito-Ruidoso watersheds, and the Mescalero Indian Reservation.

C. As to each reservation of the United States identified in response to question No. 2, has the United States at any time prepared an inventory of current and forseeable water use within such reservation?

D. If the answer as to any identified federal reservation in question No. 3 is yes, please state each current and forseeable water use included on the most recent inventory, identifying such use by number, stating point of diversion, place and purpose of use, current use diversion rates, whether such use is under a special use permit or not, the claimed priority of each such use, and the forseeable extent of such use. In lieu of such a statement, the inventory may be attached.

E. State each individual claim by the United States under the reserved water rights doctrine for each federal reservation within the Pecos River watershed, by reservation, in the following particulars:

1. whether such claim involves a diversion of water, or maintenance of an instream flow rate or of springs in natural condition;

2. if such claim involves diversion of water, the point or points of diversion;

3. if such claim involves instream flows or spring maintenance in natural condition, the location or locations for each spring, and all points on each watercourse where instream flow rates are claimed;

4. if such a claim involves a diversion of water, the maximum diversion claimed for present and future uses;

5. if such a claim is for instream flows, the flow rates claimed in c.f.s. on an average monthly basis, for each month of the year;

6. if any claim involves diversion of water, state the place of use of such water, and the use which is or may be made of the water;

7. the purpose or purposes of the reservation upon which each claim is asserted;

8. the date of reservation of each claim.

F. State each individual claim by the United States for each reservation for diversion, storage, carriage or use of the public surface or ground waters of the State of New Mexico on reserved or acquired lands within the exterior boundaries of each reservarion within the Pecos River watershed, in the following particulars:

1. whether public surface water, or ground water;

2. point of diversion;

3. place and purpose of use;

4. date at which works were initiated, and at which water was applied to beneficial use;

5. any permit or license issued by the State Engineer therefor.

G. For each location at which an instream flow rate or spring maintenance claim is made, state separately:

1. if the claimed rate of flow or natural condition will staisfy more than one purpose of the reservation, the flow or condition necessary to satisfy each claimed purpose;

2. why the particular rate of flow on an average monthly basis, or natural condition, is necessary to satisfy the purpose or purposes of the reservation upon which the claim is made;

3. why a lesser rate of flow or a reduced spring water supply would not fulfill the prupose or purposes of the reservation upon which the claim is made;

4. whether, as to each location for which an instream flow claim is made, there has been an average monthly flow at a lower rate than those rates claimed for any month from January 1, 1965 to the present, and identify such months;

5. whether, as to each location at which instream rates of flow are claimed, the stream is gaining groundwater inflow from an aquifer, losing flow to an aquifer, or not hydrologically connected to an aquifer.

H. State the width of the stream at each location at which an instream rate of flow is claimed.

I. Identify separately for each national forest and location at which you claim reserved water rights, including rates of instream flow, for timber preservation and/or production purposes, all documents which discuss the need for reserved water rights to fulfill such purposes at or near such locations.

J. State separately, for each national forest and location at which you claim reserved warer rights, including rates of instream flow, for timber preservation and/or production purposes, whether

persons employed by you or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including but not limited to transcripts, notes or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

K. Identify separately, for each national forest and location at which you claim a reserved water right, including instream rate of flow, for watershed management purposes all documents which discusss the need for water to fulfill such purposes at or near such locations.

L. State separately, for each national forest and location at which you claim reserved water rights, including instream rates of flow, for watershed management purposes, whether persons employed or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including but not limited to transcripts, notes, or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such

conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

M. State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the claims of the United States as to the purposes for which the lands were reserved.

N. State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the statutory authority claimed by the United States to support the reservation of lands by the United States, or in lieu thereof, the wording of the proclamation, order, or writing purporting to accomplish the reservation of lands.

O. State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

1. the date of commencement of the use of water, and of works for diversion or carriage thereof;
2. the point of diversion, by quarters of quarter sections;
3. the use to which the water has been applied;
4. the place of use;
5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

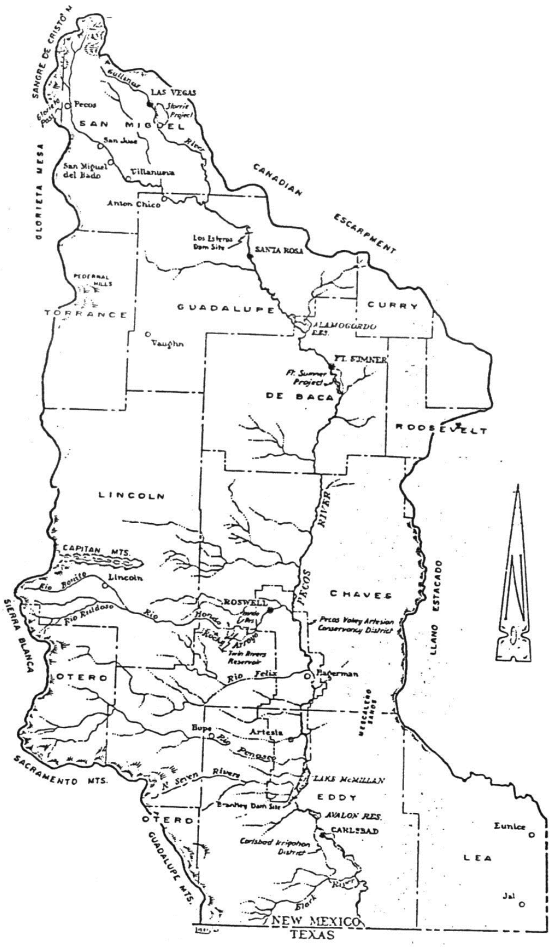
Don Klein

Richard A. Simms
Don Klein
Legal Bureau
State Engineer Office
Bataan Memorial Bldg.
Santa Fe, New Mexico 87503

I certify service of the foregoing upon counsel of record by mail, postage pre-paid, this 3rd day of July, 1979.

Don Klein
Don Klein

00-00-0000: topographical map of new mexico



IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel., S. E. REYNOLDS, State Engineer, and PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT, Plaintiffs, vs. L. T. LEWIS, et al., UNITED STATES OF AMERICA, Defendants.	)	Nos. 20,294 and 22,600 Consolidated

ANSWERS TO INTERROGATORIES

INTERROGATORY M:

State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian Reservation, the claims of the United States as to the purposes for which the lands were reserved.

ANSWER: Pecos National Monument

Purpose for reservation

Act to establish Pecos National Monument (June 28, 1965 - 79 Stat 195) which reads in part .... "to set apart and preserve for the benefit and enjoyment of the American people at site of exceptional historic and archaeological importance....including the remains and artifacts of seventeenth century Spanish mission and ancient Indian pueblo...."

The Secretary shall administer, protect and develop the national monument in accordance with the provisions of the Act of August 25, 1916 (39 Stat 535; 16 U.S.C. 1 et. seq) as amended and supplemented.

ANSWER: Fort Union National Monument

Purpose for reservation

Act to establish Fort Union National Monument (June 28, 1954 - 68 Stat 298) states the purpose is ...."to preserve

and protect, in the public interest, the historic Old Fort Union, ... and to provide public access thereto...." Section 2 of the same act further states that ...."Fort Union National Monument" and thereafter shall be administered by the Secretary of Interior in accordance with the laws and regulations applicable to national monuments.

Interpreting Section 2, it is evident that the expressed intent of the Congress is to regulate the use of the monument in accordance with the fundamental purpose expressed in the Act to establish the National Park Service (Act of August 25, 1916 - 39 Stat 535; U.S.C. 1 et. seq) as amended and supplemented.

ANSWER: Gran Quivira National Monument

Purpose for reservation

Presidential Proclamation (No. 882 - November 1, 1909 - 36 Stat 2503) established the monument as authorized by Act of Congress approved June 8, 1905 titled "An Act for the Preservation of American Antiquities" (34 Stat. 225) calls for the preservation of the largest and most important of the early Spanish church ruins known as Gran Quivira together with numerous Indian pueblo ruins in the vicinity. The above was amended by Presidential Proclamation (No. 1545 - November 25, 1919 - 41 Stat 1788) to adjust by expansion the boundaries of the monument and to restate that the monument will be supervised, controlled, and managed in accordance with the Act to establish a National Park Service (Act of August 25, 1916 - 39 Stat 535).

INTERROGATORY O:

State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

1. the date of commencement of the use of water, and of works for diversion or carriage thereof;

2. the point of diversion, by quarters of quarter sections;
3. the use to which the water has been applied;
4. the place of use;
5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

ANSWER: 1. Pecos National Monument

a) Well

1) prior to December 7, 1941 when well was drilled for use by State Historical Museum. System consists of well, pump, 3 pressure tanks, pumphouse and distribution system. Distribution system was completed by 1968.

2) Point of diversion is NW¼ NW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation, and safety.

4) within the external boundaries of the monument.

5) See Interrogator M. Pecos National Monument.

b) Poisoned Spring - Intermittent natural dispersed surface flow

1) Priority date claimed June 28, 1965, natural flow.

2) Point of issue NE¼ SE¼ SE¼, Sec. 5, T15N, R12E, NMPM

3) Natural flow to support park environment (flora and fauna) along its entire diffused flow path within the monument.

4) Within the external boundaries of the monument.

5) See Interrogatory M, Pecos National Monument.

c) Arroyo del Pueblo

1) Priority date claimed June 28, 1965 - natural flow minus all appropriated waters before the aforementioned date.

2) Along the entire approximate length of the arroyo within the external boundaries of the monument. The Arroyo enters the monument at NW¼ SE¼ SE¼, Sec. 5, T15N., R12E., NMPM and leaves the monument at NW¼ SW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Within the identifiable arroyo channel.

4) Within the identifiable arroyo channel.

5) See Interrogatory M, Pecos National Monument.

2. Fort Union National Monument

a) Well

1) Water system consists of 325 feet - 8-5/8" OD well equipped with pump, pumphouse, pressure tank, 50,000 gallon storage tank with connecting water lines. Entire system was constructed and water use began on/about January 23, 1959.

2) Point of diversion SE¼ SW¼ SE¼, Sec. 3, T19N, R18E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation and safety.

4) Within the external boundaries of the monument.

5) See Interrogatory M - Fort Union National Monument.

3. Gran Quivira National Monument

a) Well

1) Water supply system consists of 638 foot - 8" well equipped with pump, 50,000 gallon storage, pumphouse and distribution lines. Water well was drilled by April 29, 1959, and remaining system by March 7, 1962. This well source replaced an 875 foot, 6" well drilled within the monument. The water was used for utility purposes only because of its poor quality. Drinking water was hauled in by park residents. The well was drilled sometime in the mid 30's.

2) Point of diversion NE¼ NW¼ SE¼, Sec. 4, T1S., R8E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation and safety.

4) Within the external boundaries of the monument.

5) See Interrogatory M, Gran Quivira National Monument.

IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel., S. E. REYNOLDS, State Engineer, and PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT,	)	
Plaintiffs,	)	
vs.	)	Nos. 20,294 and 22,600 Consolidated
L. T. LEWIS, et al., UNITED STATES OF AMERICA,	)	
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ANSWERS TO INTERROGATORIES

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State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian Reservation, the claims of the United States as to the purposes for which the lands were reserved.

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Purpose for reservation

Act to establish Pecos National Monument (June 28, 1965 - 79 Stat 195) which reads in part .... "to set apart and preserve for the benefit and enjoyment of the American people at site of exceptional historic and archaeological importance....including the remains and artifacts of seventeenth century Spanish mission and ancient Indian pueblo...."

The Secretary shall administer, protect and develop the national monument in accordance with the provisions of the Act of August 25, 1916 (39 Stat 535; 16 U.S.C. 1 et. seq) as amended and supplemented.

ANSWER: Fort Union National Monument

Purpose for reservation

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and protect, in the public interest, the historic Old Fort Union, ... and to provide public access thereto...." Section 2 of the same act further states that ...."Fort Union National Monument" and thereafter shall be administered by the Secretary of Interior in accordance with the laws and regulations applicable to national monuments.

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ANSWER: Gran Quivira National Monument

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Presidential Proclamation (No. 882 - November 1, 1909 - 36 Stat 2503) established the monument as authorized by Act of Congress approved June 8, 1905 titled "An Act for the Preservation of American Antiquities" (34 Stat. 225) calls for the preservation of the largest and most important of the early Spanish church ruins known as Gran Quivira together with numerous Indian pueblo ruins in the vicinity. The above was amended by Presidential Proclamation (No. 1545 - November 25, 1919 - 41 Stat 1788) to adjust by expansion the boundaries of the monument and to restate that the monument will be supervised, controlled, and managed in accordance with the Act to establish a National Park Service (Act of August 25, 1916 - 39 Stat 535).

INTERROGATORY O:

State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

1. the date of commencement of the use of water, and of works for diversion or carriage thereof;

2. the point of diversion, by quarters of quarter sections;
3. the use to which the water has been applied;
4. the place of use;
5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

ANSWER: 1. Pecos National Monument

a) Well

1) prior to December 7, 1941 when well was drilled for use by State Historical Museum. System consists of well, pump, 3 pressure tanks, pumphouse and distribution system. Distribution system was completed by 1968.

2) Point of diversion is NW¼ NW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation, and safety.

4) within the external boundaries of the monument.

5) See Interrogator M. Pecos National Monument.

b) Poisoned Spring - Intermittent natural dispersed surface flow

1) Priority date claimed June 28, 1965, natural flow.

2) Point of issue NE¼ SE¼ SE¼, Sec. 5, T15N, R12E, NMPM

3) Natural flow to support park environment (flora and fauna) along its entire diffused flow path within the monument.

4) Within the external boundaries of the monument.

5) See Interrogatory M, Pecos National Monument.

c) Arroyo del Pueblo

1) Priority date claimed June 28, 1965 - natural flow minus all appropriated waters before the aforementioned date.

2) Along the entire approximate length of the arroyo within the external boundaries of the monument. The Arroyo enters the monument at NW¼ SE¼ SE¼, Sec. 5, T15N., R12E., NMPM and leaves the monument at NW¼ SW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Within the identifiable arroyo channel.

4) Within the identifiable arroyo channel.

5) See Interrogatory M, Pecos National Monument.

2. Fort Union National Monument

a) Well

1) Water system consists of 325 feet - 8-5/8" OD well equipped with pump, pumphouse, pressure tank, 50,000 gallon storage tank with connecting water lines. Entire system was constructed and water use began on/about January 23, 1959.

2) Point of diversion SE¼ SW¼ SE¼, Sec. 3, T19N, R18E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation and safety.

Southwest Region

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

AUG 20 1980

MEMORANDUM

TO: Director, National Park Service

THROUGH Assistant Secretary, Fish and Wildlife

FROM: Assistant Solicitor, Parks and Recreation

SUBJECT: New Mexico v. Lewis, Answers to Interrogatories

The enclosed correspondence from the Justice Department asks for guidance on the filing of water claims for Pecos National Monument, Ft. Union National Monument and Gran Quivira National Monument in the above named case. This memorandum will point out the particular problems involved in asserting water rights to these monuments and evaluate alternatives available for responding to the interrogatories.

I. Pecos National Monument

Date of original reservation 6/28/65. Purpose of reservation as set forth in authorizing legislation is to preserve sites of exceptional historic and archeological importance and administer in accordance with the National Park Service Act of 1916. (79 Stat. 195).

a. Ground water

The NPS is utilizing water from a well drilled before 1941 on acquired (not reserved) land. Waters of underground streams are public waters in New Mexico and are subject to appropriation for beneficial use. NMSA 72-12-1. No permit or license to appropriate underground waters is required under New Mexico law unless a basin with reasonably ascertainable boundaries has been declared by the state engineer. NMSA § 72-12-20. Until a basin is declared by the state engineer, he may not exercise jurisdiction therein. McBee v. Reynolds, 399 P. 2d 110, 74 N.M. 783 (1965). See also, St. v. Mendenhall, 362 P.2d 998, 68 N.M. 467 (1961). In a conversation with Garland Moore, the hydrologist for the NPS at the SWRO in Santa Fe, he informed me that Pecos National Monument is on acquired land and that in 1976 the State engineer declared the area a closed basin. The NPS filed a declaration of use of

underground water in December 1977 with a disclaimer that the U.S. was filing as a matter of comity and disclaiming the applicability of state water laws. A declaration does not deny or admit to the authenticity of a water right, but only gives the state notice.

The Solicitor's Office has not pushed for assertion of federal reserved rights on acquired land and it is doubtful that the department will change its policy.

One alternative is to assert a non-reserved water right, for unappropriated water to carry out congressional objectives where state law does not recognize substantive bases for federal appropriation. This is distinct from the federal reserved right which arises where necessary to carry out the purposes of reservations of federal lands in specific areas. The Solicitor issued a comprehensive opinion on June 25, 1979, #M-36914 which outlined the parameters of the non-reserved water right. By memorandum dated February 4, 1980 from the Secretary to Director, NPS, it stated that agencies should not make any general assertions of non-reserved water rights in applications to state agencies or in any ongoing court proceedings without the approval of the appropriate Assistant Secretary. The other condition that must be met is that the non-reserved water right may be claimed where it is necessary that they be asserted or otherwise they will be lost.

The other alternative is to assert that the declaration of use of underground water made in December 1977 by the NPS was really a filing for a state water right and not done as a matter of comity. We would proceed then to perfect the state water right. It might be possible to negotiate with the state that if they recognize our state water right we will not file a reserved water right claim.

Recommendation: We should negotiate with the state to try and perfect a water right in the well pursuant to state law. If this is unsuccesful, then a request should be made to the Assistant Secretary for permission to claim a non-reserved right.

b. Surface water

The NPS also uses the natural flow of Arroyo del Pueblo. Arroyo del Pueblo flows through the monument area and we could assert a claim to the natural flow (instream flow) to support park environment along the arroy's channel (ecosystem maintenance).

Once again an assertion of federal reserved rights is inappropriate because the monument is all acquired land.

Under New Mexico law, all natural water flowing in streams and watercourses belong to the public and are subject to appropriation for beneficial use. NMSA 72-1-1. Beneficial use is the basis the measure and the limit to the right to the use of water. NMSA 72-12-1. There has not been any filing of use of this spring with the state by the NPS. Although the spring is appropriable, there is a question as to whether in-stream use for ecosystem maintenance is a beneficial use in New Mexico.

In 1972, the Supreme Court of New Mexico addressed the issue of whether physical efforts of man resulting in visible diversion of water are necesary to the establishment of a water right. The court held that a man-made diversion, together with intent to apply water to beneficial use and actual application of the water to beneficial use is necessary to claim water rights by appropriation in New Mexico for agricultural purposes. State Ex. Rel. Reynolds v. Miranda, 493 P.2d 409, 83 N.M. 445 (1972). The court limited the holding to apply to appropriation for agricultural purposes but placed great weight on the condition that there be a taking or diversion from the stream. Id. at 410. It is unlikely that the state would recognize instream flow for ecosystem maintenance as a beneficial use because no diversion is involved for this use.

Recommendation: A filing with the state may prove futile but one should be attempted to determine once and for all if the state will recognize instream flow for ecosystem maintenance as a beneficial use. If not, then this seems a clear case for the assertion of a federal non-reserved water right and a request should be made from the Assistant Secretary to assert it.

c. The NPS also uses the intermittent natural flow of Poisoned Spring for ecosystem maintenance. The dispersed flow of the spring runs entirely within the boundaries of the monument and no filing for appropriation was ever made to the state.

Assertion of a federal reserved right is inappropriate because the spring exists on acquired land.

Assertion of a state water right suffers from the same problem as pointed out with Arroyo del Pueblo (i.e. no state recognition of instream flow for ecosystem maintenance as a beneficial use).

Assertion of a non-federal reserved right is also possible in this situation.

Recommendation: Unlike Arroyo del Pueblo, Poisoned Spring arises and terminates completely within the monument boundaries and the U.S. controls access to the waters, thus the issue of quantifying an instream flow is largely academic. For this reason, we have nothing to lose by either filing with the state for a water right or asserting a non-federal reserved right.

II. Ft. Union National Monument

Date of original reservation: 6/28/54. Purpose of reservation is to preserve and protect historic Old Fort Union and provide adequate public access thereto. (68 Stat. 298).

The NPS drilled a well in 1959 in an undeclared basin area. In 1960, the NPS filed a declaration of use of underground water with the state with a disclaimer clause. The basin is still undeclared.

III. Gran Quivera National Monument

Date of original reservation: 11/1/09. Purpose is to preserve the historic ruins (36 Stat. 2503) 11/1/09 and to administer in accordance with the National Park Service Act of 8/25/16.

The NPS drilled a well in 1959 in an undeclared basin which replaced an original well drilled in 1930 within the park boundary. This new well was drilled on private property about one half mile outside the monument boundary. The NPS has a permanent easement from the monument to the well site.

Recommendation for Ft. Union and Gran Quivera N.M. By letter dated March 4, 1980 from the regional director, he notes that both of these monuments are not within the watershed that is being adjudicated even though underground waters may be hydrologically connected. Therefore there is no need to asert any water right claims to these two monuments.

This office would appreciate a response in two weeks so that the appropriate answers to interrogatories may be submitted to the Justice Department. If you have any questions please feel free to contact Steve Hernandez of this division at X7957.

David A. Watts

06-30-1980: letter to solicitor; department of the interior from united states department of justice regarding documents which were

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

June 30, 1980

Address Reply to the
Division Indicated
and Refer to Initials and Number

MEF:KAMarra
90-1-2-710

Clyde O. Martz, Esquire
Solicitor
Department of the Interior
Washington, D.C. 20240

Attention: Gary Widman, Esquire
Associate Solicitor for
Parks and Recreation

Dear Mr. Martz:

Re: State of New Mexico v. L.T. Lewis, et al.,
Civil No. 20,294, District Court of
Chaves County, New Mexico

Enclosed please find a letter of June 16, 1980, and accompanying documents which were mistakenly sent to the Associate Solicitor of Indian Affairs.

The letter of June 16 explains the information we are seeking. We would appreciate a response as soon as possible. Please note that 16 U.S.C. §7j - 2(g) may have a bearing on this matter.

Thank you for your assistance in this matter.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: Kenneth A. Marra

Kenneth A. Marra
Attorney

Enclosure

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

June 16, 1980

Address Reply to the
Division Indicated
and Refer to Initials and Number
MEF:KAMarra
90-1-2-710

Clyde O. Martz, Esquire
Solicitor
Department of the Interior
Washington, D.C. 20240

Attention: Hans Walker, Esquire
Acting Associate Solicitor
Division of Indian Affairs

Dear Mr. Martz:

Re: State of New Mexico v. L.T. Lewis et. al.,
Civil No. 20, 294, Chavez County,
Supreme Court of New Mexico

Enclosed please find a draft copy of answers to interrogatories which have been prepared by Nick Estes to be filed in the above-captioned case. As you will notice upon a review of them, Mr. Estes has included two claims for the natural flow of two springs located within the Pecos National Monument. These claims, if made, would be based upon the so called "federal appropriative right".

Due to the position taken by Secretary Andrus on the assertion of such water rights, Mr. Estes would like written authority to make these claims. We would appreciate your review of the claims and if you agree that they should be asserted, a letter acknowledging your concurrence.

Thank you for your assistance in this matter.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Kenneth A. Marra
Attorney

tates Attorney
que, New Mexico 87103

Attention: Charles Estes, Esquire
Assistant United States
Attorney

Southwest Region

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MEMORANDUM

AUG 12 1980

TO: Director, National Park Service

FROM: Assistant Solicitor, Parks and Recreation

SUBJECT: Assertion of Historic or Natural Stream Flows for NPS Reserved Water Rights

It has recently come to our attention that, in a number of on-going stream adjudications, NPS is prepared to assert water rights claims for historic or natural stream flows (e.g. the entire unappropriated instream flow as of the date of the NPS reservation) as the appropriate quantification of NPS instream flow reserved water rights. This memorandum briefly reviews the applicable law and policy on this subject, and cautions against generic use of an historic or natural stream flow standard for quantifying NPS instream flow reserved water rights.

It is our conclusion that an individual examination of the resource values associated with instream flows is required, and that instream flow reserved water rights may be claimed only to the extent necessary to conserve these resource values. In other words, instream flow reserved water rights claims are authorized only for that quantity of water which is required to protect the scenic, natural, wildlife and public enjoyment resource values that were the purpose for the National Park System reservation. While this approach may require the assertion of all historic or natural stream flows to conserve these resource values in some cases, in other cases lesser stream flows may still adequately conserve NPS resource values.

As you know, Solicitor's Opinion M-36914, 86 I.D. 553 (June 25, 1979), contains a comprehensive discussion of the reserved water rights doctrine and concludes that certain minimum stream flows could be asserted under the reserved water rights doctrine for reserved public domain National Park System lands. See 86 I.D. 553, 594-602. Specifically, under the "fundamental purpose" for National Park System reservation as articulated in 16 U.S.C. 1, minimum stream flows may be claimed by NPS to the extent water is required for:

1. Scenic, natural and historic conservation uses such as minimum stream flows for conservation of natural features (e.g. waterfalls) and aesthetic conditions,
2. Wildlife conservation uses such as minimum stream flows for the protection of aquatic life, and
3. Sustained public enjoyment uses such as minimum stream flows for water-borne public enjoyment and recreation. Id.

Solicitor's Opinion M-36914 accurately reflects the law that reserved water rights may be claimed only for that quantity of water which is "needed to accomplish the purposes of the reservation". 86 I.D. 553, 572. As reiterated in United States v. New Mexico, 438 U.S. 696, 699-702 (1978):

> The Court has previously concluded that Congress, in giving the President the power to reserve portions of the federal domain for specific federal purposes, impliedly authorizes him to reserve "appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.". . .[T]he Court has repeatedly emphasized that Congress reserved "only that amount of water necessary to fulfill the purpose of the reservation, no more." Each time this court has applied the "implied-reservation-of-water doctrine" it has carefully examined both the asserted water right and the specific purposes for which the land was reserved, and concluded that without the water the purposes of the reservation would be entirely defeated. This careful examination is required both because the reservation is implied, rather than expressed, and because of the history of congressional intent in the field of federal-state jurisdiction with respect to allocation of water. . .Where water is necessary to fulfill the very purposes for

> which a federal reservation was created, it is reasonable to conclude, even in the face of Congress' express deference to state water law in other areas, that the United States intended to reserve the necessary water. (Citations and footnotes omitted, emphasis in original).

The above-quoted language of the United States v. New Mexico decision indicates that the courts will be quite thorough and demanding in resolving the minimum quantity of water which is necessary to accomplish the purpose of NPS reservations.1/

Therefore, it is our view that a particularized assessment of the minimum stream flows necessary to conserve NPS scenic, natural, biotic and recreational purposes or resource values is required to adequately present and defend NPS instream flow reserved water rights in court.2/ Casual assertion of historic or natural stream flows, without underlying scientific analysis of why the entire stream flow is the minimum amount of water necessary to accomplish the purpose of a National Park System reservation, does not appear to be in accordance with the Solicitor's Opinion and reserved water rights case law, and, thus, likely will not carry the day in court.

Moreover, unsubstantiated claims to historic or natural stream flows would be at odds with the policy stated in the President's July 12, 1978 memorandum to federal land managing agency heads, including Secretary Andrus. In that memorandum, President Carter established the following policies governing the assertion of reserved water rights:

> Resolution of disputes involving Federal water rights shall include a willingness to negotiate and settle such rights in an orderly and final manner, seeking a balance with conflicting and established water uses. . .Utilize a reasonable standard when asserting Federal reserved water rights which reflects true Federal needs, rather than theoretical or hypothetical needs

based on the full legal extension of all possible rights.

Thus, it would appear that the assertion of historic or natural stream flows, when such stream flows are not supported by demonstrable "true Federal needs", is inconsistent with President Carter's policy memorandum.

In recent years, the main evidence relied upon to substantiate the right to natural flows consisted of the use of stream flow records. Some of the records reflected only recent measures because of the lack of measuring devices on the stream. In light of United States v. New Mexico and President Carter's policy memorandum, this type of evidence likely will not suffice. If we continue to assert natural flow claims using only stream flow records and no attempt is made to tie specific quantities of water to particular purposes or resource values, the courts may not entertain our claims. While in the past one state court has allowed us additional time to quantify after assertion of natural flow was denied, this practice may not continue because after United States v. New Mexico there is nothing to prevent other state courts from simply denying our claim because of lack of evidence.

In conclusion, we continue to urge NPS to be very thorough in establishing the nexus between the purposes or resource values to be protected and desired instream flow reserved water rights. We recognize that instream flow quantification methodologies are in their infancy, and that the development of supportable methodologies to quantify biotic, scenic, recreational and natural resource value water requirements will be a difficult task. However, we know of no other strategy to meet these legal and policy directives which will also ensure the successful confirmation of NPS instream flow reserved water rights. We therefore recommend that NPS prepare a strategy that will tie specific quantities of instream flow water needs to the purposes and resource values for individual NPS reservations. Steve Hernandez and Tom Lundquist of my staff are available to assist you in this effort.

David A. Watts

1/ Significantly, the New Mexico court also stated its view of Cappaert v. United States, 426 U.S. 128 (1976) in terms reflecting its minimum flow concerns:

> As the Court concluded, the pool was reserved specifically to preserve its scientific interest, principal of which was the Devil's Hole pupfish. Without a certain quantity of water, these fish would not be able to spawn and would die. . .The District Court thus tailored its injunction, very appropriately, to mimimal need, curtailing pumping only to the extent necessary to preserve an adequate water level at Devil's Hole. . . United States v. New Mexico, supra at 438 U.S. 701-702, note 4.

2/ We would note that this particularized inquiry into the purposes or resource values desired to be maintained through instream flow reserved water rights is the approach that Congress has mandated for asserting instream flow reserved water rights under the Wild and Scenic Rivers Act. The Wild and Scenic Rivers Act is the single situation where Congress has expressly addressed the quantity of instream flows assertable as reserved water rights. As developed in the Solicitor's opinion at 86 I.D. 607-609, Congress did not intend that wild and scenic river designation would automatically create a reserved water right to all unappropriated instream flows, but rather only waters necessary to accomplish the particular purposes for the wild and scenic river would be reserved.

Since Congres thought it was merely codifying existing case law on reserved water rights in the Wild and Scenic Rivers Act, it is reasonable to assume that Congress also did not believe that creation of prior NPS units served to automatically reserve all unappropriated instream flows.

6516000

L54(SWR)OM

MAR 04 1980

Memorandum

To: Field Solicitor, Santa Fe

From: Regional Director, Southwest Region

Subject: State of New Mexico v. L. T. Lewis
Civil Nos. 20294 and 22600

In response to Assistant U. S. Attorney Estes' letter of February 8, 1980 transmitted by your memorandum of February 13, 1980, the following information is submitted as requested.

1. NPS areas

Pecos National Monument is located within the Pecos River watershed. Fort Union and Gran Quivira National Monuments, while not located within the court ordered designated watershed, are probably hydraulically connected to the Pecos River watershed by sharing a common ground water system.

2. Typed and locations of water use:

Previously answered in Interrogatories M and O.

3. Date facilities were constructed:

A. Pecos National Monument

Records show that the United States acquired an existing water well which was drilled sometime before December 7, 1941, when the State Historical Museum operated the monument. Records further show that in 1968 a 1-inch water line, (390 feet), was added to the existing system by the United States.

In addition to the above, the United States claims all of the natural flow through Arroyo del Pueblo and to Poisoned Springs. Details are explained in Interrogatories M and O.

United States filed "Declaration of Owner of Underground Water Right" on July 18, 1978 and was assigned Declaration No. UP-500 by the State Engineer. United States claimed 20 af/annum for municipal purposes.

B. Fort Union National Monument

Fixed Property Records show that the original distribution system including the well was constructed by January 23, 1959.

United States filed "Declaration of Owner of Underground Water Right" in January 8, 1960 and has been assigned Declaration Nos. MISC 1-MA-5 by the State Engineer. The United States claimed 50,000 gallons per day (when development of the monument was completed) at a diversion rate of 50 gallons per minute. Water to be used for lawns, trees, and shrubs around residence and visitor center.

C. Gran Quivira National Monument

Fixed Property Records state the existing well was approved on April 29, 1959. The well site is located on Jack L. Kite Ranch to which the United States enjoys a permanent easement to maintain a well and for the installation of a pipe and electrical distribution line connecting the well site with the monument.

The above well replaced an 875 feet - 5-inch diameter well located within the monument which was abandoned because water from the well was non-potable but was used from about mid 1930's until 1959 for utility purposes only. Drinking water was hauled in from Mountainair. (Correspondence and Water Resources Management Plan draft).

Fixed Property Records show that on/about May 8, 1962 additional construction of water distribution was completed.

No claims to water have been filed by the United States.

Breakdown of acquired lands and withdrawn lands for each park area is enclosed.

Should you have any questions, please contact Garland Moore of this Office.

Robert L. Kerr

Enclosures

cc: Chief, Air & Water Resources Division, WASO, 492 (Atten: Vic Berta) (All with copy of incoming and enclosures)
Supt., Gran Quivira, Pecos, Fort Union
bcc:Moore, OM, SWR with incoming & enclosures
GMoore:og 3/3-80

PECOS NATIONAL MONUMENT

A right to use all groundwater underlying and surface waters on the following described lands known as Pecos National Monument (Act of June 28, 1965 - 79 Stat. 195).

NEW MEXICO PRINCIPAL MERIDIAN

Township	Range	Section	Subdivision
15N	12E	5	SE¼; E½E½SW¼; E½W½E½SW¼
		8	E½NE¼NW¼; E½W½NE¼NW¼; N½NE¼SE¼NW¼; NE¼NW¼SE¼NW¼; N½N½S½NE¼; N½NW¼

Of the above transaction, consisting of 278.7 acres more or less, reserves to the grantor, E. E. Fogelson and Greer Garson Fogelson, his wife, the right to take water for domestic and irrigation purposes from the lands conveyed, and the right to explore for water, to drill wells and install, maintain and replace pumps, flumes, etc. included are the rights of ingress and egress to exercise the rights reserved. All water used by the U. S. must be used for the administration and maintenance of Pecos National Monument. Deed to the U. S. was executed by E. E. Fogelson, et ux., on December 15, 1964, filed for record on December 29, 1964, and recorded in Miscellaneous Record 225 at Page 595, San Miguel County, New Mexico.

Title to the remaining 62.6 acres more or less, lying within the above description was acquired by the U. S. from the Board of Regents of the Museum of New Mexico on December 13, 1965. Mineral interests to the same parcel of land was quitclaimed to U. S. by Gross, Kelly and Company, a New Mexico Corporation on December 13, 1965.

L54(SWR)OM

FEB 29 1980

Memorandum

To: Field Solicitor, Santa Fe

From: Regional Director, Southwest Region

Subject: State of New Mexico v. Lewis
Civil Nos. 20294 and 22600

Responding to your memorandum of February 7, 1980, enclosed are the National Park Service's responses to Interrogatories "N" and "O."

In reviewing the enclosed, please note that Pecos National Monument is the only park area located within the court ordered portion of the watershed of the Pecos River to be adjudicated in this case. Fort Union and Gran Quivira National Monuments have been included since late 1960s because it was believed that the ground waters found in both areas are hydraulically connected to the surface and ground waters found within the watershed of the Pecos River.

Should you have any questions, please contact Garland Moore of this Office.

Robert I. Kerr

Enclosures

cc:
Chief, Division of Air & Water Resources, WASO, 492 (Atten: Vic Berte')
w/enclosures
Supt., Gran Quivira, Fort Union, Pecos w/enclosures
bcc:
Moore, OM, SWR w/enclosures

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
FEB 8 1980
Date
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* 2 om

United States Department of the Interior
OFFICE OF THE SOLICITOR
FIELD SOLICITOR
RM. 224, U.S. COURTHOUSE
P.O. BOX 1042
SANTA FE, NEW MEXICO 87501
February 7, 1980

Memorandum

To: Regional Director, Southwest Region, National Park Service

From: Field Solicitor, Santa Fe

Subject: State of New Mexico v. Lewis
Civil Nos. 20294 and 22600

Enclosed is a letter to this office dated February 4, 1980 from U.S. Attorney for the District of New Mexico. The letter is self explanatory. Please compile information in Interrogatory "O" in accordance with Instruction "M" and return to this office.

Gayle E. Manges
Field Solicitor, Santa Fe

Enclosure

cc:
U. S. Attorney
District of New Mexico
P.O. Box 607
Albuquerque, New Mexico 87103
Attn: ~~Jim Grant~~

IXK54 PECO

W1823 PECO

02-04-1980: letter to field solicitor from united states department of justice regarding interrogatories: interrogatory '0' requires infor

U.S. Department of Justice

United States Attorney
District of New Mexico

Post Office Box 607
Albuquerque, New Mexico 87103

February 4, 1980

Gayle Manges, Esq.
Field Solicitor
Department of Interior
P.O. Box 1042
Santa Fe, New Mexico 87102

RE: STATE OF NM v. LEWIS
Civil Nos. 20294 and 22600

Dear Gayle:

I enclose a copy of Interrogatories from the State of New Mexico in this case. Answers were due today and I have responded on behalf of the Forest Service. Interrogatory "O" obviously requires information from the Bureau of Land Management and possibly the National Park Service and I have indicated in my response that this information will be made available as soon as possible.

Justice forwarded these Interrogatories to the Department of the Interior in July, 1979, but it is obvious that they were never forwarded to you. I apologize for not checking up on this and will appreciate whatever can be done to expedite preparation of a response.

As I indicated in my correspondence about the Santa Fe River case, I believe we are only required to claim water rights for water uses which involve either wells, developed springs, diversions from a watercourse, or storage facilities with a capacity greater than ten acre-feet. We need not compile the information sought in Interrogatory "O" for small stock-tanks which do not involve a diversion of water away from a watercourse or uses of naturally-occuring water other than as listed above. You should also note that the watershed involved is limited to the area above Avalon Dam (see Instruction "M").

Thank you very much for your help.

Very truly yours,

R. E. THOMPSON
United States Attorney

CHARLES N. ESTES, JR.
Assistant U.S. Attorney

CNE:mic
Enclosure
cc: Herb Garn (w/encl.)
Ken Marra, Esq.
Solicitor, Department of Interior
Washington, D.C. 20240

(w/encls.)

L1425(SWR)OLA

October 20, 1976

Memorandum

To: Field Solicitor, Santa Fe

From: Chief, Division of Land Acquisition, Southwest Region

Subject: New Mexico, et al. v. L. T. Lewis, et al., C.A. No. 20294, Dist. Ct., Chaves County, State of New Mexico

In response to your memorandum of October 8, 1976, subject as above, this is to advise you that no lands administered by the National Park Service are situate in the Rio Hondo Watershed in the State of New Mexico; however, in keeping with the United States amended response to the aforementioned case dated May 1965, we recommended that the entire area of Carlsbad Caverns National Park, Gran Quivira, Fort Union, and Pecos National Monuments be included. This office (SWR-OM) forwarded to you on April 24 and May 24, 1974, legal descriptions of the above park areas with our opinion as to type of water rights claimed for each legal subdivision.

"/s/ BREWSTER LINDNER"

Brewster Lindner

cc:
SWR-O, w/cy inc. ✓
Gary Moore, SWR-OM

United States Department of the Interior
OFFICE OF THE SOLICITOR
FIELD SOLICITOR
RM. 224, U.S. COURTHOUSE
P.O. BOX 1042
SANTA FE, NEW MEXICO 87501

October 8, 1976

DIV. OF LAND ACQ-SWR 10/13/76

	Action	Info	Initial	Date
Lindner	3			
Kasper	2		KK	10/14
Johnsen	1		PJ	10/12
[illegible]	4			
[illegible]				
Romero				
Bith Lee				
Buff Lee				
Hosp Lee				
File				

Memorandum

To: Chief, Division of Land Acquisition, SWRO

From: Field Solicitor, Santa Fe

Subject: New Mexico, et al. v. L. T. Lewis, et al., C.A. No. 20294, Dist. Ct., Chaves County, State of New Mexico

Enclosed are copies of various correspondence concerning the existence of any Federal lands in the Rio Hondo Watershed. If the description of the Watershed is not available, a copy can be obtained in the State Engineer's Office for the State of New Mexico. Please advise whether any lands administered by your agency are situate in the Watershed. If so, please advise whether any water rights for such lands have been acquired or otherwise obtained.

Gayle E. Manges
Field Solicitor, Santa Fe

Enclosures

cc:
Gary Moore - w/copies of enclosures

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALBUQUERQUE FIELD OFFICE
ROOM 7102 FEDERAL BLDG. AND U.S. COURTHOUSE
P.O. BOX 1696
ALBUQUERQUE, NEW MEXICO 87103

IN REPLY
REFER TO:

October 6, 1976

MEMORANDUM

TO : Field Solicitor, Santa Fe
Field Solicitor, Amarillo

FROM : Field Solicitor, Albuquerque

SUBJECT : New Mexico, et al. v. L.T. Lewis, et al., Civ. No. 20294, Dist. Ct., Chaves County, State of New Mexico

The above-styled litigation was expanded a few years ago to include a general water rights adjudication of the Rio Hondo and its surface and underground tributaries in southeastern New Mexico. The original subject matter of the litigation, the adjudication of the Pecos River in the Roswell Basin, had been substantially completed at the time of the inclusion of the Rio Hondo into the adjudication. The principal surface tributaries to the Rio Hondo are the Rio Bonito and the Rio Ruidoso, although all minor tributaries and ground water basins in the Rio Hondo watershed are also involved.

In April 1976, the United States filed its Answer in the expanded Rio Hondo adjudication, asserting water rights for the Lincoln National Forest and as trustee for the Mescalero Apache Indian Tribe. No other federal rights were asserted.

I have been requested by our Washington Office (copy of Associate Solicitor Reid Chamber's memorandum of September 28, 1976 to me is enclosed) to gather and furnish additional information which will enable the Justice Department to determine whether it is desirable

RECEIVED
OCT 7 1976
Department of the Interior
FIELD SOLICITOR
Santa Fe, New Mexico

to assert water rights for any other federal lands in the Rio Hondo watershed.

I am also enclosing a copy of the Justice Department's letter of September 22, 1976, to the Solicitor, requesting this information. That letter sets out the specific information required if there are federal lands other than the national forest and Indian reservation covered by the Answer.

Please inquire of the respective agencies served by your offices, specifically the Bureau of Land Management and the Bureau of Reclamation, as to any water rights which should be asserted in their behalf in this litigation. Your cooperation will be appreciated.

Lotario D. Ortega
Field Solicitor

Encls.

cc: R/Sol., Tulsa

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SEP 28 1976

MEMORANDUM

To: Field Solicitor, Albuquerque

From: Associate Solicitor, Indian Affairs

Subject: New Mexico v. Lewis, No. 20294, District Court for Chaves County

Attached is a letter from the Department of Justice requesting additional material regarding this case. Please gather the necessary information and provide us with a draft response to Justice.

If you have any questions, please contact Scott McElroy (343-6967) of this office.

Reid P. Chambers

Attachments

UNITED STATES DEPARTMENT OF JUSTICE

INTERIOR DEPT. WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

MEF:DNKing
90-1-2-710

SEP 23 1976

September 22, 1976

SOLICITOR'S DOCKET

90-1-2-710
#15816
#41

H. Gregory Austin, Esquire
Solicitor
Department of the Interior
Washington, D.C. 20240

Attention: Reid P. Chambers, Esquire
Associate Solicitor
Division of Indian Affairs

Dear Mr. Austin:

Re: State of New Mexico, et al. v. L. T. Lewis, et al., District Court for Chaves County, No. 20294, State of New Mexico (Forest Service Claims).

As you may know, the above action is a general water adjudication involving the Rio Hondo and its surface and underground tributaries in the State of New Mexico. The major surface tributaries of the Rio Hondo are the Rio Bonito and the Rio Ruidoso. All of the minor tributaries and ground water basins in the watershed would also be involved. The United States was brought into the action by virtue of a consolidated petition which was filed several years ago. A copy of this petition is enclosed. The intervening years have been consumed with the resolution of certain jurisdictional questions, and in mid-April of this year the United States filed its answer. A copy of this answer is enclosed.

In its answer, the United States asserted water rights for the Lincoln National Forest and as trustee for the Mescalero Apache Indian Tribe. No other federal rights were asserted. To insure that no federal rights are omitted, please determine whether it is desirable to assert water rights for any other federal lands in this watershed which are under the jurisdiction of your Department. If any lands under the jurisdiction of your Department have rights to or currently have water being used on them in this watershed, please provide us with the following information:

Federal Reserved Rights

1. It will be necessary to establish that the water uses for which we assert a reserved right are within the "purposes" for which the federal enclave was set aside from the public domain. In this regard, please provide us with copies of all documents which indicate the purpose for which the federal enclave was created.

2. It will also be necessary to provide information as to the quantum of the reserved water rights involved in this litigation. In this regard. please provide us with the following:

a. The amount of water claimed for each present use, i.e. each stockwater site, hot spring, domestic well.

b. The amount of water claimed for each foreseeable future use.

c. The location by legal description of each present and foreseeable use.

d. The water source of each present or foreseeable use.

e. The date of priority of each present or foreseeable use. This would be the reservation date for that parcel of land where the use is located.

f. The purpose or purposes for each present or foreseeable use.

Rights Under State Law

3. It is anticipated that some of the federal lands in this watershed are lands acquired from private individuals by purchase, exchange, or condemnation. With respect to these lands, a reserved right would not attach. Water rights for these lands would be derived under state law. With respect to any such lands in the watershed for which you claim water rights, please provide us with the following information:

a. The amount of water claimed for each diversion or use.

b. The legal description of the point of diversion or use.

c. To establish the priority for each right, indicate the date of applicatcn of water to beneficial use or the date when project development was undertaken.

d. The water source for each diversion or use to which you claim a legal right.

e. Any documentation evidencing a legal right to the use of water or substantiating points 1a-d.

4. With respect to the presentation of the above points (1 through 3), it is desirable to prepare one or more maps of the federal lands involved which set forth certain information. The map or maps should designate:

a. The areas of the involved federal lands in the watershed.

b. A breakdown of these lands by date of withdrawals or acquisition.

c. The location of the various water uses. The exact form of the exhibit(s) will depend on the particular facts involved. Preparation should be undertaken after consultation with the legal personnel involved in the preparation of this case.

5. Finally, please list the names, addresses, and official positions of any people who have personal knowledge of the facts involved in the above, and a brief summary of the matters about which they can testify.

This letter is intended to provide guidelines for the preparation of evidence for use in the above action. As the facts are developed, modification of the matters set forth in this letter will probably be desirable. Mr. Douglas N. King (202-739-2639) of this office and Mr. Neck Estes (505-474-3858) with the United States Attorney's office in Albuquerque are familiar with this matter if you should have any questions regarding the above. Your prompt attention to this matter is appreciated.

Sincerely,

Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division

By: Myles E. Flint
Myles E. Flint
Acting Chief, Indian Resources Section

Enclosures

cc: United States Attorney
Albuquerque, New Mexico 87103

Attention: Charles N. Estes, Esquire
Assistant United States Attorney

05-22-1974: letter to solicitor from regional director, southwest region regarding list of all known developed and undeveloped sprin

Southwest Region
P. O. Box 728
Santa Fe, New Mexico 87501

L54

MAY 23 1974

Mr. Gayle Manges, Solicitor
P. O. Box 1042
Santa Fe, New Mexico 87501

Dear Mr. Manges:

In response to your request for additional information, enclosed are a list of all known developed and undeveloped springs for each of the following park areas.

Fort Union National Monument
Pecos National Monument
Gran Quivira National Monument
Carlsbad Caverns National Park

Should additional information be required please contact, as you have done, Garland Moore, extension 412, of this office.

Sincerely yours,

/S/ Carl O. Walker

for Joseph Rumburg
Regional Director
Southwest Region

Enclosures

cc:
Superintendents, CACA, GRQU, PECO, and FOUN
Chief of Maintenance, MRM-WASO
Attn: Vic Berte', Water Resources
RSN-SWR

GMoore:ba 5/22/74

Fort Union and Gran Quivira National Monuments have no developed or undeveloped springs.

Pecos National Monument

Poison Spring (Undeveloped)

Township	Range	Section	Subdivision
15N	12E	5	NW¼SE¼SE¼

CARLSBAD CAVERNS NATIONAL PARK

Township	Range	Section	Subdivision	Status	Status
24S	24E	25	NW¼NW¼	Developed	Kid Spring Improvements date - 1918-1920 Type - Metal Tank, Dam By Whom - Unknown Flow, 5-20 gph
		28	NE¼NE¼	Developed	East and West Seep-Lechugilla Canyon. Developed for stock watering with earth and rock tank. Developed in conjunction with Lowe property. By Whom - Unknown Date - Unknown Flow, 3-15 gph
		31	NW¼	Undeveloped	Seep Pot holes in stream bed - no record of improvements or flow available.
		33	NE¼SW¼	Developed	Lowe Ranch Spring Improvements - Date Unknown Type - Pipe, Metal Tub, Rock Tank By Whom - Lowe Flow, 0-4 gph NPS acquired property by condemnation, September 7, 1951.

Township	Range	Section	Subdivision	Status	Remarks
		33	SE¼SE¼	Developed	Upper Lowe Ranch Seep Improvements - Date Unknown Type - Earthen Tank By Whom - Lowe Flow, 1-5 gph
		34	SW¼SE¼	Undeveloped	Seep Flow, Unknown
		34	SE¼SE¼	Undeveloped	Potholes Quantity, 50-60 Gallon/Pothole (Estimated)
		35	SE¼NE¼	Undeveloped	Spider Cave Seep Flow, 115 to 3 gph
		36	NW¼NE¼	Developed	Oak Springs Improvement Date - 1930 Type - Water Tanks and Pumping System By Whom - NPS Flow, 2-307 gph
	25E	19	SW¼SE¼	Undeveloped	Grammer Seep (Middle Upper) Flow, 0-15 gph
		19	S½SW¼	Undeveloped	Grammer Spring (East Upper) Flow, 0-4 gph
		30	NE¼SW¼	Developed	Big Hill Seep Improvements Date - 1935 (?) Type - Road Container By Whom - NPS Flow, 2-7 gph

Township	Range	Section	Subdivision	Status	Remarks
		30	SW¼NE¼	Undeveloped	Lower Grammer Seep Flow, 0-0.5 gph
		30	NE¼NW¼	Undeveloped	Grammer Seep (West Upper) Flow, 2-2.5 gph
25N	22E	36	NE¼NE¼	Undeveloped	Name - None Flow, ? gph
	23E	6	E½SW¼	Undeveloped	Name - None Flow, 4 gph
		7	NE¼NW¼	Developed	Kirkland Spring Improvement Date - Unknown Type - Earthen Tank By Whom - Unknown Flow, 3-5 gph
		8	SE¼NW¼	Developed	Able Seep Improvement Date - Unknown Type - Cement Catch Basin By Whom - Unknown Flow, No Record
		9	SW¼SW¼	Undeveloped	Potholes Capacity of each 200-300 gallons (estimated).
		9	NW¼SW¼	Undeveloped	Old Quaker Flow, Seep
		9	NE¼SW¼	Undeveloped	Name - None Flow, Seep

Township	Range	Section	Subdivision	Status	Remarks
		10	NW¼SE¼	Undeveloped	Name - None Flow, 8 gph (Estimated)
		10	NE¼NE¼	Undeveloped	Name - None Flow, 5 gph (Estimated)
		11	SE¼SW¼	Undeveloped	Slaughter Pothole Flow, No Record
		12	SW¼SE¼	Developed	Maple Spring Improvement Date - Unknown Type - Metal Tank, Pipe By Whom - Unknown Flow, 0-5 gph
		12	SE¼SW¼	Developed	Rock Wren Springs Improvement Date - 1920s Type - Metal Tank Check Dam By Whom - Coldwell and Clements Flow, 3-5 gph
		14	NE¼SE¼	Developed	Clemond Roach Seep Improvement Date - 1906 (?) Type - See Below By Whom - Kip McKinney Flow, 1-5 gph Type of Improvement: Water piped from seep to metal tank setting on concrete base. Base exists.

Township	Range	Section	Subdivision	Status	Remarks
		18	SW¼NW¼	Developed	Putnam Spring Improvement Date - 1965 Type - Pipeline to building, corral By Whom - NPS Flow, 1.5-8 gph
		28	NE¼NW¼	Developed	Iron Pipe Spring Improvement Date - 1920s Type - Pipe, Earth Tank By Whom - Unknown Flow, 3-8 gph
		28	NE¼NW¼	Undeveloped	Cut Log Spring Seeps cover area 50'x100' Flow, No Record
		28	NW¼NW¼	Unknown	Pine Cone Spring Flow, No Record
		29	SW¼NE¼	Developed	Longview Spring Improvement Dates - 1912-1918 (?) Type - Pipe from Spring to Earth Tank By Whom - Nunn and Roberts Flow, Drip - 20 gph
		29	NE¼NE¼	Developed	Crown Rock Spring Improvement Date - 1914 (Approx.) Type - Pipe from Spring to Earth Tank By Whom - Nunn Flow, Dry to 8 gph

Township	Range	Section	Subdivision	Status	Remarks
		29	SW¼NE¼	Undeveloped	Dog Pen Seep Flow, 3-10 gph
25N	24E	4	NE¼SE¼	Developed	Name - None Improvement Date - 1957 Type - 3 Check Dams By Whom - O'Neal and Patterson Flow, No Record
		5	NE¼SE¼	Developed	Stone Ranch Spring Improvement Date - 1918 Type - 5,000 Gallon Tank By Whom - Stone Flow, 3-15 gph
		5	SW¼SE¼	Undeveloped	Stone West Seep Flow, Dry to Seeping (?)
		5	NE¼SE¼	Undeveloped	Stone East Seep Flow, Dry to Seeping (?)

04-30-1974: memorandum to superintendent from hydraulic engineer regarding water right docket information

Southwest Region
P. O. Box 728
Santa Fe, New Mexico 87501

L54

APR 30 1974

Memorandum

To: Superintendent, Pecos National Monument

From: Hydraulic Engineer, Water Resources, PSN-SWR

Subject: Water Right Docket Information

Make a permanent Water Right Docket No. 2 for the enclosed land deeds entitled, "Adjudication of Pecos River Basin."

[SIGNED]
Garland Moore

Enclosures

cc:
Chief of Maintenance, MRM-WASO
Attn: Vic Berte'
PSN-SWR

GMoore:ba 4/30/74

Water Docket
CHCH
GRGD
PECO
FOUN.

Southwest Region
P. O. Box 728
Santa Fe, New Mexico 87501

4/24/74

L54

Mr. Gayle Manges, Solicitor
P. O. Box 1042
Santa Fe, New Mexico 87501

Dear Mr. Manges:

It has recently been brought to our attention that in 1965, the U. S. amended response to the case entitled, State of New Mexico, et al. v. L. T. Lewis, et al., Civil No. 20294, the total areas of Carlsbad Caverns National Park, Gran Quivira National Monument, Pecos National Monument, and Fort Union National Monument were not included except for the following:

1. A water right with priority of 1880 recognized by permit No. 0432 issued December 27, 1937, and by permit No. 0432 and C-1129 for supplemental well (groundwater) dated July 8, 1963, for .5 c.f.s. Surface diversion is from Rattlesnake Springs (N.79°39'E., 1,842 ft. from SW corner, Sec. 23, T. 25 S., R. 24 E., N.M.P.M.) and supplemental well located 200 ft. north and 1,400 ft. east of SW corner, Sec. 23, T. 25 S., R. 24 E., N.M.P.M. Part of the water is used for domestic purposes at Headquarters, Carlsbad Caverns National Park, (.2 c.f.s. - 42 acre-feet per annum) and part is used for irrigation at Rattlesnake Springs (.3 c.f.s. - 63 acre-feet per annum).

2. The right to 50 gallons of water per minute from a well located in NW¼NE¼SW¼, Sec. 4, T. 1 S., R. 8 E., N.M.P.M., to be used for domestic and irrigation purposes at Gran Quivira National Monument.

3. A water right under Declaration of Owner of Underground Water Right dated January 8, 1960, numbered Misc. 1-MA-5, and acknowledged by State Engineer on July 13, 1961, for 50 gallons per minute produced by a well in SE¼SW¼SE¼, Sec. 3, T. 19 N., R. 18 E., N.M.P.M.; to be used for domestic use for permanent personnel, 50,000 visitors per year and irrigation of lawns, trees, etc., at Fort Union National Monument, Mora County, New Mexico.

We would appreciate your reviewing the enclosed legal descriptions for each park area with the view towards protecting, under the same case, U. S. claims to all waters (surface and underground) for each National Park Service area located within the Pecos River drainage basin. Please inform us what evidence, if any, will be required to support these claimed rights.

If there are any questions with respect to this letter, please contact Hydraulic Engineer Garland Moore of this office.

Sincerely yours,

Joseph Rumburg
Regional Director
Southwest Region

Enclosures

cc:
Superintendents, CACA, GRQU, PECO, and FOUN
Chief of Maintenance, MRM-WASO
Attn: Vic Berte', 4/C enclosures
PSN-SWR

GMoore:ba 4/23/74

NOTE - SUPT., CACA:

File this information in your permanent Water Right Docket No.1 and 2, Folder 4, Part K - Adjudication of Pecos River Basin.

NOTE - SUPTS., GRQU, PECO AND FOUN:

Make a permanent Water Right Docket No. 2 entitled, "Adjudication of Pecos River Basin."

CARLSBAD CAVERNS NATIONAL PARK

1. A right to use all groundwaters underlying and surface water on the following described lands which were unappropriated at the time of withdrawal from public domain and reserved for National Park status by Executive Order No. 3984 dated April 2, 1924; No. 4870 dated May 3, 1928; No. 5370 dated June 17, 1930, etc., which presently define the boundaries of Carlsbad Caverns National Park (revised by Public Law 88-249, 88th Congress, S. 1175, December 30, 1963).

NEW MEXICO PRINCIPAL MERIDIAN

Township	Range	Section	Subdivision	Date Initially Reserved	Possible Exception to Reservation
24S	23E	35	S½	4/ 2/24	
		36	All	4/ 2/24	See 2a.
	24E	25	All	4/ 2/24	
		26	All	4/ 2/24	
		27	All	4/ 2/24	
		28	All	4/ 2/24	
		29	All	4/ 2/24	
		31	All	4/ 2/24	
		32	All	4/ 2/24	See 2a.
		33	All	4/ 2/24	See 2c.
		34	All	4/ 2/24	See 2c.
		35	All	4/ 2/24	
		36	All	4/ 2/24	
	25E	19	S½SE¼	6/17/30	
		20	S½S½	Unknown	
		21	S½S½	Unknown	
		26	SW¼SW¼	Unknown	See 2d.
		27	All	5/ 3/28	See 2d.
		28	All	5/ 3/28	
		29	All	4/ 2/24	See 2d.
		30	All	4/ 2/24	See 2d.
		31	All	4/ 2/24	See 2e.
		32	All	4/ 2/24	See 2a.
		33	All	5/ 3/28	
		34	W½; NW¼NE¼	5/ 3/28	See 2d.
25S	22E	24	All	4/ 2/24	
		25	All	4/ 2/24	
		35	All	4/ 2/24	
		36	All	4/ 2/24	
	23E	1	All	4/ 2/24	
		2	All	4/ 2/24	
		3	All	4/ 2/24	
		4	All	4/ 2/24	

Township	Range	Section	Subdivision	Date Initially Reserved	Possible Exception to Reservation
		5	All	4/ 2/24	
		6	All	4/ 2/24	
		7	All	4/ 2/24	
		8	All	4/ 2/24	
		9	All	4/ 2/24	
		10	All	4/ 2/24	
		11	All	4/ 2/24	
		12	All	4/ 2/24	
		13	All	4/ 2/24	
		14	All	4/ 2/24	
		15	All	4/ 2/24	
		16	All	4/ 2/24	
		17	All	4/ 2/24	
		18	All	4/ 2/24	
		19	All	4/ 2/24	
		20	All	4/ 2/24	
		21	All	4/ 2/24	
		22	All	4/ 2/24	
		23	All	4/ 2/24	
		24	All	4/ 2/24	
		25	All	4/ 2/24	
		26	All	4/ 2/24	
		27	All	4/ 2/24	
		28	All	4/ 2/24	
		29	All	4/ 2/24	
		30	All	4/ 2/24	
		31	All	4/ 2/24	
		32	All	4/ 2/24	
		33	All	4/ 2/24	
		34	NW¼	4/ 2/24	
	24E	1	N½	4/ 2/24	
		2	W½; NE¼	4/ 2/24	See 2a.
		3	All	4/ 2/24	
		4	All	4/ 2/24	See 2b.
		5	All	4/ 2/24	See 2b.
		6	All	4/ 2/24	
		7	All	4/ 2/24	
		8	All	4/ 2/24	See 2b.
		9	W½; NE¼	4/ 2/24	See 2b.
		10	NW¼	4/ 2/24	
		17	W½; NE¼	4/ 2/24	
		18	All	4/ 2/24	
		19	NW¼	4/ 2/24	
	25E	5	N½	4/ 2/24	
		6	N½	4/ 2/24	

Township	Range	Section	Subdivision	Date Initially Reserved	Possible Exception to Reservation
26S	22E	1	N½; W½SW¼	4/ 2/24	
		2	All	4/ 2/24	See 2a. & 2f.
		11	All	4/ 2/24	
		12	W½W½	4/ 2/24	
		14	NW¼	4/ 2/24	
	23E	6	NW¼	4/ 2/24	

2. POSSIBLE EXCEPTIONS TO RESERVATION

Within Carlsbad Caverns National Park the following lands were acquired by land exchange, condemnation or purchase.

NEW MEXICO PRINCIPAL MERIDIAN

2a. Township	Range	Section	Subdivision
24S	23E	36	All
	24E	32	All
	25E	32	All
25S	24E	2	Lots 1,2,3,4, S½N½, SW¼
26S	22E	2	S½

The above transaction includes 2,721.12 acres. The U. S. acquired title to all above lands by quitclaim deed No. 2876 executed by State of New Mexico on September 30, 1964 and recorded in Book 186, Page 10 of the records of Eddy County, New Mexico.

NEW MEXICO PRINCIPAL MERIDIAN

2b. Township	Range	Section	Subdivision
25S	24E	4	SW¼NW¼; S½SW¼
		5	SE¼NE¼; E½SE¼
		8	NE¼NE¼
		9	NW¼NW¼

The above transaction includes 320 acres more or less. U. S. acquired title to all of the above lands by warranty deed executed by Thurman A. Mayes and Mahalo O. Mayes, husband and wife, on 17 April 1965 and recorded in Book 183, Page 228 of the Record of Deeds in Eddy County, New Mexico.

NEW MEXICO PRINCIPAL MERIDIAN

2c. Township	Range	Section	Subdivision
24S	24E	33	W½SE¼; NE¼SE¼
		34	N½S½; NE¼NE¼

The above transaction includes 320 acres more or less. U. S. acquired title to all of the above by condemnation action in U.S. vs. 320 Acres of Land, more or less, situate in Eddy County, State of New Mexico, Alan J. Lowe, et al., Civil Action No. 1672 dated 7 day of September 1951.

NEW MEXICO PRINCIPAL MERIDIAN

2d. Township	Range	Section	Subdivision
24S	25E	26	SE¼SE¼
		27	S½SE¼
		29	SW¼NW¼; NW¼SW¼
		30	NE¼; E½NW¼
		34	NW¼NE¼

The above transaction includes 480 acres more or less. U. S. acquired title to all of the above on 20 January 1933 from W. B. Grammar.

NEW MEXICO PRINCIPAL MERIDIAN

2e. Township	Range	Section	Subdivision
24S	25E	31	NE¼NW¼

The above transaction includes 40 acres more or less. U. S. acquired title on 26 October 1940 with the reservation that for 25 years from the above date the right to mine guano shall be reserved plus an additional 60 days the right to remove from the land any buildings, structures, machinery, equipment, or improvements. The reservation period has expired. The entire transaction is recorded on Page 286 of Volume 76 of the Deed Records of Eddy County, New Mexico.

NEW MEXICO PRINCIPAL MERIDIAN

2f. Our records show that the only inholder is located N½ of Sec. 2, T. 26 S., R. 22 E. (Ed. Jordon).

WASO Review and Comments Relative to the Assertion of Water Right Claims for Pecos, Fort Union, and Gran Quivira National Monuments

Pecos National Monument

Ground water claim for well supply - We concur with the Solicitor's office recommendation that the Service, through the Field Solicitor and Department of Justice representative, negotiate with the state to perfect a water right for the well pursuant to state law. If the negotiation fails, then your office should request this office to petition the Assistant Secretary for permission to claim a non - reserved right for the well.

Surface water claim to natural flow of Arroyo del Pueblo for ecosystem maintenance - We concur with the Solicitor's recommendation that the Service attempt through negotiation, involving both the Field Solicitor and Justice Department, to establish with the state recognition of the right to instream flow needed for ecosystem maintenance as a beneficial use. If the Service is not successful, then this office should be advised so that we can request permission from the Assistant Secretary to claim a non-reserved right for instream flow.

Claim to intermittent flow of Poisoned spring for ecosystem maintenance - We concur with the Solicitor's office recommendation that negotiation with the state should be attempted before resorting to the assertion of a non-reserved water right.

Fort Union and Gran Quivira National Monuments

Claims to well supplies - We believe, that since the monuments are not located within the watershed being adjudicated, that unless it can be established that the underground waters are hydrologically connected, there appears to be no need to assert water right claims for the wells.

General comment - It should be emphasized that in the assertion of a claim for instream flow, the claim should be substantiated by supporting data.

IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel., S. E. REYNOLDS, State Engineer, and PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT,	)	
Plaintiffs,	)	
vs.	)	Nos. 20,294 and 22,600 Consolidated
L. T. LEWIS, et al., UNITED STATES OF AMERICA,	)	
Defendants.	)	

ANSWERS TO INTERROGATORIES

INTERROGATORY M:

State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian Reservation, the claims of the United States as to the purposes for which the lands were reserved.

ANSWER: Pecos National Monument

Purpose for reservation

Act to establish Pecos National Monument (June 28, 1965 - 79 Stat 195) which reads in part .... "to set apart and preserve for the benefit and enjoyment of the American people at site of exceptional historic and archaeological importance....including the remains and artifacts of seventeenth century Spanish mission and ancient Indian pueblo...."

The Secretary shall administer, protect and develop the national monument in accordance with the provisions of the Act of August 25, 1916 (39 Stat 535; 16 U.S.C. 1 et. seq) as amended and supplemented.

ANSWER: Fort Union National Monument

Purpose for reservation

Act to establish Fort Union National Monument (June 28, 1954 - 68 Stat 298) states the purpose is ...."to preserve

and protect, in the public interes he historic Old Fort Union, ... and to provide public access thereto...." Section 2 of the same act further states that ...."Fort Union National Monument" and thereafter shall be administered by the Secretary of Interior in accordance with the laws and regulations applicable to national monuments.

Interpreting Section 2, it is evident that the expressed intent of the Congress is to regulate the use of the monument in accordance with the fundamental purpose expressed in the Act to establish the National Park Service (Act of August 25, 1916 - 39 Stat 535; U.S.C. 1 et. seq) as amended and supplemented.

ANSWER: Gran Quivira National Monument

Purpose for reservation

Presidential Proclamation (No. 882 - November 1, 1909 - 36 Stat 2503) established the monument as authorized by Act of Congress approved June 8, 1905 titled "An Act for the Preservation of American Antiquities" (34 Stat. 225) calls for the preservation of the largest and most important of the early Spanish church ruins known as Gran Quivira together with numerous Indian pueblo ruins in the vicinity. The above was amended by Presidential Proclamation (No. 1545 - November 25, 1919 - 41 Stat 1788) to adjust by expansion the boundaries of the monument and to restate that the monument will be supervised, controlled, and managed in accordance with the Act to establish a National Park Service (Act of August 25, 1916 - 39 Stat 535).

INTERROGATORY O:

State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

1. the date of commencement of the use of water, and of works for diversion or carriage thereof;

2. the point of diversion, by qu ..rs of quarter sections;
3. the use to which the water has been applied;
4. the place of use;
5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

ANSWER: 1. Pecos National Monument

a) Well

1) prior to December 7, 1941 when well was drilled for use by State Historical Museum. System consists of well, pump, 3 pressure tanks, pumphouse and distribution system. Distribution system was completed by 1968.

2) Point of diversion is NW¼ NW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation, and safety.

4) within the external boundaries of the monument.

5) See Interrogatory M. Pecos National Monument.

b) Poisoned Spring - Intermittent natural dispersed surface flow

1) Priority date claimed June 28, 1965, natural flow.

2) Point of issue NE¼ SE¼ SE¼, Sec. 5, T15N, R12E, NMPM

3) Natural flow to support park environment (flora and fauna) along its entire diffused flow path within the monument.

4) Within the external boundaries of the monument.

5) See Interrogatory M, Pecos National Monument.

c) Arroyo del Pueblo

1) Priority date claimed June 28, 1965 - natural flow minus all appropriated waters before the aforementioned date.

2) Along the entire approximate length of the arroyo within the external boundaries of the monument. The Arroyo enters the monument at NW¼ SE¼ SE¼, Sec. 5, T15N., R12E., NMPM and leaves the monument at NW¼ SW¼ NE¼, Sec. 8, T15N, R12E, NMPM.

3) Within the identifiable arroyo channel.

4) Within the identifiable arroyo channel.

5) See Interrogatory M, Pecos National Monument.

2. Fort Union National Monument

a) Well

1) Water system consists of 325 feet - 8-5/8" OD well equipped with pump, pumphouse, pressure tank, 50,000 gallon storage tank with connecting water lines. Entire system was constructed and water use began on/about January 23, 1959.

2) Point of diversion SE¼ SW¼ SE¼, Sec. 3, T19N, R18E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation and safety.

4) Within the e. nal boundaries of the monument.

5) See Interrogatory M - Fort Union National Monument.

3. Gran Quivira National Monument

a) Well

1) Water supply system consists of 638 foot -- 8" well equipped with pump, 50,000 gallon storage, pumphouse and distribution lines. Water well was drilled by April 29, 1959, and remaining system by March 7, 1962. This well source replaced an 875 foot, 6" well drilled within the monument. The water was used for utility purposes only because of its poor quality. Drinking water was hauled in by park residents. The well was drilled sometime in the mid 30's.

2) Point of diversion NE¼ NW¼ SE¼, Sec. 4, T1S., R8E, NMPM.

3) Municipal use (visitors, park operations, park residential use) construction and maintenance activities, irrigation and safety.

4) Within the external boundaries of the monument

5) See Interrogatory M, Gran Quivira National Monument.

United States Department of the Interior
NATIONAL PA SERVICE
SOUTHWEST REGION
P.O. Box 728
Santa Fe, New Mexico 87501

IN REPLY REFER TO:
L54(SWR)OM

MAR 04 1980

Memorandum

To: Field Solicitor, Santa Fe

From: Regional Director, Southwest Region

Subject: State of New Mexico v. L. T. Lewis
Civil Nos. 20294 and 22600

In response to Assistant U. S. Attorney Estes' letter of February 3, 1980 transmitted by your memorandum of February 13, 1980, the following information is submitted as requested.

1. NPS areas

Pecos National Monument is located within the Pecos River watershed. Fort Union and Gran Quivira National Monuments, while not located within the court ordered designated watershed, are probably hydraulically connected to the Pecos River watershed by sharing a common ground water system.

2. Types and locations of water use:

Previously answered in Interrogatories M and O.

3. Date facilities were constructed:

A. Pecos National Monument

Records show that the United States acquired an existing water well which was drilled sometime before December 7, 1941, when the State Historical Museum operated the monument. Records further show that in 1968 a 1-inch water line, (390 feet), was added to the existing system by the United States.

In addition to the above, the United States claims all of the natural flow through Arroyo del Pueblo and to Poisoned Springs. Details are explained in Interrogatories M and O.

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MAR 6 1980
Department of the Interior
FIELD SOLICITOR
Santa Fe, New Mexico

United States filed "Declaration of Owner of Underground Water Right" on July 18, 1978 and was assigned Declaration No. UP-500 by the State Engineer. United States claimed 20 af/annum for municipal purposes.

B. Fort Union National Monument

Fixed Property Records show that the original distribution system including the well was constructed by January 23, 1959.

United States filed "Declaration of Owner of Underground Water Right" in January 8, 1960 and has been assigned Declaration Nos. MISC 1-MA-5 by the State Engineer. The United States claimed 50,000 gallons per day (when development of the monument was completed) at a diversion rate of 50 gallons per minute. Water to be used for lawns, trees, and shrubs around residence and visitor center.

C. Gran Quivira National Monument

Fixed Property Records state the existing well was approved on April 29, 1959. The well site is located on Jack L. Kite Ranch to which the United States enjoys a permanent easement to maintain a well and for the installation of a pipe and electrical distribution line connecting the well site with the monument.

The above well replaced an 875 feet - 5-inch diameter well located within the monument which was abandoned because water from the well was non-potable but was used from about mid 1930's until 1959 for utility purposes only. Drinking water was hauled in from Mountainair. (Correspondence and Water Resources Management Plan draft).

Fixed Property Records show that on/about May 8, 1962 additional construction of water distribution was completed.

No claims to water have been filed by the United States.

Breakdown of acquired lands and withdrawn lands for each park area is enclosed.

Should you have any questions, please contact Garland Moore of this Office.

Robert G. [illegible]

Enclosures

cc: Chief, Air & Water Resources Division, WASO, 492 (Atten: Vic Berte) (All with copy of incoming and enclosures)
Supt., Gran Quivira, Pecos, Fort Union

PECOS NATIONAL MONUMENT

A right to use all groundwater underlying and surface waters on the following described lands known as Pecos National Monument (Act of June 28, 1965 - 79 Stat. 195).

NEW MEXICO PRINCIPAL MERIDIAN

Township	Range	Section	Subdivision
15N	12E	5	SE¼; E½E½SW¼; E½W½E½SW¼
		8	E½NE¼NW¼; E½W½NE¼NW¼; N½NE¼SE¼NW¼; NE¼NW¼SE¼NW¼; N½W½S½NE¼; N½NW¼

Of the above transaction, consisting of 278.7 acres more or less, reserves to the grantor, E. E. Fogelson and Greer Garson Fogelson, his wife, the right to take water for domestic and irrigation purposes from the lands conveyed, and the right to explore for water, to drill wells and install, maintain and replace pumps, flumes, etc. included are the rights of ingress and egress to exercise the rights reserved. All water used by the U. S. must be used for the administration and maintenance of Pecos National Monument. Deed to the U. S. was executed by E. E. Fogelson, et ux., on December 15, 1964, filed for record on December 29, 1964, and recorded in Miscellaneous Record 225 at Page 595, San Miguel County, New Mexico.

Title to the remaining 62.6 acres more or less, lying within the above description was acquired by the U. S. from the Board of Regents of the Museum of New Mexico on December 13, 1965. Mineral interests to the same parcel of land was quitclaimed to U. S. by Gross, Kelly and Company, a New Mexico Corporation on December 13, 1965.

GRAN QUIVIRA NATI MONUMENT

A right to use all groundwater underlying and surface waters on the following described lands which was unappropriated at the time of withdrawal from public domain and reserved for National Monument status under the Act of Congress approved June 8, 1906, entitled, "An Act for the Preservation of American Antiquities."

1. NEW MEXICO PRINCIPAL MERIDIAN

Township	Range	Section	Subdivision	Date Initially Reserved	Possible Exception to Reservation
1N	8E	34	S½SW¼	11/25/19	
			S½SE¼	11/25/19	See 2.
		35	S½SW¼	11/25/19	See 2.
1S	8E	2	N½NW¼	11/25/19	
		3	N½N½	11/01/09	
		4	N½NE¼	11/25/19	

Presidential Proclamations No. 882 dated November 1, 1909 - 36 Stat. 2503 and No. 1545 November 25, 1919 - 41 Stat. 1778 set the area aside for National Monument purposes.

2. POSSIBLE EXCEPTION TO RESERVATION

Within the boundaries of Gran Quivira National Monument the following areas were acquired by exchange from the University of New Mexico, May 12, 1959.

NEW MEXICO PRINCIPAL MERIDIAN

Township	Range	Section	Subdivision
1N	8E	34	S½SE¼
		35	S½SW¼

FORT UNION NAT. AL MONUMENT

A right to use all groundwater and surface waters on the following described lands known as Fort Union National Monument..

PARCEL 1:

BEGINNING at corner No. 1 (a stake in stone mound), from which the corner common to the northwest corner of Section 6, Township 19 North, Range 19 East, NMPM, and the southwest corner of Section 31, Township 20 North, Range 19 East, NMPM, bears North 67° 30' East, a distance of 8707.30 feet;

thence South 60° 24' 30" West, a distance of 5281.04 feet to corner No. 2 (a stake in stone mound);

thence North 29° 35' 30" West, a distance of 1674.66 feet to corner No. 3 (a stake in stone mound);

thence North 17° 11' 30" West, a distance of 844.6 feet to corner No. 4;

thence North 47° 12' 30" West, a distance of 598.70 feet to corner No. 5;

thence North 29° 35' 30" West, a distance of 2209.0 feet to corner No. 6 (a stake in stone mound);

thence North 60° 24' 30" East, a distance of 5279.53 feet to corner No. 7;

thence South 29° 35' 30" East, a distance of 5278.9 feet to corner No. 1, the point of beginning;

containing 637 acres more or less; and

PARCEL 2:

BEGINNING at corner No. 1 (a stake in stone mound), from which corner No. 6, Parcel No. 1, described above, bears North 69° 56' East, a distance of 2475.6 feet; thence South 24° 51' East, 1926.4 feet to corner No. 2 (a stake in stone mound); thence South 65° 9' West, a distance of 1890.3 feet to corner No. 3 (a stake in stone mound);

thence North 24° 51' West, a distance of 1926.4 feet to corner No. 4 (a stake in stone mound);

thence North 65° 09' East, a distance of 1890.3 feet to corner No. 1, the point of beginning;

comprising 83.6 acres more or less;

The above transaction consisting of 720.6 acres more or less reserves to the grantor, "The Union Land and Grazing Company, a corporation, all

minerals and mineral rights in and under the above described land. Title to the land will revert to the grantor should the area be discontinued as a National Monument."

IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

RECEIVED
JUL - 5 1979
U.S. ATTORNEY'S OFFICE
Albuquerque, New Mexico

STATE OF NEW MEXICO, ex rel.,
S. E. REYNOLDS, State Engineer,
and PECOS VALLEY ARTESIAN
CONSERVANCY DISTRICT,

Plaintiffs,

vs.

Nos. 20, 294 and 22,600
Consolidated

L. T. LEWIS, et al.,
UNITES STATES OF AMERICA,

Defendants.

Pursuant to Rule 33, New Mexico Rules of Civil Procedure, the Plaintiff State of New Mexico submits the following interrogatories to the Defendant United States of America, to be answered fully under oath within one hundred twenty (120) days of service thereof.

DEFINITIONS AND INSTRUCTIONS

A. Where a complete answer to a particular Interrogatory is not possible, the Interrogatory should be answered to the extent possible and a statement should be made indicating why only a partial answer is given.

B. As used herein the terms "person" and "persons" include natural persons, private corporations, governmental entities or agencies, partnerships, associations and joint ventures. The singular and plural forms are used interchangeably, as are the masculine and feminine forms.

C. As used herein the term "identify":

1. When used in reference to a natural person, requests the following information with respect to such person: his full name, his present or last known business and residence address, his present or last known employer's name, his title or job designation, and, if applicable, his civil service classification.

2. When used in reference to any form of entity, requests the following information: the full legal name and form of organization, its address, or if the entity is a governmental entity, its full name and address.

3. When used in reference to a document, the term "identify" requests the following information with respect to such document: its date, its author, the type of document (e.g., letter, memorandum, telegram, chart, invoice, statement, photograph, sound reproduction, etc.), the nature and substance of the document, its present location and the name of each of its present custodians.

D. As used herein, the term "document" means all written or otherwise recorded matter (e.g., tape recordings and any other mechanical or electrical transcriptions) and includes (a) copies of the same writing which differ from the original or other copies thereof due to notations made thereon and (b) material attached to any such writings.

E. As used herein, "you" and "your" mean the United States and all agencies, officers and employees thereof.

F. As used herein, the word "location" means the location according to the New Mexico coordinate system or the rectangular survey in quarter-sections unless the context calls for a response in the form of a street address.

G. As used herein, the term "month" means calendar month, and the word "year" means calendar year.

H. Each interrogatory is to be answered for the period January 1, 1965, to date of answer unless it asks an historical date, or the context otherwise indicates. If the facts have been changed during the period, the answer should disclose the state of affairs from time to time in effect during the period.

I. If you claim that the attorney-client privilege or attorney-work product doctrine is applicable to any document, identify the document and identify each person who has ever been in possession of the document or any copy thereof or has seen, heard of or otherwise come to know the contents thereof.

J. If you claim that any document is exempt from disclosure pursuant to the Freedom of Information Act, identify the document, state the provision of the Freedom of Information Act under which it is claimed that the document is exempt from disclosure, and state why the document is exempt from disclosure.

K. If you claim that the attorney-client or attorney-work product doctrine is applicable to any meeting or conversation, provide its date and place and inentify each person present at the meeting or conversation.

L. As used herein, the word "permitee" means any person or entity authorized by you or any agency to conduct any activity in a National Forest or other federal reservation.

M. As used herein, the term "watershed of the Pecos River" is the area shown on Attachment A to these interrogatories. Under court order, the adjudication extends to Avalon Dam, and to waters tributary to the Pecos River at or above Avalon Dam. For purposes of these interrogatories only, the southerly boundary of the Pecos River watershed involved in this adjudication is fixed by a line having one point at the SE corner, T. 23 S., R. 21 E., and another at the SE corner, T. 23 S., R. 21 E., projected to the limits of the watershed. Generally, Rocky Arroyo and Dunniway Canyon and tributaries are north of this line, and Dark Canyon and tributaries are south of it. Cf. Plate 3, Ground-Water Report 3, Geology and Ground-Water Resources of Eddy County, New Mexico, Hendrickson & Jones, N.M. Ins. Min. & Tech., 1952. In any instance in which the United States claims lands of a federal reservation shown as included within the "watershed of the Pecos River" are not in fact included therein, such claims should be stated in response to questions concerning such reservation.

INTERROGATORIES

A. Identify the person or persons principally responsible for answering these Interrogatories.

B. Identify all reservations of the United States within the watershed of the Pecos River, excluding therefrom the Lincoln National Forest, Rio Hondo -Bonito-Ruidoso watersheds, and the Mescalero Indian Reservation.

C. As to each reservation of the United States identified in response to question No. 2, has the United States at any time prepared an inventory of current and forseeable water use within such reservation?

D. If the answer as to any identified federal reservation in question No. 3 is yes, please state each current and forseeable water use included on the most recent inventory, identifying such use by number, stating point of diversion, place and purpose of use, current use diversion rates, whether such use is under a special use permit or not, the claimed priority of each such use, and the forseeable extent of such use. In lieu of such a statement, the inventory may be attached.

E. State each individual claim by the United States under the reserved water rights doctrine for each federal reservation within the Pecos River watershed, by reservation, in the following particulars:

1. whether such claim involves a diversion of water, or maintenance of an instream flow rate or of springs in natural condition;

2. if such claim involves diversion of water, the point or points of diversion;

3. if such claim involves instream flows or spring maintenance in natural condition, the location or locations for each spring, and all points on each watercourse where instream flow rates are claimed;

4. if such a claim involves a diversion of water, the maximum diversion claimed for present and future uses;

5. if such a claim is for instream flows, the flow rates claimed in c.f.s. on an average monthly basis, for each month of the year;

6. if any claim involves diversion of water, state the place of use of such water, and the use which is or may be made of the water;

7. the purpose or purposes of the reservation upon which each claim is asserted;

8. the date of reservation of each claim.

F. State each individual claim by the United States for each reservation for diversion, storage, carriage or use of the public surface or ground waters of the State of New Mexico on reserved or acquired lands within the exterior boundaries of each reservarion within the Pecos River watershed, in the following particulars:

1. whether public surface water, or ground water;

2. point of diversion;

3. place and purpose of use;

4. date at which works were initiated, and at which water was applied to beneficial use;

5. any permit or license issued by the State Engineer therefor.

G. For each location at which an instream flow rate or spring maintenance claim is made, state separately:

1. if the claimed rate of flow or natural condition will staisfy more than one purpose of the reservation, the flow or condition necessary to satisfy each claimed purpose;

2. why the particular rate of flow on an average monthly basis, or natural condition, is necessary to satisfy the purpose or purposes of the reservation upon which the claim is made;

3. why a lesser rate of flow or a reduced spring water supply would not fulfill the prupose or purposes of the reservation upon which the claim is made;

4. whether, as to each location for which an instream flow claim is made, there has been an average monthly flow at a lower rate than those rates claimed for any month from January 1, 1965 to the present, and identify such months;

5. whether, as to each location at which instream rates of flow are claimed, the stream is gaining groundwater inflow from an aquifer, losing flow to an aquifer, or not hydrologically connected to an aquifer.

H. State the width of the stream at each location at which an instream rate of flow is claimed.

I. Identify separately for each national forest and location at which you claim reserved water rights, including rates of instream flow, for timber preservation and/or production purposes, all documents which discuss the need for reserved water rights to fulfill such purposes at or near such locations.

J. State separately, for each national forest and location at which you claim reserved warer rights, including rates of instream flow, for timber preservation and/or production purposes, whether

persons employed by you or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including but not limited to transcripts, notes or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

K. Identify separately, for each national forest and location at which you claim a reserved water right, including instream rate of flow, for watershed management purposes all documents which discusss the need for water to fulfill such purposes at or near such locations.

L. State separately, for each national forest and location at which you claim reserved water rights, including instream rates of flow, for watershed management purposes, whether persons employed or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including but not limited to transcripts, notes, or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such

conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

M. State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the claims of the United States as to the purposes for which the lands were reserved.

N. State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the statutory authority claimed by the United States to support the reservation of lands by the United States, or in lieu thereof, the wording of the proclamation, order, or writing purporting to accomplish the reservation of lands.

O. State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

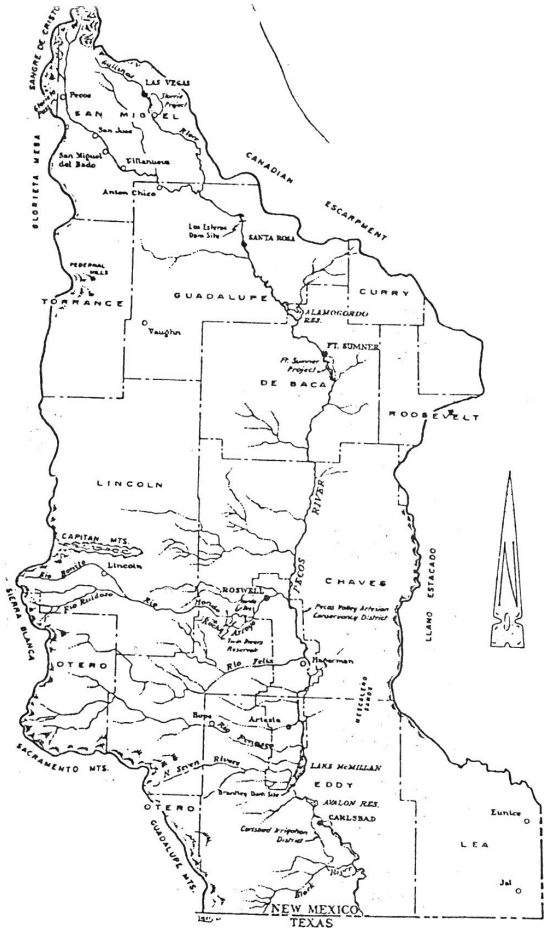
1. the date of commencement of the use of water, and of works for diversion or carriage thereof;
2. the point of diversion, by quarters of quarter sections;
3. the use to which the water has been applied;
4. the place of use;
5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

Don Klein

Richard A. Simms
Don Klein
Legal Bureau
State Engineer Office
Bataan Memorial Bldg.
Santa Fe, New Mexico 87503

I certify service of the foregoing upon counsel of record by mail, postage pre-paid, this 3rd day of July, 1979.

Don Klein
Don Klein


LAS VEGAS
SAN MIGUEL
Pecos
San Juan
River
San Miguel del Bado
Villanueva
Anton Chico
CANADIAN
ESCARPMENT
Los Esteros Dam Site
SANTA ROSA
GUADALUPE
CURRY
TORRANCE
Vaughn
CLAYTON RES.
FT. SUMNER
Ft. Sumner Project
DE BACA
ROOSEVELT
LINCOLN
PECOS RIVER
CAPITAN MTS.
Lincoln
ROSWELL
CHAVES
LLANO ESTACADO
Hondo
Pecos Valley Artesian Conservancy District
Hagerman
OTERO
Rio Felix
Artesia
Penasco
SACRAMENTO MTS.
N. Seven Rivers
LAKE McMILLAN
EDDY
Brantley Dam Site
AVALON RES.
CARLSBAD
Carlsbad Irrigation District
Eunice
LEA
Jal
GUADALUPE MTS.
NEW MEXICO
TEXAS

IN THE DISTRICT COURT OF CHAVES COUNTY

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel., S. E. REYNOLDS, State Engineer, and PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT,	)	
Plaintiffs,	)	
vs.	)	Nos. 20,294 and 22,600 Consolidated
L. T. LEWIS, et al., UNITED STATES OF AMERICA,	)	
Defendants.	)	

ANSWERS TO INTERROGATORIES

COMES NOW the defendant, United States of America, by and through its attorneys, R. E. Thompson, United States Attorney for the District of New Mexico, and Charles N. Estes, Jr., Assistant United States Attorney for said District to answer plaintiff's interrogatories as follows:

INTERROGATORY A:

Identify the person or persons principally responsible for answering these Interrogatories.

ANSWER: Regional Forester, Forest Service, USDA, Federal Building, 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102.

INTERROGATORY B:

Identify all reservations of the United States within the watershed of the Pecos River, excluding therefrom the Lincoln National Forest, Rio Hondo-Bonito-Ruidoso watershed, and the Mescalero Indian Reservation.

ANSWER: Santa Fe National Forest, Cibola National Forest and Lincoln National Forest.

INTERROGATORY C:

As to each reservation of the United States identified in response to question No. 2, has the United States at any time

prepared an inventory of current and forseeable water use within such reservation?

ANSWER: Yes.

INTERROGATORY D:

If the answer as to any identified federal reservation in question No. 3 is yes, please state each current and forseeable water use included on the most recent inventory, identifying such use by number, stating point of diversion, place and purpose of use, current use diversion rates, whether such use is under a special use permit or not, the claimed priority of each such use, and the foreseeable extent of such use. In lieu of such a statement, the inventory may be attached.

ANSWER: The National Forest Water Uses and Rights Inventory for watersheds tributary to the Pecos River is attached. The following watershed identification numbers are used in the Inventory:

Santa Fe National Forest

071 Upper Pecos River

072 Cow Creek

073 Gallinas-Tecolote Creek

074 Lower Pecos River

Cibola National Forest

065 East Estancia

076 Bonito Canyon

Lincoln National Forest

075 Del Macho-Salt Creek

079 Alamo-Maverick

081 Upper Rio Penasco

082 Aqua Chiquita

083 Elk-Burnt Canyon

084 Lower Rio Penasco

085 Bluewater Creek

086 North Guadalupe

INTERROGATORY E:

State each individual claim by the United States under the reserved water rights doctrine for each federal reservation within the Pecos River watershed, by reservation, in the following particulars:

1. whether such claim involves a diversion of water, or maintenance of an instream flow rate or of springs in natural condition;

2. if such claim involves diversion of water, the point or points of diversion;

3. if such claim involves instream flows or spring maintenance in natural condition, the location or locations for each spring, and all points on each watercourse where instream flow rates are claimed;

4. if such a claim involves a diversion of water, the maximum diversion claimed for present and future uses;

5. if such a claim is for instream flows, the flow rates claimed in c.f.s. on an average montly basis, for each month of the year;

6. if any claim involves diversion of water, state the place of use of such water, and the use which is or may be made of the water;

7. the purpose or purposes of the reservation upon which each claim is asserted;

8. the date of reservation of each claim.

ANSWER: Santa Fe National Forest

Watershed No. 071, I.D., No. 031

1. Diversion of water.
2. The point of diversion is in SW 1/4 Sec. 27, T. 19 N., R. 12 E.
3. The claim does not involve instream flows or spring maintenance.
4. Maximum diversion claimed for present and future uses is .2 acre feet per year.

5. N/A.
6. The place of use is in SW 1/4 Sec. 27, T. 19 N., R. 12 E. The water is used as domestic water for timber marking and fire suppression crews.
7. Timber production.
8. The date of reservation is January 11, 1892.

Watershed No. 072. I.D. No. 057.

1. Diversion of water (well).
2. The point of diversion is in NE 1/4 SE 1/4 Sec. 32. T. 17 N. R. 13 E.
3. The claim does not involve instream flows or spring maintenance.
4. The maximum diversion claimed for present and future use is .1 acre feet per year.
5. N/A.
6. The place of use is in NE 1/4 SE 1/4 Sec. 32. T. 17 N. R. 13 E. The water is used as domestic water for timber marking and fire suppression crews.
7. Timber production.
8. The date of reservation is January 11, 1892.

Watershed No. 073. I.D. No. 069.

1. Diversion of water (well).
2. The point of diversion is in NE 1/4 SE 1/4 Sec. 14, T. 17 N., R. 14 E.
3. The claim does not involve instream flows or spring maintenance.
4. The maximum diversion claimed for present and future use is .5 acre feet per year.
5. N/A.
6. The place of use is NE 1/4 SE 1/4 Sec. 14, T. 17 N., R. 14 E. The water is used as domestic

water for timber marking and fire suppression crews.

7. Timber production.

8. The date of reservation is May 27, 1898.

Cibola National Forest

Watershed No. 076 I.D. No. 553.

1. Diversion of water (well).

2. The point of diversion is in SW 1/4 SE 1/4 Sec. 30, T. 1 S., R. 12 E.

3. The claim does not involve instream flows or spring maintenance.

4. The maximum diversion claimed for present and future use is .2 acre feet per year.

5. N/A.

6. The place of use is SW 1/4 SE 1/4 Sec. 30, T. 1 S., R. 12 E. The water is used by fire crews for domestic water, fire suppression, and road watering during fire suppression activities.

7. Timber production.

8. The date of reservation is November 5, 1906.

INTERROGATORY F:

State each individual claim by the United States for each reservation for diversion, storage, carriage or use of the public surface or ground waters of the State of New Mexico on reserved or acquired lands within the exterior boundaries of each reservation within the Pecos River watershed, in the following particulars:

1. whether public surface water, or ground water;

2. point of diversion;

3. place and purpose of use;

4. date at which works were initiated, and at which water was applied to beneficial use;

5. any permit or license issued by the State Engineer therefor.

ANSWER: See the attached National Forest Water Uses, Requirements, and Rights Inventory. Dates at which works were initiated or water applied to beneficial use are not known at present, but efforts to acquire this information are being made.

INTERROGATORY G:

For each location at which an instream flow rate or spring maintenance claim is made, state separately:

1. if the claimed rate of flow or natural condition will satisfy more than one purpose of the reservation, the flow or condition necessary to satisfy each claimed purpose;

2. why the particular rate of flow on an average monthly basis, or natural condition, is necessary to satisfy the purpose or purposes of the reservation upon which the claim is made;

3. why a lesser rate of flow or a reduced spring water supply would not fulfill the purpose or purposes of the reservation upon which the claim is made;

4. whether, as to each location for which an instream, flow cliam is made, there has been an average monthly flow at a lower rate than those rates claimed for any month from January 1, 1965 to the present, and identify such months;

5. whether, as to each location at which instream rates of flow are claimed, the stream is gaining groundwater inflow from an aquifer, losing flow to an aquifer, or not hydrologically connected to an aquifer.

ANSWER: Not Applicable.

INTERROGATORY H:

State the width of the stream at each location at which an instream rate of flow is claimed.

ANSWER: Not Applicable.

INTERROGATORY I:

Identify separately for each national forest and location at which you claim reserved water rights, including rates of

instream flow, for timber preservation and/or production purposes, all documents which discuss the need for reserved water rights to fulfill such purposes at or near such locations.

ANSWER:

Cibola National Forest

Lloyd, W.L., Forest Supervisor, 1975. Integrated Fire Control Organization and Financial Plan. This document specifies personnel, equipment, their location and costs for fire suppression on the Mountainair Ranger District. The document is located in the Cibola National Forest Supervisor's Office, K.T. Pfefferle, Forest Supervisor.

Santa Fe National Forest

Archuleta, Bernie, District Fire Staff, 1979. Preattack Plan for Block 00. This document identifies the need for water at Site No. 69 in Watershed No. 073. The water is needed for forest fire suppression activities.

Quintana, Dave, District Fire Staff, 1979. Preattack Plan for Block NN. The need for water at Site No. 57 in Watershed No. 072 is identified in the document. The water is needed for forest fire suppression activities.

Quintana, Dave, District Fire Staff, 1979. Preattack Plan for Block JJ. This document identifies the need for water at Site No. 31 in Watershed No. 071. The water is needed for fire suppression activities.

The above documents are located in the Santa Fe National Forest, Forest Supervisor's Office, J. L. Perry, Forest Supervisor.

INTERROGATORY J:

State separately, for each national forest and location at which you claim reserved water rights, including rates of instream flow, for timber preservation and/or production purposes, whether persons employed by you or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including but not limited to transcripts, notes or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

ANSWER: The documents listed in question "I" are the result of discussions between the respective District and Forest Staffs.

INTERROGATORY K:

Identify separately, for each national forest and location at which you claim a reserved water right, including instream rate of flow, for watershed management purposes all documents which discuss the need for water to fulfill such purposes at or near such locations.

ANSWER: See answer to Interrogatory "I".

INTERROGATORY L:

State separately, for each national forest and location at which you claim reserved water rights, including instream rates of flow, for watershed management purposes, whether persons employed or retained by you have ever considered, evaluated, discussed or determined whether there is a need for water to fulfill such purposes at such locations. If your answer is yes:

1. identify all persons involved;

2. state what acts were performed by each such person, including the date when each such act was performed;

3. identify all documents used, referred to, generated by, written or otherwise prepared by each such person, including

but not limited to transcripts, notes, or minutes kept of any meetings or discussions; and

4. state the conclusions reached regarding the need for reserved water rights and the reasons advanced in support of such conclusions and state whether such conclusions and/or reasons were reduced to writing (and if reduced to writing, identify each such document).

ANSWER: See answer to Interrogatory "I".

INTERROGATORY M:

State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the claims of the United States as to the purposes for which the lands were reserved.

ANSWER: Not Applicable.

INTERROGATORY N:

State, as to each identified federal reservation within the watershed of the Pecos River, except national forests and the Mescalero Indian reservation, the statutory authority claimed by the United States to support the reservation of lands by the United States, or in lieu thereof, the wording of the proclamation, order, or writing purporting to accomplish the reservation of lands.

ANSWER: Not Applicable.

INTERROGATORY O:

State all claims of the United States in and to use of waters of the Pecos River watershed on federal lands not reserved, indicating specifically as to each such claim:

1. the date of commencement of the use of water, and of works for diversion or carriage thereof;

2. the point of diversion, by quarters or quarter sections;

3. the use to which the water has been applied;

4. the place of use;

5. the statutory authority, or executive act, if any, claimed to authorize or require the diversion and use of water.

ANSWER: For claims of the United States in connection with water uses on acquired National Forest lands, see the attached National Forest Water Uses, Requirements, and Rights Inventory.

The Corps of Engineers has completed a domestic well for use at the administrative site at the Two Rivers Dam: State Engineer permit number RA-6313, issued May 17, 1978. The well is located in the SW 1/4 SW 1/4 Sec. 10, T. 12 S., R. 22 E., N.M.P.M.

Information concerning the claims of other federal agencies on non-reserved lands are still being compiled and will be forwarded when received.

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I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed to opposing counsel of record this 4th day of February, 1980.

Ch Estes

CHARLES N. ESTES, JR.
Assistant U. S. Attorney

Docket Information

Number of Documents in Docket 157

Documents Dated from 5/12/1956 to 5/26/1999

Docket Compiled: 6/3/2016