WATER-RIGHT DOCKET

Saguaro National Park

Docket No: 22

JELKS SPRING

Preliminary Docket Information

05-29-1979: water right/source docket information: jelks spring

DATE: May 29, 1979

WATER RESOURCES/WATER RIGHT

WATER RIGHT/SOURCE DOCKET INFORMATION

REGION Western AREA Saguaro National Monument

SITE Jelks Spring (Also Known as Mesquital, Upper, or Cow Head Spring)

STATE Arizona COUNTY Pima DOCKET NO. WR #9

LOCATION SE¼SE¼NW¼ Section 4, T15S, R17E

REGIONAL BASIN Colorado LOCAL BASIN Santa Cruz (Tanque Verde)

ACQUIRED BY Reservation

APPLICATION PERMIT CERTIFICATE

ACTION DUE PRIORITY June 30, 1930 RESERVATION March 1, 1933.

QUANTITY 10,000 gallons per day USE Stockwatering and domestic

STATUS Active SOURCE Surface water (Spring)

REMARKS Jelks Spring is in Hydrologic Basin Unit NO. 15050302.

NARRATIVE:

On June 5, 1930, J. Jelks applied to the state of Arizona for an appropriative right to divert water from Jelks Spring. The water is and was used as a domestic supply and stock watering on the X9 Ranch. Water is piped from the diversion (on Monument land) to the ranch located south of the boundaries of the Monument. The State of Arizona issued a water right license (Certificate No. 551) for this diversion to Mr. Jelks on September 21, 1933.

The lands on which the spring is located were first withdrawn as a part of the federal forest reserve on October 2. 1905. This was later changed to Coronado National Forest in 1908. The lands on which the spring is located became a part of Saguaro National Monument when it was proclaimed on March 1, 1933.

(See attached narrative)

6/22/87. Apparently Jelks Spring is not and has never been within the Park. Jelks did get a certificate of appropriation, but for a spring outside the Park. See the attachments

Saguaro National Monument - Jelks Spring

The question of the legal status of Mr. Jackson's water right for Jelk's Spring (also known as Mesquital, Upper, or Cow Head Spring) and the historical background of his claim is briefly discussed below.

Various water right locations were filed by his predecessors in title during the period of 1913 to 1919 on Rincon Creek at a point far downstream of the X9 Ranch headquarters (specifically in Sections 13 and 24, T15S, R16E). On May 6, 1929, J. Jelks acquired title to land in Sections 17 and 18, T15S, R17E.

On June 5, 1930, Mr. Jelks filed Application No. A-1115 with the State of Arizona on Mesquital Spring (known as and hereinafter referred to as Jelks Spring) in Mesquital Wash, a tributary of Rincon Creek. He received Certificate of Water Right No. 551 on September 21, 1933. The amount of water appropriated was not to exceed 10,000 gallons per day.

Superintendent Herschler, in "Description of Water Systems in Saguaro", dated March 11, 1957, stated that the catchment structure at the spring consisted of a cement box approximately 3' x 3' x 5' deep in the bottom of the stream channel. Approximately 3 miles of 1" galvanized pipe was laid on the surface of the ground from the catchment box to the X9 Ranch headquarters where it flowed into a storage tank of 10,000 gallon capacity.

By Departmental Order of October 2, 1905, the land containing Jelks Spring was temporarily withdrawn from the public domain for a forest reserve. On July 19, 1907 [redacted] these lands were added to the Santa Catalina National Forest. On July 2, 1908, the name was changed to Coronado National Forest. Finally, by Presidential Proclamation No. 2032 of March 1, 1933, these lands became a part of Saguaro National Monument.

As mentioned in previous memos, if a private appropriation had been made prior to the date of the first reservation (1905) then the specific federal statutes of 1866 (43 U.S.C, Sec. 661), 1870 and the Desert Land Act of 1877 would apply. Arizona law prior to 1919 provided that the acquisition of a water right on unnappropriated public waters could be accomplished by merely diverting and applying the water to a beneficial use. This is the law which would be applied under the above statutes to determine if an appropriative right had vested. However, prior to 1919, a spring which did not constitute the source of a watercourse was not included as a part of the public waters and belonged to the landowner. After 1919, these springs were included as a part of the public waters subject to appropriation. Also after 1919, all subsequent appropriations were subject to the regulations as imposed by the State of Arizona (i.e., all the formalities of the permit system).

If there had not been an appropriation and continuous use (without a cessation of use to constitute an abandonment) prior to 1905, then the federal statutes mentioned above would not apply. The Supreme Court so held in Federal Power Commission v. Oregon, 349 U.S. 435, 75 S.Ct. 832 (1955), that these statutes do not apply to reserved lands but only to the public domain. The Arizona Supreme Court similarly held in Verde Water and Power Co. v. Salt River Valley Water Users' Association, 197 P. 227 (1921), that springs were not subject to appropriation if the public land had been withdrawn.

When the filings were made on Rincon Creek during the period of 1913 to 1919, did these serve to appropriate water from Mesquital or Jelks Spring, a tributary of Rincon Creek? (Momentarily disregarding whether such an appropriation within federally reserved lands was legally possible, as will be discussed infra.) The Arizona Supreme Court in Southern Pac. Co. v. Proebstel, 150 P.2d 81 (1944), held that "A stream is a watercourse having a source and terminus, banks and channel, through which waters flow, at least periodically. Streams usually empty into other streams, lakes, or the ocean, but a stream does not lose its character as a watercourse even though it may break up and disappear."

It might be argued that a filing on Rincon Creek, more than four miles from Jelks Spring, was a filing solely on Rincon Creek and did not include a second "stream" which had Jelks Spring as its source. This is further strengthened by the filing made by Mr. Jelks in 1930, in that his application was made to appropriated water from Mesquital Spring (Jelks Spring) in Mesquital Wash, a tributary of Rincon Creek, rather than on Rincon Creek. The conclusion being that Mesquital Wash is a "stream emptying into another stream" (Rincon Creek), both of which are subject to separate appropriations.

The federal statute which did apply between 1905 and 1933 (assuming no appropriation prior to 1905) is 16 U.S.C. Section 481. This statute provides that "All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated or under the laws of the United States and the rules and regulations established thereunder." As stated in Field Solicitor Lavell's memo of October 12, 1970, section 481 does not say the water is subject to appropriation as in 43 U.S.C. Section 661, but rather that it may be used. He concluded that the Forest Service retained the ownership of the water source along with the right to use whatever water form the source it needed for its authorized purposes. This is somewhat similar to the reservation doctrine as enunciated in Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468 (1963), wherein the court held that upon creation of a federal reservation (including national forests, parks, monuments, etc.) on the public domain - whether by treaty, legislation or Executive order - the reservation has appurtenant to it the right to divert as much water from the streams within or bordering upon it as is necessary to serve the purposes for which the reservation was created. Applying 16 U.S.C. Sec. 481 and the reservation doctrine, Coronado National Forest (and subsequently Saguaro National Monument) retained ownership of Jelks Spring and reserved all of the water flowing in or along the reservation's boundaries as was necessary to serve the purposes for which the reservation was created.

Jelks could not gain an appropriative right under Section 481 (or under the federal statutes of 1866, 1870 or 1877) on Jelks Spring subsequent to 1905. When he applied for and received a license from the State of Arizona he acquired no water right as against the United States since there was no federal statute allowing such a right to vest (i.e., the U.S. is the only entity which may dispose of its property). He also could not gain a prescriptive right since property of the U.S. cannot be acquired by adverse possession.

It might also be argued that when Mr. Jelks acquired a water right with a priority of 1930, he impliedly waived any earlier priority he may then have had.

In summary, Mr. Jelks or his predecessors probably did not make an appropriation to beneficial use of Jelks Spring prior to 1905 (under the facts as we have found and stated). Given this as a presumption, Mr. Jelks, his predecessors or successors, could not gain a valid water right under Arizona law since this land had been withdrawn from the public domain prior to his appropriation to beneficial use and the only applicable federal statute allowed only the "use" of the water not the appropriation.

Mike Ackerman
August 25, 1975

THE MANUFACTURING STATIONERS INC. PHOENIX, ARIZONA 40439

Transfe[illegible]d to Gordon Packard and Sara [illegible]kard,
April 16, 1948

Certificate Record No. 551 Page No. 551

STATE OF ARIZONA

WATER DISTRICT NO. COUNTY OF PIMA

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* J. Rukin Jelks

of Vail, *State of* Arizona, *has made proof to the satisfaction of the STATE WATER COMMISSIONER of Arizona, of a right to the use of the waters of*

the Mesquital Spring in Mesquital Wash, *a tributary of* Rincon Creek,

for the purpose of Domestic Use and Watering Livestock

under App.No. A-1115 *Permit No.* A-779 *of the State Water Commission, and that said right to the use of said waters has been perfected in accordance with the laws of Arizona, and made and entered of record*

in the Records of the State Water Commissioner at Phoenix, Arizona, in Volume 2, *at page* 551

on the 21st *day of* September, 1933; *that the priority of the right hereby confirmed dates*

from June 5, 1930; *that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall*

not exceed 10,000 gallons per day ~~acre feet per annum~~

A description of ~~the lands to which said right is appurtenant and for other purposes~~ the place where such water is put to beneficial use, is as follows: Within the West Half of the Northeast Quarter ($W\frac{1}{2}$ $NE\frac{1}{4}$) and East Half of the Northwest Quarter ($E\frac{1}{2}$ $NW\frac{1}{4}$) of Section Sixteen (16), Township Fifteen (15) South, Range Seventeen (17) East, G.& S. R. B. & M., in the County of Pima, State of Arizona.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, and subject to all prior existing rights.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE WATER COMMISSIONER affixed this*

21st *day of* September, *1933*

(SEAL)

By FRANK P. TROTT
State Water Commissioner.

Attest: ICIE L. HARRISON
Secretary.

Recorded in State Record of Water Right Certificates, Volume 2, *Page* 551

Application No. A-1115

Certificate No. 551 Issued Sept. 21, 1933

Transferred to:
Gordon Packard and Sara Packard April 16, 1948
*Permit No. A-779

APPLICATION FOR A PERMIT

To Appropriate the Public Waters of the State of Arizona

I, J. RUKIN JELKS (Name of applicant)
of Vail (Postoffice), County of
State of Arizona, do hereby make application for a permit to appropriate the following described public waters of the State of Arizona, subject to existing rights:

If the applicant is a corporation, give date and place of incorporation

1. The source of the proposed appropriation is Mesquital Spring in (Name of stream)
Mesquital Wash, tributary of Rincon Creek

2. The amount of water which the applicant intends to apply to beneficial use is 10,000
gallons per day ~~cubic feet per second~~

3. The use to which the water is to be applied is domestic and stock watering. (Irrigation, power, mining, manufacturing, domestic supplies, etc.)

4. The point of diversion is located N. 21° E. 3/4 of a mile from SW corner (Give distance and bearing to section corner)
Sec. 4, T. 15-S, R. 17-E, (If unsurveyed land it should be so stated and tied to some natural object)

being within the SE¼ NW¼ unsurveyed (Give smallest legal subdivision) of Sec. 4, Tp. 15-S (No. N. or S.)
R. 17-E (No. E. or W.), G. and S. R. B. & M., in the County of Pima

5. The pipe line (Main ditch, canal or pipe line) to be approximately 2
miles in length, terminating in the W½ NE¼, E½NW¼ (Smallest legal subdivision) of Sec. 16, Tp. 15-S (No. N. or S.)
R. 17-E (No. E. or W.), G. and S. R. B. & M., the proposed location being shown throughout on the accompanying map.

6. The name of the ditch, canal or other works is Mesquital Spring and Pipe line.

DESCRIPTION OF WORKS

DIVERSION WORKS—

7. (a) Height of dam feet, length on top feet, length at bottom
feet; material to be used and character of construction (Loose rock, concrete masonry, rock and brush, timber crib, etc., wasteway over or around dam)

(b) Description of headgate (Timber, concrete, etc., number and size of openings)

*A different form of application is provided where storage works are contemplated. These forms can be secured without charge, together with instructions by addressing the State Water Commissioner, Phoenix, Arizona.

MUNICIPAL SUPPLY—

11. To supply the city of .....

.....(Name of) *County, having a present population of* ....., *and an estimated population of* .....*in 19*.....

(Answer questions 12, 13, 14 and 15, in all cases)

12. Estimated cost of proposed works, $ 4,000.00

13. Construction work will begin on or before July 1, 1930

14. Construction will be completed on or before October 1, 1930

15. The water will be completely applied to the proposed use on or before

October 1, 1930

Duplicate maps of the proposed ditch or other works, prepared in accordance with the rules of the State Water Commissioner, accompany this application.

J. RUKIN JELKS
(Name of applicant)

Signed in the presence of us as witnesses:

(1) T. T. Murry (Name), P.O. Box, 1482, Tucson, Ariz. (Address of witness)

(2) Matt W. Corbett (Name), Congress Hotel, Tucson, Ariz. (Address of witness)

L. B. Wilson (Name), 827 So. 6th Ave. " "

Remarks:

This spring will be developed by sinking an 8-ft. shaft, concreting the sides, and at the bottom there will be a 1" pipe connection which will convey the water approximately 2 miles to a large tank at Mr. Jelks' house located about on the line between the E½NW¼ and the W½NE¼ of Sec. 16, T. 15-S, R. 17-E, into a large tank from which water will be used for household purposes and conducted to watering troughs for stock-watering purposes.

STATE OF ARIZONA,
County of Maricopa. } ss.

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for correction or completion, as follows: .....

In order to retain its priority, this application must be returned to the State Water Commissioner, with corrections, on or before ....., *19*.....

WITNESS my hand this .....*day of* ....., *19*.....

State Water Commissioner.

STATE OF ARIZONA, } ss.
County of Maricopa. }

This is to certify that I have examined the foregoing application and do hereby grant the same, subject to the following limitations and conditions: If for irrigation, this appropriation shall be limited to one-eightieth of one cubic foot per second, or its equivalent, for each acre irrigated, and shall be subject to such reasonable rotation system as may be ordered by the proper officer, under direction of the Commissioner.....

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and not to exceed 10,000 Gallons per Day ~~cubic feet per second~~, or its equivalent in case of rotation. The priority date of this permit is June 5, 1930.

Actual construction work shall begin on or before November 6, 1931, and shall thereafter be prosecuted with reasonable diligence and be completed on or before February 6, 1932.

Complete application of the water to the proposed use shall be made on or before February 6, 1932.

WITNESS my hand this 7th day of November, 19 30.

(SEAL) FRANK P. TROTT
State Water Commissioner.

Certificate No. 551
9/21/33.

Application No. A-1115 Permit No. A-779

PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF ARIZONA.

Division No..... District No.....

This instrument was first received in the office of the State Water Commissioner at Phoenix, Arizona, on the 5th day of June, 1930, at 4:15 o'clock P. M.

Returned to applicant for correction.....

Corrected application received.....

Approved November 7, 1930.

Recorded in Book No. 8 of Permits, at page.....

(SEAL) FRANK P. TROTT
State Water Commissioner.

J. W. Rollins

Page 2, of letter from J. W. Rollins
to Register and receiver of U.S.L. Office..

Filed and recorded at request of J. W. Rollins May 19th, A. D. 1919 at 9-20 A. M.

R. B. Vinson, County Recorder,
By M. L. Alvine Deputy.

NOTICE OF WATER LOCATION.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have appropriated and do hereby appropriate of the surface and underground waters or flow, including flood waters, of the Rincon Creek, five hundred miner's inches, for irrigation, domestic and other benificial uses and purposes. The undersigned are the owners of the following lands situate in the County of Pima, Arizona, to-wit: the SE I/4 SE I/4 Sec. I6, NE I/4 NE I/4 Sec. 2I, N I/2 SE I/4; SW I/4 SE I/4 ; SW I/4 NE I/4 Sec. I6, NE I/4 of Sec. I7 all in T I5 S, R I6 E, G & S R M, containing 400 acres.

Said appropriators and owners intend to divert said water at a point on said Rincon Creek approximately one half mile southwest of the southwest corner of the old Esau Mills ranch, said location point falling approximately in sections I3 and 24 T I5 S, R I6 E, G & S R M. Said point of diversion shall be approximately at a point above named which is marked by a monument of stone 24 inches high and I8 inches in diameter this notice being within a tin can placed inside said monument.

Said appropriators intend to construct a dam for diversion purposes at or approximately at the said point of diversion and across the bed or channel of said Rincon Creek.

From said point of diversion said appropriators intend to construct a ditch in a generally westerly direction to and upon the above described lands of these appropriators, which said lands of these appropriators shall be the terminal point of siad ditch, and which lands lie about 3 miles westerly from said point of diversion.

Dated and posted on the ground, and at the above point of diversion, this 7th day of June I9I9..

Dorothy S. Knipe
J. W. McDonald
Frederic O. Knipe

Filed and recorded at request of F. O. Knipe June II, A. D. I9I9 [illegible] P. M.

R. [illegible] County R.

By [illegible]

Notice Of Water Location.

Know All Men By These Presents: That we, the undersigned, have appropriated, and do hereby appropriate of the surface and underground waters, or flow, including flood waters, of the Rincon Creek, five hundred (500) miner's inches, for irrigation, domestic and other beneficial uses and purposes. The undersigned are the owners of the following lands situate in the County of Pima, Arizona, to-wit: the SE 1/4 SE 1/4 Sec. 16; NE 1/4 NE 1/4 Sec. 21; N 1/2 SE 1/4; SW 1/4 SE 1/4; SW 1/4 NE 1/4 Sec. 16, all in T 15 S. R 16 E. G&SRM. containing 240 acres.

The said appropriators and owners intend to divert said water at a point in the Rincon Creek approximately 1/4 of a mile West of the West boundary line of the lands of Esau Mills upon unpatented and unlocated lands of the public domain. Said point of diversion shall be approximately at point above named which is marked by a monument of stones 24 inches high and 18 inches in diameter, this notice being within a tin can placed inside said monument.

Said appropriators intend to construct a dam for diversion purposes at or approximately at the said point of diversion and across the bed or channel of said Rincon Creek,

From said point of diversion said appropriators intend to construct a ditch in a generally Westerly direction to and upon the above described lands of these appropriators, which said lands of these appropriators shall be the terminal point of said ditch, and which lands lie about two and one-half miles Westwardly from said point of diversion. Said appropriators intend further to construct lateral ditches to and upon the various fields and parts of their said lands, the purpose being to irrigate the same.

Dated and posted on the gound, and at the above point of diversion, this 14th day of July, 1918.

Frederick O. Knipe

Dorothy A. Knipe

Filed and recorded at request of F. O. Knipe, July 17 A.D. 1918, at 3-10 P. M.

R. B. Vinson, County Recorder,

By M. L. Alwine — Deputy.

irrigation purposes.
A copy of this notice is posted on the ground this 22nd day of March, 1913. at the point of diversion.
Witnesses:
Joseph Menager,
H. M. Gandalfo.
James R. Dunseath
Locator.

Filed & recorded at request of James R. Dunseath, Mar. 25, 1913 at 9-45 a.m.
O. E. Harwell, County Recorder
by L. M. Shibell, deputy.

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Notice of Water Location. Know all men by these presents: That we, the undersigned, have appropriated, and do hereby appropriate of the surface and underground waters or flow, including flood waters, of the Rincon Creek, three hundred (300) miners inches for irrigation, domestic and other beneficial uses and purposes. The undersigned are the owners of the following lands situate in the County of Pima, Arizona, to-wit:-

miles westerly from the said point of diversion. I did appropriator intend further to construct lateral ditches and to and upon the various fields and part of their said lands, the purpose being to irrigate the same.

Dated and posted on the ground and at the above point of diversion, this 24th day of Feb. 1913.

Witnessed to signatures
Jose Ma. Mendez
Martha E. Stoddard
Francisco Tellez

Frederic O. Knipe
Fulgencio his + mark Molina
Rafal M. Mendez

Witness to posting, Jose Ma. Mendez.
Filed & recorded at request of F. O. Knipe, Mar. 31, 1913 at 9-15 A. M.
O. E. Lowell, County Recorder
by L. M. Shibell, deputy.

Possessory Right affidavit.

Notice is hereby given that I Mrs France L. Conyers of Turner Post Office Cochise County,

05-19-1919: notice of water location, page 5 - narrativecont

Land History

WR-8

Subject: Sequ - WR #9
Jolks Spring

NATIONAL PARK SERVICE
Western Regional Office
MESSAGE RECORD

Routed for: ☑ Information ☐ Action

☐ Incoming Call
☑ Outgoing Call

Date 8/27/75

To: WR #9
~~Sequoia~~

Name and Title Melvin Yukas - Director of Land Classification

Representing National Forest Service Telephone No. (703) 235-1250

Address

NPS Personnel in on Call Mike Ackerman - Legal Clerk

Conversation: Mr. Yukas provided the following information in regard to reservations or withdrawals of lands containing or in the vicinity of Jolks Spring:

32 Stat. 202: first established Santa Catalina N.F. (in 1903 ?)

35 Stat. 2148 of July 19 1907 added land (containing Jolks Spring) to Santa Catalina N.F.

E.O. 908 of July 2, 1908 changed Dragoon, Santa Rita and Santa Catalina National Forests to the Coronado National Forest.

Follow-up Action to be Taken:

none

Follow-up Action Taken:

00-00-0000: changes in national forest names

IN ANSWER TO YOUR RECENT REQUEST WE ARE SENDING YOU THE ACCOMPANYING MATERIAL
Law Library
American-British Law Division
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20540

It is hereby ordered that the names of the National Forests mentioned in the left-hand column of the table given below shall on and after July 1, 1908, be changed, and that such National Forests shall be consolidated into National Forests which shall bear the names shown in the right-hand column of the table:

FORMER NAMES	NEW NAME
Alaska	
Chugach and Afognak	Chugach
Alexander Archipelago Tongass	Tongass
Arizona	
Chiricahua Peloncillo (New Mexico)	Chiricahua
Dragoon Santa Catalina Santa Rita	Coronado
Baboquivari Huachuca Tumacacori	Garces
Prescott Verde	Prescott
California	
Modoc Warner Mountains	Modoc
Monterey Pinnacles San Benito	Monterey
San Jacinto Trabuco Canyon	Cleveland
Colorado	
San Isabel Wet Mountains	San Isabel
Idaho	
Cassia Raft River (also in Utah)	Minidoka
Montana	
Little Belt Little Rockies Highwood Mountains Snowy Mountains	Jefferson
Ekalaka Long Pine Short Pine (South Dakota) Slim Buttes (South Dakota) Cave Hills (South Dakota)	Sioux

FORMER NAMES	NEW NAME
Nebraska	
Dismal River, Niobrara, North Platte	Nebraska
Nevada	
Independence, Ruby Mountains	Humboldt
Charleston, Vegas	Moapa
Monitor, Toiyabe, Toquima	Toiyabe
New Mexico	
Guadalupe, Sacramento	Alamo
Peloncillo, Chiricahua (Arizona)	Chiricahua
Gallinas, Lincoln	Lincoln
Magdalena, San Mateo	Magdalena
South Dakota	
Short Pine, Slim Buttes, Cave Hills, Ekalaka (Montana), Long Pine (Montana)	Sioux
Utah	
Fishlake, Glenwood	Fishlake
Monticello, La Sal (also in Colorado)	La Salle
Raft River (also in Idaho), Cassia (Idaho)	Minidoka
Grantsville, Salt Lake, Wasatch	Wasatch

It is also ordered that on and after July 1, 1908, the name of the Otter National Forest, in Montana, shall be the Custer National Forest; the name of the Pecos River National Forest, in New Mexico, shall be the Pecos National Forest; the name of the Imnaha National Forest in Oregon, shall be the Wallowa National Forest; the name of the Aquarius National Forest, in Utah, shall be the Powell National Forest; and the name of the Big Horn National Forest, in Wyoming, shall be the Bighorn National Forest.

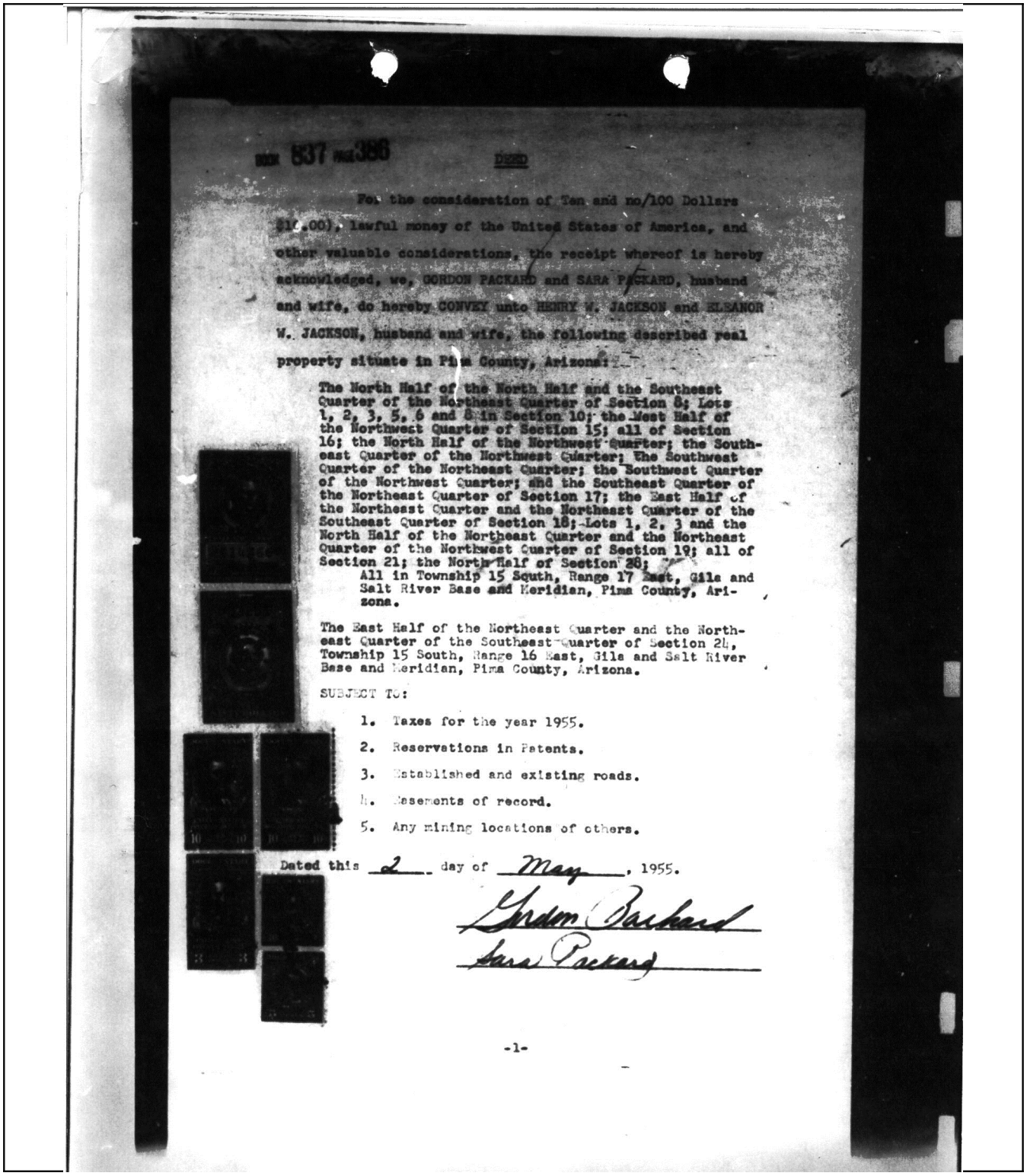
THEODORE ROOSEVELT

THE WHITE HOUSE.

July 2, 1908.

[No. 908.]

05-02-1955: deed



BOOK 837 PAGE 386

DEED

For the consideration of Ten and no/100 Dollars ($10.00), lawful money of the United States of America, and other valuable considerations, the receipt whereof is hereby acknowledged, we, GORDON PACKARD and SARA PACKARD, husband and wife, do hereby CONVEY unto HENRY W. JACKSON and ELEANOR W. JACKSON, husband and wife, the following described real property situate in Pima County, Arizona:

The North Half of the North Half and the Southeast Quarter of the Northeast Quarter of Section 8; Lots 1, 2, 3, 5, 6 and 8 in Section 10; the West Half of the Northwest Quarter of Section 15; all of Section 16; the North Half of the Northwest Quarter; the Southeast Quarter of the Northwest Quarter; the Southwest Quarter of the Northeast Quarter; the Southwest Quarter of the Northwest Quarter; and the Southeast Quarter of the Northeast Quarter of Section 17; the East Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section 18; Lots 1, 2, 3 and the North Half of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 19; all of Section 21; the North Half of Section 28;

All in Township 15 South, Range 17 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

The East Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section 24, Township 15 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

SUBJECT TO:

1. Taxes for the year 1955.
2. Reservations in Patents.
3. Established and existing roads.
4. Easements of record.
5. Any mining locations of others.

Dated this 2 day of May, 1955.

Gordon Packard

Sara Packard

BOOK 72 PAGE 580

QUITCLAIM DEED

For the consideration of TEN AND NO/100 DOLLARS ($10.00), lawful currency of the United States of America, and other valuable considerations, the receipt whereof is hereby acknowledged, I, MARY HASKELL HUNTER, formerly the wife of J. Rukin Jelks, do hereby quitclaim unto GORDON PACKARD and SARA PACKARD, husband and wife, the following described real property situate in the County of Pima, State of Arizona, to-wit:

The North Half of the North Half, and the Southeast Quarter of the Northeast Quarter of Section 8; Lots 1, 2, 3, 5, 6 and 8 in Section 10; the West Half of the Northwest Quarter of Section 15; All of Section 16; the Northwest Quarter, and the South Half of the Northeast Quarter of Section 17; the East Half of the Northeast Quarter, and the Northeast Quarter of the Southeast Quarter of Section 18; Lots 1, 2, 3 and the North Half of the Northeast Quarter, and the Northeast Quarter of the Northwest Quarter of Section 19; All of Section 21; the North Half of Section 28; all in Township 15 South, Range 17 East, Gila and Salt River Base and Meridian, Pima County, Arizona; and the East Half of the Northeast Quarter; and the Northeast Quarter of the Southeast Quarter of Section 24, Township 15 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of March, 1948.

Mary Haskell Hunter
Mary Haskell Hunter formerly the wife of J. Rukin Jelks

STATE OF MONTANA)
County of Missoula) ss.

On this the 27 day of March, 1948,

-1-

Arizona Land Title & Trust Company Order No. 4447

05-06-1929: bargain and sale deed

Bargain and Sale Deed

THIS INDENTURE, Made the 6th day of

in the year of our Lord, One Thousand Nine Hundred and Twenty Nine, between F. C. KNIPE and DOROTHY A. KNIPE, husband and wife,

parties of the first part, and J. HUKIN JELKS, a single man

the party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of TEN-- DOLLARS gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, situate, lying and being in the County of Pima, State of Arizona, and bounded and described as follows, to-wit:

The Northwest Quarter, and the South Half of the Northeast Quarter of Section 17; the East Half of the Northeast Quarter, and the Northeast Quarter of the Southeast Quarter of Section 18, Township 15, South, Range 17 East, Gila and Salt River Base and Meridian, Arizona.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof, and, also, all the estate, right, title, interest, claim of homestead, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of ..... or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above described premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, ... his ..... heirs and assigns, forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

F. C. Knipe

Dorothy A. Knipe

STATE OF ARIZONA, }
County of Pima. } ss.

This instrument was acknowledged before me this 6th day of May A.D. 1929 by F. C. Knipe and Dorothy A. Knipe his wife.

(NOTARY SEAL) E. T. Busick, Notary Public

My commission expires Feb. 17, 1930.

Filed and recorded at request of Busick & Hall, May 13 A.D. 1929 at 4-40 P.M.

Mabel A. Cooper, County Recorder.

By A. Macallah Deputy

D BK 136

05-21-1926: bargain and sale deed

Bargain and Sale Deed

THIS INDENTURE. Made the Twenty-first day of May in the year of our Lord. One Thousand Nine Hundred and Twenty-six. between F. O. Knipe and Dorothy A. Knipe. his wife.

part ies of the first part. and M. H. Haskell.

the party of the second part.

WITNESSETH: That the said parties of the first part. for and in consideration of the sum of Ten ($10.00) DOLLARS gold coin and other valuable considerations of the United States of America/to us in hand paid by the said party of the second part. the receipt whereof is hereby acknowledged. do by these presents. bargain. sell. convey and confirm unto the said party of the second part. and to his heirs and assigns forever. all the certain lots. piece s. or parcels of land. situate. lying and being in the County of Pima. State of Arizona. and bounded and described as follows. to-wit:

The South East quarter of the South East quarter of section sixteen (16) and the North East quarter of the North East quarter of section twenty one (?1) in Township fifteen (15) South range sixteen (16) East, G & S R B & M, Pima County, Arizona. The South West quarter of the North East quarter, the West one half (½) of the South East quarter and the North East quarter of the South East quarter of section sixteen (16) in township fifteen (15) South of range sixteen (16) East, G & S R B & M, Pima County, Arizona.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof, and, also, all the estate, right, title, interest, claim of homestead, property possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of or to the said premises, and every part and parcel thereof, with the appurtenances, to wit:

Leased State Lands:

The N. W. One quarter of Section 15, Township 14, Range 16 East of the Gila & Salt River Meridian, Arizona; North (½) of the N. E. One Quarter of Section 15, Township 15, Range 16 ...Gila & Salt River Meridian, Arizona; The South One Half of the S. E. One quarter of Section 10.

This agreement dated the 14th (fourteenth) day of April, 1926 between the parties hereto is made a part of this Bargain and Sale Deed for reference as to improvements, payments, and date of right to possession of land.

TO HAVE AND TO HOLD, all and singular, the above described premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns, forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the presence of) Frederick O. Knipe (Seal)
E. T. Cusick, Charity Barry Dorothy A. Knipe (Seal)

THE STATE OF ARIZONA, }
County of Pima. } ss.

Before me, E. T. Cusick, a Notary Public in and for the County of Pima, State of Arizona, on this day personally appeared Dorothy A. Knipe known to me to be the person whose name she subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 21 day of May A. D. 1926.

E. T. Cusick Notary Public.

(My Commission expires 2-27-30)
(NOTARY SEAL)

THE STATE OF ARIZONA, }
County of Pima. } ss.

Before me, E. T. Cusick, a Notary Public in and for the County of Pima, State of Arizona, on this day personally appeared Frederick O. Knipe husb. of Dorothy A. Knipe known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 21 day of May A. D. 1926.

E. T. Cusick Notary Public.

(My Commission expires 2-27-30)
(NOTARY SEAL)

Filed and recorded at request of M. H. Haskell, May 22 A. D. 1926, at 3-45 P.M.

Carroll Hudson, County Recorder.

By C. Neustadter Deputy

BK 110

05-06-1926: bargain and sale deed

Bargain and Sale Deed

THIS INDENTURE, Made the Sixth day of May in the year of our Lord, One Thousand Nine Hundred and Twenty-six, between M. H. Haskell and Katherine Adams Haskell, his wife,

parties of the first part, and F. O. Knipe

the party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Five Hundred ($500.00) --- DOLLARS gold coin of the United States of America, and other valuable considerations to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the certain lots, pieces, or parcels of land, situate, lying and being in the County of Pima, State of Arizona, and bounded and described as follows, to-wit:

East half of the northeast quarter and the northeast quarter of the southeast quarter of Section eighteen and the southwest quarter of the northwest quarter of Section seventeen in Township fifteen south of Range seventeen east of the Gila and Salt River Meridian, Arizona, containing one hundred sixty acres.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof, and, also, all the estate, right, title, interest, claim of homestead, property possession, claim and demand whatsoever, as well in law as in equity, of the said part ies of the first part, of or to the said premises, and every part and parcel thereof, with the appurtenances. to wit:

Lease No. NM-01434. N½N½; SE¼SE¼; NE¼SW¼, Sec. 18, Twp. 15S Range 17E, 240 Acres. The agreement dated April 14, 1926, between the parties hereto is made a part of this Bargain and Sale Deed for reference as to improvements and date of right to possession thereto.

TO HAVE AND TO HOLD, all and singular, the above described premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns, forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the presence of) Katherine Adams Haskell (Seal)
Melville H. Haskell (Seal)

1 Mary C. Haskell,
2 Katherine Haskell
3 Charity Barry

THE STATE OF ARIZONA, }
County of Pima. } ss.

Before me, E. T. Cusick, a Notary Public in and for the County of Pima, State of Arizona, on this day personally appeared Melville _ Haskell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 21 day of May A. D. 1926.

E. T. Cusick, Notary Public.

(My Commission expires 2-27-30)
(NOTARY SEAL)

THE STATE OF OHIO, }
County of Cuyahoga. } ss.

Before me, Kyle Kyle, a Notary Public in and for the County of Cuyahoga, State of Ohio, on this day personally appeared Katherine Adams Haskell wife of said Melville H. Haskell known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 10th day of May A. D. 1926.

Kyle Kyle, Notary Public.

(My Commission expires Jan. 12, 1928)
(NOTARY SEAL)

Filed and recorded at request of F. O. Knipe, May 26 A. D. 1926, at 1-05 P.M.
Carroll Hudson, County Recorder.
By E Henstetter Deputy.

DRK 110

Other Supporting Information

United States Department of the Interior

NATIONAL PARK SERVICE

Saguaro National Monument
3693 South Old Spanish Trail
Tucson, Arizona 85730-5699

IN REPLY REFER TO:

L54

June 23, 1987

Memorandum

To: Chief, Water Rights Branch
Attention: Walter Rusinek
National Park Service
Water Resources Division

From: Superintendent, Saguaro National Monument

Subject: Water Rights Filings, General Stream Adjudication, Upper Santa Cruz River Basin

Here is the information we have on water sources, wells and springs in Saguaro National Monument. Enclosed are copies of the filings made on wells within the Monument in June, 1982 (Enclosures #1-14). In the upper left hand corner of these copies can be found annotations as to whether the filing is on acquired or reserved land, the acquisition date (if known), the deed number (if known) and the tract number as found on Land Status Maps 01 through 05 (Drawing No. 151-80,006). Please note also that corrections have been made on some of the filing sheets as far as locations. These corrections are highlighted in yellow.

A check on the Green property concerning water rights indicates that Mr. Green has not filed, but the NPS did file in 1982 as the filings indicate (Enclosure #3). The Kenner Well, your Docket #2, does exist and the necessary information is included as part of Enclosure #16. Two wells in the Tucson Mountain District, the Dobe House Well (Enclosure #11) and the Red Hills Well (Enclosure #13), are to be used as part of the mitigation of impacts to wildlife resulting from construction of the Central Arizona Project aqueduct. A plan prepared for this mitigation (Enclosure #17) and the Project Statement (Enclosure #18) from the Natural /Cultural Resource Management Plan - Saguaro National Monument, 1987 Revision, are included.

The last item of interest to you is the one related to springs. Enclosure #16 is the best information that we have on known springs in the Rincon Mountain District. In reference to Docket #9-Jelks Spring, there seems to be an error in the information that you have on file. Enclosure #15 is a copy of the Certificate of Water Right #551 issued to Mr. Jelks and transferred by him to Gordon and Sara Packard. Please note that this certificate is issued for a right on land outside Saguaro National Monument. The spring cited in your correspondence is not the Jelks Spring filed on. Apparently confusion arose in the past and the name Jelks was erroneously applied to the spring in Section 4 that has also been called Upper Spring (see Enclosure #16). Should you have any questions on this matter please contact Resource Management Specialist Dr. Robert Hall here at Saguaro, phone 8-762-6682 or (602) 629-6682.

for Ernest Quintana
William F. Paleck

Enclosures

New Card Same R&T | Type of Data | Loc 182= C D | Format 261= F M P Z

PERTINENT REMARKS (1)

R=183 | T=A | 185= | 185= | 185=

New Card Same R&T

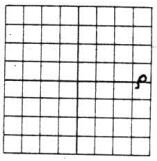
FOOT NOTES:

② Frequency of Collection Codes

A	B	C	D	F	I	M	Ø	Q	S	W	Z
annual	bi-monthly	continuous	daily	semi-monthly	intermittent	monthly	one time only	quarter annual	semi-annual	weekly	other

Docket #9
SAGU

This site has been a subject in past correspondence between the park and Regional Office (see Water Right Docket #9). It is the only known current alien development of a spring within the park's authorized boundaries (Rincon Mountain Unit).



The site is developed by a concrete basin and two pipelines. The surface of the basin is approximately 4 X 4 ft. (the lid of the basin could not be removed, therefore no further measurements were obtained). The basin is located to the northwest side of a narrow drainage which is northwest of the Madrona "Ranger Station" complex and near Manning Camp Trail.

U. S. GOVERNMENT PRINTING OFFICE : 1975 O -579-020

One pipeline runs from the source to a watering trough on Park Service land; this line is not believed to be functional (the trough was dry).

Latitude of trough: 32° 09' 25"
Longitude of trough: 110° 36' 37"
Altitude of trough: 3725 feet

See attached continuation sheet.

Continuation of Spring (D-15-17) 4 bda:

The second pipeline parallels the first from the source to the trough (but is not connected to the trough), and continues on past the trough to X9 Ranch. This pipeline is presently not functional although there were indications that some attempt to repair the line had been made within the last few years.

Note: 1) Access to Madrona "Ranger Station" complex is through private land (X9 Ranch)

2) Is not a public easement

The Madrona "Ranger Station" complex is supplied water purchased from a private water company located at X9 Ranch (source of water is wells located on X9 Ranch property).

Saguaro NM
(D-15-17) 4 bda
Watering trough below
Jelks Spring
Docket #9



Looking Southwest, water trough below Jelks Spring is in center foreground. A pipeline can be followed from this site to Jelks Spring which is above trough in wash.

W. Reed
5/19/81

Subject: Jelks Spring - SAGU

NATIONAL PARK SERVICE
Western Regional Office
MESSAGE RECORD
Date 4/1/82

Routed for: ☒ Information ☐ Action

☒ Incoming Call ☐ Outgoing Call

To: _____

Name and Title Hal Coss

Representing Saguaro Telephone No. _____

Address _____

NPS Personnel in on Call McMahon and Reed

Conversation: Coss informed us that Mr Jackson, a nearby landowner who gets his water from Jelks Spring, had expressed concern about the registration of Jelks Spring pursuant to the AGMA of 1980. Jackson had informed Coss that the spring box is 6 ft deep and possibly could've been considered a well. Although there had been problems in the past, Coss said that the water system was now functioning and that the spring was now supplying water to a trough at Jackson's place (the X-9 Ranch).

We informed Coss that we would make a careful inspection of our records to determine whether Jelks Spring should be registered as a well but do not plan to do so.

Follow-up Action to be Taken:

Follow-up Action Taken:

RECEIVED
MAY 13 1971
Action | Infor | Initial
D
A D
C
A
S
Files

L54(WSC)LWW
SAGU

May 11, 1971

Memorandum

To: Director, National Park Service
Attention: Chief, Division of Water Resources

From: Chief, Water Resources Section, Office of Land Acquisition and Water Resources, WSC

Subject: Water Rights, Madrona Area, Saguaro

Reference Mr. Chavez' trip report dated April 30, and our telephone conversation regarding subject above.

It is hoped that when the spring again flows, we may be able to work some sort of arrangement with the Superintendent, so that its flow may be measured.

Any comments or advice you have on this matter would be appreciated.

(Sgd)
Gerard S. Witucki

cc:
Director, Southwest Region
Superintendent, Saguaro

L54 Sa

L54-(WSC)LWW
SAGU

April 30, 1971

MW

Memorandum

To: Director, Western Service Center
Through: Chief, Office of Land Acquisition and Water Resources
Chief, Water Resources Section

From: Water Docket Specialist, WSC-LWW

Subject: Trip to Saguaro NM - Water Rights, Madrona area.

1. Purpose of trip: To conduct a water right study of the Jelks Spring - Madrona area for Saguaro, in response to the request of Regional Director's March 6, 1971 memorandum.

2. Companions: None

3. Accomplishments: Met with Superintendent Harold R. Jones and Chief Ranger Louis L. Gunzel to discuss the water rights problem at the Madrona area. The following is a brief summary of the situation.

For some time, park use of the Jelks Spring, which is presently being utilized by the X-9 Ranch, has been considered to be a possible solution to the water supply problem that now exists at the Madrona area (for further discussion see Superintendent's memorandum of October 7, 1970, to Chief, Office of Land Acquisition and Water Resources, and memorandum of March 10, 1971, to Director, Southwest Region). The water rights to this source are not fully defined, as Mr. Henry Jackson, Owner of the X-9 Ranch, utilizes the source for stockwatering and has a State-issued water right certificate for such use. The certificate, issued in 1933 to a J. Rukin Jelks (former owner of the X-9 Ranch), has been the basis for Mr. Jackson's use of the spring, in accordance with the basic principles of appropriation; i.e., right to the use by actual application of the water to continued benificial use and the right of appropriation accrued from the day of the actual beneficial application of the water (State of Arizona Water Code, Sections 75-105). However, as stated in an October 12, 1970 memorandum from the Field Solicitor W. G. Lavell (Phoenix) to the Manager, Land Office, Bureau of Land Management, the question of rights is one of priority; that is, if

the Jelks-Jackson water right was established prior to October 2, 1905, (date when the land involved was withdrawn for a forest reserve), then Jackson's water right would not be subject to the needs of the Monument. But if the appropriation took place later than the 1905 withdrawal date, Mr. Jackson's right to the use of this source is subject to the water needs of the Monument.

Superintendent Jones expressed his desire to clarify this matter, particularly so as to have the information available for master planning and wilderness studies.

Later that day, Chief Ranger Gunzel and I went into the Madrona area to observe the spring, collection structure and pipelines. Apparently, Mr. Jackson is not now using water in his operation from this source, as the spring was almost dried up (approximately 1/2-1 gpm) and the water level in the cistern was too low (2 ft from bottom) to function. It was not possible to take any accurate measurements of the flow, as obtaining permission from Mr. Jackson seemed unadvisable at this time. Based on these observations and conversations with park personnel, it appears that the dependability of the spring as a water source is questionable so that it will have to be monitored to determine its reliability - however as you know, the southwest is experiencing a drought at this time and this may be an irregular versus a seasonal variation.

I next proceeded to conduct the research necessary to determine the actual priority date of Mr. Jackson's water right by searching the records at the Pima County Courthouse in Tucson; the following history of the X-9 Ranch lands and the subject water right was revealed:

March 13, 1913 - Notice of water location filed by F. O. Knipe, Fulgencio Molina, Rafal M. Mendez (Rincon Creek)

July 17, 1918 - Notice of water location filed by F. O. Knipe (Rincon Creek)

June 11, 1919 - Notice of water location filed by F. O. Knipe (Rincon Creek)

May 6, 1926 - M. H. Haskell and Katherine Adams Haskell sell to F. O. Knipe lands now known as X-9 Ranch

Proc. March 1, 1933
trans. Aug 10, 1933

May 6, 1929 - F. O. Knipe sells to J. Rukin Jelks lands now known as X-9 Ranch

September 21, 1933 - Issuance of State certificate of water right to J. Rukin Jelks (Jelks Spring)

March 27, 1948 - Mary Haskell Hunter (formerly wife of J. Rukin Jelks) sells to Gordon and Sara Packard lands now known as X-9 Ranch

April 16, 1948 - State certificate of water right (Jelks Spring) transfered to Gordon and Sara Packard

May 2, 1955 - Gordon and Sara Packard sell to Henry W. and Eleanor W. Jackson lands now known as X-9 Ranch

The records reveal that the earliest recorded use of water in this area was March 25, 1913, at which time several ranchers, including Mr. F. O. Knipe filed a notice of water location. This however is for use of water from the Rincon Creek. No reference to the Jelks Spring, (also known as Upper Spring and Mesquite Spring) is made until 1933 when Jelks received his certificate of water right. My investigation confirmed that there was no appropriation from this water source prior to October 2, 1905, which is the date establishing the Governments' prerogative in control and use of this water source. I returned to the Monument to discuss my findings with the park staff.

The following day in Phoenix I met with Field Solicitors Laurie K. Luoma and William G. Lavell to discuss my findings, in context of their earlier memorandum; specifically, that there was no record of appropriation prior to the 1905 withdrawal date. Mr. Lavell again stated that the provision of 16 U. S. C. 481 would be controlling. In other words, Mr. Jackson does not have exclusive right to the use of the spring, but could have basis for his priority in right to such use - against any encumbrances for further appropriation by other private concerns - subject to the rights and needs of the Monument. Simply stated, the Monument holds the legal right to use the spring, however there may be basis for discussions with Mr. Jackson as to his earlier use of the spring water (as documented by State certificate) which was prior to the parks anticipated need.

4. Observations and conclusions: It would appear that the Service has the following alternatives available as to the settlement of this matter so that the Monument could utilize this water source, should it prove to be reliable:

a. Inform Mr. Jackson of the legal claims of the Government on the spring and proceed to tap into the source.

b. Approach Mr. Jackson with a cooperative agreement as to sharing of the water within the context of mutual rights and needs.

c. Given the uncertainty of the flow of this source, to seek other sources for this area through further review of the geo-hydrological situation and determine the best course of action in developing an adequate water supply.

A more detailed report will follow, in reply to the March 18, request by the Director, Southwest Region, pending further study of the situation within our organization. Documentation of the information obtained from this study, will also be distributed appropriately in the form of water right dockets.

SIGNED

David Chavez

Cleared for Distribution:

(s&w William L. Bowen APR 30 1971

Director, WSC (Date)

cc:
Chief, MW-WASO
Director, Southwest Region
Superintendent, Saguaro

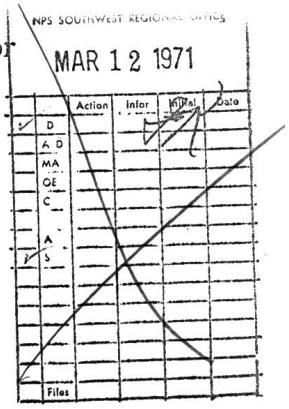
United States Department of the Interior

NATIONAL PARK SERVICE

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

IN REPLY REFER TO:
L54

March 10, 1971



Memorandum

To: Director, Southwest Region

From: Superintendent, Saguaro

Subject: Water Right Investigation, Madrona Area

On November 5 Mr. Gerard S. Witucki, Chief, Water Resources Section, Office of Land Acquisition and Water Resources, Western Service Center, transmitted correspondence concerning the Jelk's Spring Water Right Certificate to the Washington Office for review and advice. As of this date, there has been no response to this request.

As you know, both Field Solicitor Manges and Field Solicitor William G. Lavell in Phoenix are of the opinion that the United States has a valid right to the use of this water. However, in my last discussion with Mr. Henry Jackson, owner of the X-9 Ranch, concerning use of this water, he said he didn't think he could spare the water. Of course, I have never questioned the validity of the State Water Right Certificate on the Jelk's Spring in any discussions with Mr. Jackson.

In connection with the upcoming master plan team visit I discussed this water right with Mr. Jack Lahr of the Office of Land Acquisition and Water Resources, Western Service Center. He suggested that the Regional Office request thorough research and investigation by the Water Resources Section as this is basic data that should be available for the master plan team in considering any water supply development for Madrona as well as for any wilderness proposal which might include this area.

From the management standpoint I am very anxious to find a solution to the very critical water supply problem that now exists at Madrona and recommend that you request an investigation by the Water Resources Section.

Harold R. Jones

Harold R. Jones

CC: General Superintendent
Jack Lahr, Western Service Center

L 54 Sagu

11-05-1970: memorandum to director, nps from chief, water resources section, office of land acquisition and water resources, wsc

674 11-13-70

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WESTERN SERVICE CENTER
450 GOLDEN GATE AVENUE, BOX 36025
SAN FRANCISCO, CALIFORNIA 94102

WRC Copy

Nov 9 10 13 AM '70

Jelk's Spr

IN REPLY REFER TO:
L54(WSC)LWW
SAGU

November 5, 1970

Memorandum

To: Director, National Park Service
Attention: Chief, Division of Water Resources

From: Chief, Water Resources Section, Office of Land Acquisition and Water Resources, WSC

Subject: Water rights investigation, Madrona area - Saguaro

The enclosed incoming correspondence is for your review and comments.

It would seem that a question exists as to whether the State of Arizona had the authority to issue a certificate of water right. However, even if not, it would seem that Mr. Henry Jackson, owner of the X-9 Ranch may have established some sort of a position as regards a prescriptive right in this situation.

Your advice in this matter would be appreciated.

Gerard S. Witucki

Gerard S. Witucki

Enclosures 7

cc:
Director, Southwest Region
Superintendent, Saguaro

SUGU

10-16-1970: memorandum to director, southwest region from superintendent, saguaro regarding water rights - madrona area

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

L1425

October 16, 1970

Memorandum

To: Director, Southwest Region

From: Superintendent, Saguaro

Subject: Water Rights - Madrona Area

Enclosed is a copy of information that has been provided by the Bureau of Land Management and their field solicitor.

If we interpret this correctly, it appears that we have a legal right to use of the water from the spring which was covered by a State Water Right Certificate issued in September 1933. See my memorandum of May 22, 1970, L54, XR-I3019.

If Field Solicitor Manges agrees that we have a right to the use of this water, we feel that an experienced water rights negotiator should negotiate with Mr. Henry Jackson, owner of the X-9 Ranch, to acquire any residual right he may have. Of course, as I have previously stated, we feel that the water from this spring would probably supply our residential needs as well as stockwatering as needed in that portion of the X-9 Ranch. However, the amount of water available should be determined by a competent hydrologist.

We would appreciate your advice as to how we should proceed on this rather delicate matter.

Harold R. Jones

Harold R. Jones

Enclosures

cc:
Chief, Office of Land Acquisition and
Water Resources

00-00-0000: memorandum to superintendent from manager, land office regarding inquiry regarding water rights on spring or seep

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Land Office
3022 Federal Building
Phoenix, Arizona 85025

RECEIVED

Memorandum

To : Harold R. Jones, Superintendent
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

From : Manager, Land Office

Subject: Inquiry regarding water rights on a spri[illegible]
or seep within the Saguaro National Monu[illegible]

At your request we obtained the attached opinion from the Field Solicitor.

In summary, the Field Solicitor is of the opinion that if the waters were appropriated prior to October 2, 1905, the later wit[illegible]drawals would not affect that prior right, but any purported appropriation on or after that date, would be subject to the right of the United States to use the water but would serve to protect the appropriator against a purported appropriation by another individual.

Acting

Enclosures
Encl. 1 - Cpy of request dtd 5/28/70
Encl. 2 - Cpy of opinion dtd 10/12/70

10-12-1970: memorandum to manager, land office from field solicitor regarding inquiry regarding water rights on a spring or seep

IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

ROOM 410, ARIZONA TITLE BUILDING ANNEX
135 NORTH 2ND AVENUE
PHOENIX, ARIZONA 85003

RECEIVED
BUREAU OF
LAND MANAGEMENT
1970 OCT 13 PM 2 34 5
PHOENIX
ARIZONA

October 12, 1970

Memorandum

To: Manager, Land Office

From: Field Solicitor

Subject: Inquiry regarding water rights on a spring or seep within the Saguaro National Monument

At the request of the Superintendent of Saguaro National Monument, you have asked our opinion as to the status of the water rights to a certain spring or seep located inside the Monument. His question was prompted by the fact that the Arizona State Water Commissioner issued a Certificate of Water Right to the waters to a private party in September of 1933.

The historical status of the area is critical to the determination. From the information presented to us it would appear to be as follows:

August 31, 1894 - Plot of survey including the SE¼ of Sec. 4, T. 15S., R. 17E. The remainder of the section is still unsurveyed. (The spring or seep is located in this section.)

October 2, 1905 - Lands withdrawn for a Forest Reserve.

March 4, 1907 - Forest Reserve changed to a National Forest.

July 2, 1908 - Name changed to the Coronado National Forest.

March 1, 1933 - Saguaro National Monument created by Presidential Proclamation.

It should be noted that the Monument is within the exterior boundaries of the Coronado National Forest. The Proclamation includes the following language:

> The reservation made by this proclamation is not intended to prevent the use of the lands now within the Coronado National Forest for national-forest purposes under the proclamation establishing the Coronado National Forest, and the two reservations shall both be

effective on the land withdrawn; but the national monument hereby established shall be the dominant reservation, and any use of the land which interferes with the preservation or protection as a national monument is hereby forbidden.

Thus, from October 2, 1905 until March 1, 1933 the land in question was reserved land as part of the forest system. During the six months until September 1933 when the water right was issued, the land was also reserved as part of Saguaro National Monument.

The Superintendent specifically asked if Executive Order No. 107, dated April 17, 1926, would have any effect on the purported water appropriation in 1933. That order reads:

> Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), entitled "an act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat. 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one-quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 10 of the act of December 29, 1916 (39 Stat. 862), and in aid of pending legislation.

It is clear from the wording of the order that it is not applicable to the land in question because it only is operable on unreserved public lands. As stated previously, this land has had reserve status since October 3, 1905.

The matter would appear to be controlled by 16 U.S.C. § 481 which reads:

> All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder.

Unfortunately, it appears that, to date, there has not been any reported case involving the statute. We have been informed by attorneys for the Forest Service that the policy advanced by that agency is - while water

may be appropriated[1] it is subject to whatever needs the Forest Service may have for the water. This is supported by the holding in Arizona v. California, 373 U.S. 546 (1963) which extended the Winters Doctrine to other federal establishments, this doctrine in simple terms being that the United States reserved water rights for the Indians effective as of the time the Indian reservations were created. The Court said, at p. 601:

> The Master ruled that the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other federal establishments such as National Recreation Areas and National Forests. We agree with the conclusions of the Master that the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge and the Gila National Forest.

One important fact relative to the appropriation should be determined by the Superintendent. The fact that the certificate was issued by the State Water Commissioner in September of 1933 does not necessarily mean that that is the date of appropriation. More than likely it was several years prior to the time of issuance. The state law controls the date of appropriation. Under the state law as it existed in Arizona at that time, it appears that an appropriation of public waters could be made by the mere application of such waters to a beneficial use, apparently without the posting or recording of any notice or any other formality. Parker v. McIntyre, 47 Ariz. 484, 56 P.2d 1337 (1936). Therefore if such an appropriation took place prior to October 2, 1905, the date the lands took on reserved status, then the appropriator would have a vested right which would be afforded the statutory protection of 43 U.S.C. 661 which reads in pertinent part:

> Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; . . .

1. It would appear to us that the use of the word "appropriation" would only mean as to protection of the appropriator against a purported appropriation by another individual. This interpretation is based on the fact that the language of Sec. 481 does not say the water is subject to appropriation as has been held to be the case of water on the public domain, 43 U.S.C. § 661, State of Arizona, 59 I.D. 14 (1945), but rather that it may be used. Thus the language infers that the Forest Service retains the ownership, or at least an interest in the ownership, of the water in the event it needs the water for its purpose.

If the appropriation took place during the period from October 2, 1905 to March 1, 1933 which is most likely to be the case, then the provisions of 16 U.S.C. 481 would be controlling. That statute was enacted June 4, 1897 (30 Stat. 36) and therefore was in effect when the lands became reserved. Therefore the owner of the water right would have the right to use the water from the spring or seep subject to the possible needs that the Monument may have for the water. This right the appropriator acquired could only be gained under these statutory provisions and the fact the administrative ownership of the land changed would not change the right, especially since the land retained its reserved status.

If the appropriation was made after the creation of the Monument, the rights of the appropriator would not be any different than if the appropriation had been made while the land was in the Coronado National Forest. While 16 U.S.C. 481 would not be controlling, the reservation concept laid down in Arizona v. California, supra, would be applicable.

William G. Lavell

05-28-1970: memorandum to field solicitor from manager, land office regarding inquiry regarding water rights on a spring or seep

7153
(LO:BL)

Land Office
3022 Federal Building
Phoenix, Arizona 85025

May 28, 1970

Memorandum

To: Field Solicitor

From: Manager, Land Office

Subject: Inquiry regarding water rights on a spring or seep within the Saguaro National Monument.

According to Robert Jones, Superintendent of Saguaro National Monument, there is a spring or seep located on section 4 T. 15 S., R. 17 E.

This section, and others, were withdrawn by Proclamation 2032 on March 1, 1933, and made a part of said Monument.

The historical status of said section 4 prior to March 1, 1933 is as follows:

August 31, 1894	-	Plat of survey including SE¼ accepted. (Remainder is still unsurveyed.)
October 2, 1905	-	Lands withdrawn for Forest Reserve.
March 4, 1907	-	Forest Reserve changed to National Forest.
July 2, 1908	-	Name changed to Coronado National Forest.

According to Superintendent Jones, the Arizona State Water Commissioner issued a Certificate of Water Right to a private entity in September 1933.

Jones has asked what, if any, effect Executive Order of April 17, 1926, which established Public Water Reserve No. 107 (copy enclosed), had on the purported appropriation of water in September 1933. He has also asked whether Executive Order of April 17, 1926 had any effect on the subject unsurveyed reserved lands.

We also would like to have the answers to these questions. I would appreciate your opinion after consideration of Section 10 of the Stockraising Homestead Act of December 29, 1916, of Proclamation No. 2032, E.O. of April 17, 1926 55 I.D. 371, 43 CFR 2321.1-3, and any other pertinent source material.

3 Enclosures
Encl. 1 - Copy of Section 10 of the Stockraising Homestead Act of 12-29-16
Encl. 2 - Copy of Order of Withdrawal-Public Water Reserve No. 107
Encl. 3 - Copy of Proclamation No. 2032 of March 1, 1933
RTHelmandollar:ml

10-07-1970: memorandum to chief, office of land acquisition and water resources, wsc from superintendent, saguaro regarding wa

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

IN REPLY REFER TO:
L54

October 7, 1970

Memorandum

To: Chief, Office of Land Acquisition and Water Resources, WSC

From: Superintendent, Saguaro

Subject: Water Right Investigation

As a follow up on our discussion with State Land Commissioner Bettwy in Phoenix and a subsequent telephone discussion with Jack Lahr, I am enclosing a copy of a briefing statement on the water supply situation for the Madrona Ranger Station along with a copy of the Forest Service water right application record, the State of Arizona Certificate of Water Right, and a copy of Circular No. 1066.

By Departmental Order of October 2, 1905 these lands were temporarily withdrawn for classification for forest purposes and on July 19, 1907 by Presidential Proclamation they were added to the Santa Catalina National Forest, under authority of the Act of June 4, 1897, (30 Stat. 36). Presidential Proclamation #2032 of March 1, 1933, under authority of the Act of June 8, 1906 (34 Stat. 225) established Saguaro National Monument and Executive Order #6166 of June 10, 1933, under authority of Act of March 3, 1933, (47 Stat. 1517) transferred administration to the Department of the Interior, effective August 10, 1933.

We would appreciate a review of the pertinent documents by your water rights specialists to determine what right, if any, may be vested in the present landowner, Mr. Henry Jackson of the X-9 Ranch. If he has a legal right to this water, we would appreciate your advice and a negotiation to acquire this right.

We are of the opinion that water from this spring would provide a domestic water supply for the Madrona Ranger Station and stock water for Mr. Jackson when needed. We believe that Mr. Jackson would be amenable to such an arrangement, but we hesitate to negotiate with him until the matter of legal right has been established.

It was my understanding during the discussion with State Land Commissioner Bettwy that he felt the Water Certificate was invalid and that this water had previously been withdrawn from entry by the United States prior to the issuance of the State Water Right Certificate.

Harold R. Jones

Harold R. Jones

Enclosures
Briefing Statement
Application Record
Water Right Certificate

cc:
Director, Southwest Region

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

L54
XX-L3019

May 22, 1970

Memorandum

To: Director, SWR

From: Superintendent, Saguaro

Subject: Briefing Statement on Area Problems - Water Supply - Madrona Ranger Station

For over 30 years - ever since Madrona has been used as a pack base we have had a water supply problem. In the past we have pumped water from Chiminea Creek, hauled water from X-9 Ranch or from headquarters; had a geological water survey, drilled a well that produced non-potable water and have not yet solved the problem. Now we are hauling water from headquarters again - a round trip distance of approximately 35 miles.

The optimum solution to this problem is to acquire a section and a half of former Forest Service land that is now owned by the X-9 Ranch and to relocate the Madrona Ranger Station as recommended in the boundary status report. In view of the length of time needed for legislation and construction program funding we must do something immediately to solve this problem.

One alternative would be to place a small dam on Chiminea Creek and build a large underground storage reservoir to hold an adequate supply of water to last through the dry season. This has received some consideration in the past, but I would be reluctant to mess up the Chiminea Creek drainage as it is now a beautiful natural area.

A second alternative would be to pipe water from a natural seep about ½ mile above Madrona in NE¼ of Sec. 4, R17E, T15S. This spring has been variously known as Mesquital, Jelks, Cow Head Trail Springs and Upper Spring. It has been used since some time in the 1930's as the domestic water supply for the X-9 Ranch. More recently it has been used for stock watering in connection with the Rincon allotment. Since this grazing permit was terminated, it has continued to be used for occasional stock watering outside the boundary of the monument. The catchment structure consists of a 3' x 3' x 5' cement box, and

approximately 2 miles of 1" galvanized pipe is laid on the surface to carry the water from the monument to a stock watering tank on the X-9 Ranch.

Just recently we discovered that a State Water Right Certificate (copy enclosed) was issued to J. Nevin Jukes on September 21, 1933, and now Mr. Henry Jackson, the present owner of the X-9 Ranch claims the water right on this spring. Even if this is a valid right, I believe the National Park Service could appropriate water from this source for domestic or public use in connection with the Madrona Ranger Station. However, I have just discovered Circular No. 1055 of the General Land Office by Executive Order of April 17, 1926, (copy enclosed) which indicates that public lands containing springs or water holes were withdrawn from entry and reserved for public use prior to the date this Water Right Certificate was issued by the State Water Commissioner.

I recommend that these documents be examined, that a determination on the validity of the existing Water Right Certificate be obtained, and that the Office of Lands and Water Rights be requested to appraise and acquire any legal right the present landowner may have.

If this problem of ownership can be cleared up, we will program installation of a pipeline from the existing catchment basin to the water storage tank at Madrona and make better utilization of the funds and man hours that are now being used to haul water. There would be no objection to supplying stock water when cattle are being grazed on the land immediately adjacent to the monument.

Harold R. Jones

Enclosures

UNITED STATES
DEPARTMENT OF THE INTERIOR
General Land Office

Circular No. 1066

By Executive order of April 17, 1926, the following order of withdrawal was issued:

> Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole, located on unsurveyed public land be, and the same is herby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat., 862), and in aid of pending legislation.

The above order was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needs or used by the public for watering purposes. It is not therefore to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

COPY

M
WATER RESOURCES
U[illegible]
Water Rights

FOREST SERVICE DOCKET

Ranger District _____ Forest Coronado

Application No. [illegible]-1115

Name and Address of Applicant J. Hoskin Jelks, Vail, Arizona

Name of Water Involved Mesquital Spr., Rincon Creek

Location of Water (Legal Description) T15S, R17E, Sec. 4, SW¼ NW¼ Uns.

Amount applied for: 10,000 gals. per day Proposed Use Domestic & Stock

Permittee Status of applicant _____

Date of application 6-5-30

Disposition of case C[illegible] 551 9-21-33

Protest filed _____

REMARKS OR CROSS REFERENCE

PROGRESS

[illegible]-3
April 1959

04-16-1948: certificate of water right

Tr[illegible]sferred to Gordon Packard and [illegible]ra Packard,
April 16, 1948

Certificate Record No. 551 Page No. 551

STATE OF ARIZONA

WATER DISTRICT NO. COUNTY OF PIMA

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* J. Rukin Jelks

of Vail, *State of* Arizona, *has made proof to the satisfaction of the STATE WATER COMMISSIONER of Arizona, of a right to the use of the waters of* the Mesquital Spring in Mesquital Wash, *a tributary of* Rincon Creek

for the purpose of Domestic Use and Watering Livestock

under App.No. A-1115 *Permit No.* A-779 *of the State Water Commission, and that said right to the use of said waters has been perfected in accordance with the laws of Arizona, and made and entered of record in the Records of the State Water Commissioner at Phoenix, Arizona, in Volume* 2, *at page* 551

on the 21st *day of* September, 1933; *that the priority of the right hereby confirmed dates from* June 5, 1930; *that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* 10,000 gallons per day ~~and not to exceed~~

A description of ~~the lands to which such water is appurtenant and~~ *the place where such water is put to beneficial use, is as follows:* Within the West Half of the Northeast Quarter ($W\frac{1}{2}$ $NE\frac{1}{4}$) and East Half of the Northwest Quarter ($E\frac{1}{2}$ $NW\frac{1}{4}$) of Section Sixteen (16), Township Fifteen (15) South, Range Seventeen (17) East, G.& S. R. B. & M., in the County of Pima, State of Arizona.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, and subject to all prior existing rights.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

RECEIVED
NOV 28 1969
Sequoia National Monument

Witness *the seal and signature of the STATE WATER COMMISSIONER affixed this* 21st *day of* September, *1933*

(SEAL)

By FRANK P. TROTT
State Water Commissioner.

Attest: ICIE L. HARRISON
Secretary.

Recorded in State Record of Water Right Certificates, Volume 2 *Page* 551

DIVISION OF WATER RESOURCES

ACT	INFO	NAME	INIT.	DATE
	1	MORRIS, M.		
	2	REED, E.		
		KARBAN, J.		

DIVISION OF WATER RESOURCES

ACT	INFO	NAME	INIT.	DATE
	1	MORRIS, M.		
	2	REED, E.		
		KARBAN, J.		
		HALL, R.		
		GEBBIA, M.		
		SWAN, L.		
	3	BERTE, V.		
		BURKE, R.		

<O can't tell if McKeel is involved, if he is he's very quiet. From the enclosures it looks like the Dept wrote to Witucki on Oct. 7 to advise — then decided on Oct 16 to write to the Director, SW Region.
Vic

1. WSC should determine firm yield of springs
2. Estimate over present and future demand
3. If NPS & Mr. Jackson's needs can be satisfied from existing spring ~~flow~~ supply, there should be no need to determine whether Mr. Jackson or his predecessors had a vested right, i.e. the appropriation took place prior to Oct. 2, 1905
4. If the supply is inadequate, then I assume we should assert our rights.

Witucki in his memo states no sign that he will determine amount of water available.

P.S. After writing the above - I checked our files and found memo dated Oct. 26, 1970 do Sieps from SW Regin responding to enclosed Oct 16 Sieps memo. We got a copy from Phil Stewart - SW Regin did not give Wistucki or us copies. In effect - Wistucki is still twiddling his thumbs in November while Regin has

624 10-29-70

WR Copy

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

L54-S

MW

OCT 26 1970

Memorandum

To: Superintendent, Saguaro

From: Assistant Director, Park Support Services

Subject: Water Rights - Madrona Area

The materials transmitted with your memorandum of October 16 and previous memoranda concerning the water rights at Jelks or Upper Spring have been reviewed by Field Solicitor Manges.

In his opinion the United States Government holds valid the existing water rights at this spring providing that there was no appropriation from this water source prior to October 2, 1905.

We would suggest that some historical research be conducted to determine whether or not there were any prior white owners of the lands now known as the X9 Ranch, or other settlers who might have used water from the Jelks Spring prior to October 2, 1905. If not, we see no reason why you may not proceed to tap in to this source to acquire water for Service needs in the Madrona Ranger Station.

Mr. Manges strongly recommends that no offer to purchase water from this source be made since, in his opinion, we own the water and we cannot buy with appropriated funds something we already own.

You have said that in your opinion the Jelks Spring probably produces enough water to meet our needs as well as those of the X9 Ranch. You are also aware of the public relations problem which may develop with Mr. Jackson if we attempt to begin using water from this source. We earnestly suggest, therefore, that you approach this matter with Mr. Jackson in an extremely cooperative manner. We believe he will be willing to let us tap on to this water source.

If we can be of further assistance please get in touch with us.

(SIGNED)
Monte E. Fitch

cc:
Mr. Hummel, WASO
Mr. Philip Stewart, WASO
Field Solicitor

03-30-1971: memorandum to director, nps from chief, water resources section, office of land acquisition and water resources, wsc

Water Docket folder

BARRETT
OF
WITUCKI

L54(WSC)LNW
SAGU

March 30, 1971

Memorandum

To: Director, National Park Service
Attention: Chief, Division of Water Resources

From: Chief, Water Resources Section, Office of Land Acquisition and Water Resources, WSC

Subject: Water right investigation, Madrona area - Saguaro

The enclosed incoming correspondence to this office from the Director, Southwest Region, regarding the above subject is submitted for your information and files. It is intended to send Water Docket Specialist David Chavez, either later this week or the first of next week to accomplish the requested study.

(Sgd)
Gerard S. Witucki

Enclosure

cc:
General Superintendent, Southern Arizona Group
Superintendent, Saguaro

FNP:GSWITUCKI:mlk 3/30/71

United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

L54-S

MAR 16 1971

WESTERN SERVICE CENTER
MAR 17 1971

DIRECTOR, WSC
CHIEF, ED&P
CHIEF, ADM. SVC.
CHIEF, CS&M
2 CHIEF, LAND
WATER
CHIEF, HIST. &
CHIEF, PROGMS. MANAGEMENT

Memorandum

To: Director, Western Service Center

From: Director, Southwest Region

Subject: Water Right Investigation - Saguaro

Enclosed is a copy of Saguaro National Monument Superintendent Jones' memorandum to this office dated March 10. We concur in the need for a study to determine the status of water rights at Saguaro before the upcoming Master Plan Study is made.

We are therefore requesting that the study outlined in Mr. Jones' memorandum be accomplished.

Enclosure

Earl O. Jackson

cc:
Director, NPS, w/c incoming
Gen Supt, SOAG
Supt, Saguaro

United States Department of the Interior

NATIONAL PARK SERVICE

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

IN REPLY REFER TO:
L54

March 10, 1971

NPS SOUTHWEST REGIONAL OFFICE
MAR 12 1971
Action | Infor
D
A O
MA
QE
C
A
Files

Memorandum

To: Director, Southwest Region

From: Superintendent, Saguaro

Subject: Water Right Investigation, Madrona Area

On November 5 Mr. Gerard S. Witucki, Chief, Water Resources Section, Office of Land Acquisition and Water Resources, Western Service Center, transmitted correspondence concerning the Jelk's Spring Water Right Certificate to the Washington Office for review and advice. As of this date, there has been no response to this request.

As you know, both Field Solicitor Manges and Field Solicitor William G. Lavell in Phoenix are of the opinion that the United States has a valid right to the use of this water. However, in my last discussion with Mr. Henry Jackson, owner of the X-9 Ranch, concerning use of this water, he said he didn't think he could spare the water. Of course, I have never questioned the validity of the State Water Right Certificate on the Jelk's Spring in any discussions with Mr. Jackson.

In connection with the upcoming master plan team visit I discussed this water right with Mr. Jack Lahr of the Office of Land Acquisition and Water Resources, Western Service Center. He suggested that the Regional Office request thorough research and investigation by the Water Resources Section as this is basic data that should be available for the master plan team in considering any water supply development for Madrona as well as for any wilderness proposal which might include this area.

From the management standpoint I am very anxious to find a solution to the very critical water supply problem that now exists at Madrona and recommend that you request an investigation by the Water Resources Section.

Harold R. Jones

Harold R. Jones

CC: General Superintendent
Jack Lahr, Western Service Center

L54

11-05-1970: memorandum to director, nps from chief, water resources section, office of land acquisition and water resources, wsc

BARNETT
(later)
WITUCKI

L54(WSC)LWW
SAGU

November 5, 1970

Memorandum

To: Director, National Park Service
Attention: Chief, Division of Water Resources

From: Chief, Water Resources Section, Office of Land Acquisition and Water Resources, WSC

Subject: Water rights investigation, Madrona area - Saguaro

The enclosed incoming correspondence is for your review and comments.

It would seem that a question exists as to whether the State of Arizona had the authority to issue a certificate of water right. However, even if not, it would seem that Mr. Henry Jackson, owner of the X-9 Ranch may have established some sort of a position as regards a prescriptive right in this situation.

Your advice in this matter would be appreciated.

(Sgd)
Gerard S. Witucki

Enclosures

cc:
Director, Southwest Region
Superintendent, Saguaro

FNP:GSWITUCKI:mlk 11/5/70

RECEIVED
OCT 29 1970

United States Department of the Interior

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

IN REPLY REFER TO:

L54-S

OCT 26 1970

SAGUARO [illegible] MENT	
Super[illegible]	HRV 10/28
Admin[illegible]	
[illegible]	
[illegible]	
[illegible]	
Dist. Ranger-RMD	
Ranger-RMD	
Ranger-TMD	
Ranger-MADR	
Naturalist	

Memorandum

To: Superintendent, Saguaro

From: Assistant Director, Park Support Services

Subject: Water Rights - Madrona Area

The materials transmitted with your memorandum of October 16 and previous memoranda concerning the water rights at Jelks or Upper Spring have been reviewed by Field Solicitor Manges.

In his opinion the United States Government holds valid the existing water rights at this spring providing that there was no appropriation from this water source prior to October 2, 1905.

We would suggest that some historical research be conducted to determine whether or not there were any prior white owners of the lands now known as the X9 Ranch, or other settlers who might have used water from the Jelks Spring prior to October 2, 1905. If not, we see no reason why you may not proceed to tap in to this source to acquire water for Service needs in the Madrona Ranger Station.

Mr. Manges strongly recommends that no offer to purchase water from this source be made since, in his opinion, we own the water and we cannot buy with appropriated funds something we already own.

You have said that in your opinion the Jelks Spring probably produces enough water to meet our needs as well as those of the X9 Ranch. You are also aware of the public relations problem which may develop with Mr. Jackson if we attempt to begin using water from this source. We earnestly suggest, therefore, that you approach this matter with Mr. Jackson in an extremely cooperative manner. We believe he will be willing to let us tap on to this water source.

If we can be of further assistance please get in touch with us.

Monte E. Fitch

cc:
Mr. Hummel, WASO
Mr. Philip Stewart, WASO
Field Solicitor

10-16-1970: memorandum to director, southwest region from superintendent, saguaro regarding water rights - madrona area

RECEIVED
WATER
OCT 20 1970
REMARKS

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

L1425

October 16, 1970

Memorandum

To: Director, Southwest Region

From: Superintendent, Saguaro

Subject: Water Rights - Madrona Area

Enclosed is a copy of information that has been provided by the Bureau of Land Management and their field solicitor.

If we interpret this correctly, it appears that we have a legal right to use of the water from the spring which was covered by a State Water Right Certificate issued in September 1933. See my memorandum of May 22, 1970, L54, XR-L3019.

If Field Solicitor Manges agrees that we have a right to the use of this water, we feel that an experienced water rights negotiator should negotiate with Mr. Henry Jackson, owner of the X-9 Ranch, to acquire any residual right he may have. Of course, as I have previously stated, we feel that the water from this spring would probably supply our residential needs as well as stockwatering as needed in that portion of the X-9 Ranch. However, the amount of water available should be determined by a competent hydrologist.

We would appreciate your advice as to how we should proceed on this rather delicate matter.

Harold R. Jones

Harold R. Jones

Enclosures

cc:
Chief, Office of Land Acquisition and
Water Resources

00-00-0000: memorandum to superintendent, saguaro from manager, land office regarding inquiry regarding water rights on a spri

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
[illegible] Office
3022 Federal Building
Phoenix, Arizona 85025

IN REPLY REFER TO:
(AZ-932)
(2028.5)

RECEIVED
[illegible]

Memorandum

To : Harold R. Jones, Superintendent
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

From : Manager, Land Office

Subject: Inquiry regarding water rights on a spring or seep within the Saguaro National Monument

At your request we obtained the attached opinion from the Field Solicitor.

In summary, the Field Solicitor is of the opinion that if the waters were appropriated prior to October 2, 1905, the later withdrawals would not affect that prior right, but any purported appropriation on or after that date, would be subject to the right of the United States to use the water but would serve to protect the appropriator against a purported appropriation by another individual.

Acting

Enclosures
Encl. 1 - Cpy of request dtd 5/28/70
Encl. 2 - Cpy of opinion dtd 10/12/70

05-28-1970: memorandum to field solicitor from manager, land office regarding inquiry regarding water rights on a spring or seep

7153
(LO:BL)

Land Office
3022 Federal Building
Phoenix, Arizona 85025

May 28, 1970

Memorandum

To: Field Solicitor

From: Manager, Land Office

Subject: Inquiry regarding water rights on a spring or seep within the Saguaro National Monument.

According to Robert Jones, Superintendent of Saguaro National Monument, there is a spring or seep located on section 4 T. 15 S., R. 17 E.

This section, and others, were withdrawn by Proclamation 2032 on March 1, 1933, and made a part of said Monument.

The historical status of said section 4 prior to March 1, 1933 is as follows:

August 31, 1894 - Plat of survey including SE¼ accepted. (Remainder is still unsurveyed.)
October 2, 1905 - Lands withdrawn for Forest Reserve.
March 4, 1907 - Forest Reserve changed to National Forest.
July 2, 1908 - Name changed to Coronado National Forest.

According to Superintendent Jones, the Arizona State Water Commissioner issued a Certificate of Water Right to a private entity in September 1933.

Jones has asked what, if any, effect Executive Order of April 17, 1926, which established Public Water Reserve No. 107 (copy enclosed), had on the purported appropriation of water in September 1933. He has also asked whether Executive Order of April 17, 1926 had any effect on the subject unsurveyed reserved lands.

We also would like to have the answers to these questions. I would appreciate your opinion after consideration of Section 10 of the Stockraising Homestead Act of December 29, 1916, of Proclamation No. 2032, E.O. of April 17, 1926 55 I.D. 371, 43 CFR 2321.1-3, and any other pertinent source material.

3 Enclosures
Encl. 1 - Copy of Section 10 of the Stockraising Homestead Act of 12-29-16
Encl. 2 - Copy of Order of Withdrawal-Public Water Reserve No. 107
Encl. 3 - Copy of Proclamation No. 2032 of March 1, 1933
RTHelmandollar:ml

10-07-1970: memorandum to chief, office of land acquisition and water resources, wsc from superintendent, saguaro regarding wa

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

IN REPLY REFER TO:
L54

October 7, 1970

Memorandum

To: Chief, Office of Land Acquisition and Water Resources, WSC

From: Superintendent, Saguaro

Subject: Water Right Investigation

As a follow up on our discussion with State Land Commissioner Bettwy in Phoenix and a subsequent telephone discussion with Jack Lahr, I am enclosing a copy of a briefing statement on the water supply situation for the Madrona Ranger Station along with a copy of the Forest Service water right application record, the State of Arizona Certificate of Water Right, and a copy of Circular No. 1066.

By Departmental Order of October 2, 1905 these lands were temporarily withdrawn for classification for forest purposes and on July 19, 1907 by Presidential Proclamation they were added to the Santa Catalina National Forest, under authority of the Act of June 4, 1897, (30 Stat. 36). Presidential Proclamation #2032 of March 1, 1933, under authority of the Act of June 8, 1906 (34 Stat. 225) established Saguaro National Monument and Executive Order #6166 of June 10, 1933, under authority of Act of March 3, 1933, (47 Stat. 1517) transferred administration to the Department of the Interior, effective August 10, 1933.

We would appreciate a review of the pertinent documents by your water rights specialists to determine what right, if any, may be vested in the present landowner, Mr. Henry Jackson of the X-9 Ranch. If he has a legal right to this water, we would appreciate your advice and a negotiation to acquire this right.

We are of the opinion that water from this spring would provide a domestic water supply for the Madrona Ranger Station and stock water for Mr. Jackson when needed. We believe that Mr. Jackson would be amenable to such an arrangement, but we hesitate to negotiate with him until the matter of legal right has been established.

It was my understanding during the discussion with State Land Commissioner Bettwy that he felt the Water Certificate was invalid and that this water had previously been withdrawn from entry by the United States prior to the issuance of the State Water Right Certificate.

Harold R. Jones

Harold R. Jones

Enclosures
Briefing Statement
Application Record
Water Right Certificate

cc:
Director, Southwest Region

Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

L54
XR-L3019

May 22, 1970

Memorandum

To: Director, SWR

From: Superintendent, Saguaro

Subject: Briefing Statement on Area Problems - Water Supply - Madrona Ranger Station

For over 30 years - ever since Madrona has been used as a pack base we have had a water supply problem. In the past we have pumped water from Chiminea Creek, hauled water from X-9 Ranch or from headquarters; had a geological water survey, drilled a well that produced non-potable water and have not yet solved the problem. Now we are hauling water from headquarters again - a round trip distance of approximately 35 miles.

The optimum solution to this problem is to acquire a section and a half of former Forest Service land that is now owned by the X-9 Ranch and to relocate the Madrona Ranger Station as recommended in the boundary status report. In view of the length of time needed for legislation and construction program funding we must do something immediately to solve this problem.

One alternative would be to place a small dam on Chiminea Creek and build a large underground storage reservoir to hold an adequate supply of water to last through the dry season. This has received some consideration in the past, but I would be reluctant to mess up the Chiminea Creek drainage as it is now a beautiful natural area.

A second alternative would be to pipe water from a natural seep about ½ mile above Madrona in NE¼ of Sec. 4, R17E, T15S. This spring has been variously known as Mesquital, Jelks, Cow Head Trail Springs and Upper Spring. It has been used since some time in the 1930's as the domestic water supply for the X-9 Ranch. More recently it has been used for stock watering in connection with the Rincon allotment. Since this grazing permit was terminated, it has continued to be used for occasional stock watering outside the boundary of the monument. The catchment structure consists of a 3' x 3' x 5' cement box, and

approximately 2 miles of 1" galvanized pipe is laid on the surface to carry the water from the monument to a stock watering tank on the X-9 Ranch.

Just recently we discovered that a State Water Right Certificate (copy enclosed) was issued to J. Ruskin Jelks on September 21, 1933, and now Mr. Henry Jackson, the present owner of the X-9 Ranch claims the water right on this spring. Even if this is a valid right, I believe the National Park Service could appropriate water from this source for domestic or public use in connection with the Madrona Ranger Station. However, I have just discovered Circular No. 1066 of the General Land Office by Executive Order of April 17, 1926, (copy enclosed) which indicates that public lands containing springs or water holes were withdrawn from entry and reserved for public use prior to the date this Water Right Certificate was issued by the State Water Commissioner.

I recommend that these documents be examined, that a determination on the validity of the existing Water Right Certificate be obtained, and that the Office of Lands and Water Rights be requested to appraise and acquire any legal right the present landowner may have.

If this problem of ownership can be cleared up, we will program installation of a pipeline from the existing catchment basin to the water storage tank at Madrona and make better utilization of the funds and man hours that are now being used to haul water. There would be no objection to supplying stock water when cattle are being grazed on the land immediately adjacent to the monument.

Harold R. Jones

Enclosures

UNITED STATES
DEPARTMENT OF THE INTERIOR
General Land Office

Circular No. 1066

By Executive order of April 17, 1926, the following order of withdrawal was issued:

> Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole, located on unsurveyed public land be, and the same is herby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat., 862), and in aid of pending legislation.

The above order was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needs or used by the public for watering purposes. It is not therefore to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

COPY

WATER RESOURCES
Water Rights

FOREST SERVICE DOCKET

Ranger District _____ Forest Coronado

Application No. 4-1115

Name and Address of Applicant J. Aukin Jelks, Vail, Arizona

Name of Water Involved Mesquital Spr., Rincon Creek

Location of Water (Legal Description) T15S, R17E, Sec. 4, SE¼ NW¼. Uns.

Amount applied for: 10,000 gals. per day Proposed Use Domestic & Stock

Permittee Status of applicant _____

Date of application 6-5-30

Disposition of case CWR p551 9-21-33

Protest filed _____

REMARKS OR CROSS REFERENCE

PROGRESS

April 1959

Lnd for mic & F
8-6-70

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

L54-MO(E)

JUL 28 1970

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
JUL 30 1970
Action | Infor
1- D
AD
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2- S
Files

Memorandum

To: Director, Southwest Region

From: Assistant Director

Subject: Water rights, Jelks or Upper Spring - Saguaro

Assistant Director Fitch's memorandum of July 13 to Lyle H. McDowell, Division of Park Operations, concerning the matter of public access to the Rincon Mountains, indicated some degree of uncertainty about the water rights to Jelks or Upper Spring by Mr. Henry Jackson.

Enclosed is a copy of former Superintendent Herschler's memorandum of March 11, 1957, with enclosure which indicates that no known appropriative filing had been made on Jelks or Upper Spring as of that date. We believe the status of the water right to this spring should be determined. In so doing every possible effort should be made to preserve the status quo of our relationship with Mr. Jackson.

Edward Freeman

Enclosures 2

L54 Sagu

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Saguaro National Monument
Tucson, Arizona

IN REPLY REFER TO
L54-1

March 11, 1957

Memorandum

To: Regional Director, Region Three

From: Superintendent, Saguaro

Subject: Descriptions of Water Systems (artificial structures) by which the Park Service Claims Water of the Lower Colorado River in the Federal Intervention in Arizona v. California

Attached are descriptions of the existing and proposed water systems and water developments both surface and underground in Saguaro National Monument.

This material was requested by copy of memorandum from Mr. Langley to the Regional Director dated December 31, 1956.

J. Barton Herschler
Superintendent

Encl: (1)

DESCRIPTIONS OF WATER SYSTEMS (ARTIFICIAL STRUCTURES) BY WHICH THE PARK SERVICE CLAIMS WATER OF THE LOWER COLORADO RIVER IN THE FEDERAL INTERVENTION IN ARIZONA v. CALIFORNIA

MAR 11 '57

SAGUARO NATIONAL MONUMENT, ARIZONA

A. Rincon Creek, tributary of the Santa Cruz and Gila Rivers, which in turn are tributaries of the Colorado River, on Federal land in Pima County.

1. W. H. Kenner Well, Well # 1, Water Right Docket # 2, existing well 76 feet deep, oil bath jack pump producing 400 gallon per day furnishing water for about 15 head of permittee livestock. Well, at present, can be pumped dry in a few minutes time. Location: SW¼, Sec. 4, T. 15S., R. 16 E., G. & S. R. M.

B. Pantano Wash, tributary of the Santa Cruz and Gila Rivers, which in turn are tributaries of the Colorado River, on Federal land in Pima County.

1. R. H. M. Baker Well, Well # 2, Water Right Docket # 1, existing well 312 feet deep. Pump data: 10" head Fairbanks-Morse positive displacement pump powered by 3 H.P. electric motor pumps through 1¼" supply line for approximately 1 mile to 10,000 gallon storage tank at Monument Headquarters. Peerless 3 H.P. centrifugal pressure pump supplies water to Visitor Center, Residences, and Utility Area. Location of well: Lot 1, Sec. 31, T. 14 S., R. 16 E., G. & S. R. M.

C. Spring Development - the following listed 10 springs are located on unsurveyed Federal land and are proposed for development as a source of water for wildlife and fire control purposes.

1. Freeman Spring, NE¼, Sec. 5, T. 15 S., R. 16 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough.

2. Douglas Camp Spring, SE¼, Sec. 8, T. 14 S., R. 17 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough.

3. Manning Camp Spring, NE¼, Sec. 24, T. 14 S., R. 17 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough. Also proposed is 5,000 gallon storage tank with Briggs & Stratton centrifugal pump. Water storage to provide for fire control personnel and culinary purposes during the summer months.

4. Spud Rock Cabin Spring, NE¼, Sec. 19, T. 14 S., R. 18 E., G & S. R. M., no appropriative filing made. It is proposed to construct storage tanks of 5,000 gallon capacity for fire control, with overflow pipe to stock watering trough.

5. Mud Spring, SE¼, Sec. 21, T. 14 S., R. 18 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough.

6. Happy Valley Saddle Spring, SE¼, Sec. 5, T. 15 S., R. 18 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-4- gallon capacity with overflow pipe to stock watering trough.

7. Deer Head Spring, SE¼, Sec. 20, T. 14 S., R. 18 E., G. & S. R. M., no appropriative filing made. It is proposed to construct a reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough.

8. Waterfall Spring, NW¼, Sec. 19, T. 14 S., R. 18 E., G. & S. R. M., no appropriative filing made. It is proposed to construct reservoir of 30-40 gallon capacity with overflow pipe to stock watering trough.

9. Rock Dam Spring, SW¼, Sec. 2, T. 15 S., R. 17 E., G. & S. R. M., no appropriative filing made. It is proposed to construct a small reservoir for stock and wildlife watering purposes.

10. Wasp Spring, SW¼, Sec. 32, T. 14 S., R. 17 E., G. & S. R. M., no appropriative filing made. It is proposed to construct a small reservoir for stock and wildlife watering purposes.

D. Unrecorded Water Systems for Stock Watering of Permittees:

1. Earth and rock dam 10' high, 30' long with 200' pipeline to stock watering tank. Overflow to 3' x 14' x 20" trough for stock and wildlife watering. Furnishes water for about 60 head of cattle from April 1 to November 30. Location if surveyed would probably be the SW¼, Sec.8, No. 14-10-333-33 issued to Mr. James P. Converse.

2. Jelks or Upper Spring - NW¼ of Sec. 4, R. 17 E., T. 15 S. This spring is used at present as a domestic water supply for the X9 Ranch and has been used for this purpose since some time in the 1930s. No known appropriative filing has been made. The catchment structure consists of a cement box approximately 3' x 3' x 5' deep in the bottom of the stream channel. Approximately three miles of 1" galvanized pipe is laid on the surface of the ground from the catchment box to the X9 Ranch Headquarters, where it flows into a storage tank of approximately 10,000 gallon capacity. Water is necessary for monument use and use of the X9 grazing permittee. Overflow tanks are contemplated for wildlife and stock watering purposes.

06-20-1966: memorandum to director from regional director regarding boundary extension and land acquisition, saguaro

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Southwest Region
Santa Fe, New Mexico 87501

JUN 22 9 35 AM '66

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NATIONAL PARK SERVICE 1916 1966 50TH ANNIVERSARY

IN REPLY REFER TO:
L1417

JUN 20 1966

Jelks Spr?

AIR MAIL

Memorandum

To: Director

From: Regional Director

Subject: Boundary extension and land acquisition, Saguaro

This office, Master Plan Teams and others have for some years considered the pros and cons of extending the boundaries of Saguaro to provide space for needed facilities and other purposes in the vicinity of Madrona Ranger Station. Nothing has been accomplished to date. Now, however, developments in that vicinity make it imperative that we move rapidly if we propose to move at all.

Our most urgent need, and one of long standing, at this location, is a water supply. It is not available on our land. It is, however, abundant on the property we have in mind.

Superintendent Judge's August 11, 1965, memorandum (copy enclosed) details other reasons why we should extend the boundaries, and a description of the land. We are concerned only with the minimum requirements set forth by Mr. Judge and confirmed by Superintendent Giles' March 30, 1966, memorandum (copy enclosed), totalling 320 acres. We also attach copy of a map with the desired land shaded in red.

The owner of the X9 Ranch (owner of the desired land) visited Superintendent Giles recently and advised that he was preparing to subdivide the ranch for residential purposes. Recent road work near and within the property confirms that something is afoot. The owner stated that although he had recently sold an employee of his a small acreage for $550 per acre, he expects to get $1,250 per acre when subdivided. We might get needed acreage for $550 or $600 if we could act quickly. Similar land with less assurance of water was offered to Saguaro in May of this year for $1,500 per acre, so there is little doubt that the X9 land will bring $1,250.

Tucson is experiencing a slump in the real estate business as a result of past over-building. This is temporary and it is expected that the X9 property will be put on the market as soon as business revives. Thus, it is obvious that if we wish to acquire the 320 acres for a reasonable figure, we need to move at once.

We are aware that extension of the boundaries will take time -- too much time -- before we can program acquisition with funds available to us. As a means of avoiding the delay and resulting high prices, it occurs to us that purchase might be accomplished by private means such as (1) the client of Galef and Jacobs law firm (your April 27, 1966, Informational memorandum, F-5019 ABF), (2) The Nature Conservancy headed by George Collins, or (3) some one of our Natural History or Museum Associations with $200,000 to invest. Perhaps you know of other possibilities.

In any event, we will appreciate your consideration of the problem, and any suggestions you may offer. We will be glad to supply any further information you might wish.

Daniel B. Beard

Enclosures 5

cc:
Supt., Saguaro
SSC with enclosures

03-30-1966: memorandum to regional director from superintendent, saguaro regarding supplementary boundary status report

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

NATIONAL PARK SERVICE 1916 1966 50TH ANNIVERSARY

IN REPLY REFER TO:
L1417

APR 4-1966

March 30, 1966

Memorandum

To: Regional Director

From: Superintendent, Saguaro

Subject: Supplementary Boundary Status Report

Mr. Herkenham inquired sometime ago as to which of the two proposals involving acquisition of additional land in the vicinity of the Madrona Ranger Station was considered acceptable. We believe that the minimum requirement mentioned in Superintendent Judge's memorandum of August 11, 1965 would be sufficient to meet our needs for future development. This opinion is predicated upon the assumption that an adequate water system could be developed in the area included in the proposed acquisition.

The land proposed for acquisition would be E½, Section 9; Section 10; N½, Section 15; all in T15S, R17E. This description excludes the X9 ranch buildings and development. The items numbered 1 through 6 in Mr. Judge's memorandum of August 11, 1965 would still be applicable.

Robert L. Giles

Robert L. Giles

In duplicate (CA-chas copy)

320A
$150-200,000

L1417 Sa

08-11-1965: memorandum to regional director, southwest region from superintendent, saguaro regarding supplementary boundary

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85710

IN REPLY REFER TO:
L1417

August 11, 1965

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
AUG 13 1965

Memorandum

To: Regional Director, Southwest Region

From: Superintendent, Saguaro

Subject: Supplementary Boundary Status Report

This refers to a recent telephone conversation with Dave Jones and Joe Carithers concerning one addition to the revised boundary status report. In discussing the completion of the Master Plan with Mr. Jones I indicated the desirability of acquiring additional land in the vicinity of the Madrona Ranger Station. At Mr. Carithers' suggestion I am submitting a map showing the location of the land and my justification for its acquisition.

The following description is the minimum requirement in my opinion: E½, Section 9; Section 10; N½, Section 15; all in T15S; R 17 E. This description excludes the X9 ranch buildings and development. However, this development would make an ideal Madrona Ranger Station and Pack Base. If it could be included the description would then be all of Sections 9, 10, 15, and 16; T 15 S; R 17 E.

While I have no firm basis for estimating acquisition costs, this is choice land and would probably run up to $1,000 per acre.

Following is the justification for acquiring this land:

1. The most striking and significant feature of this area is the low elevation riparian woodland habitat. There is, to our knowledge, no example of riparian woodland habitat now being preserved anywhere in the saguaro desert. This is unquestionably an exceptionally fine example worthy of protection. A relative abundance of water, and lush vegetation make this an outstanding wildlife area. It is well known as one of the finest birding areas in the Tucson vicinity. It is undoubtedly a major source of water for animals living in this area, and supports many that could not exist without it. With the abundance of plant and animal life known to exist here, the area has an exceptional potential for interpretation.

L1417
Saguaro

2. Good saguaro reproduction in this area is evident - probably exceeding that in any spot within the Rincon Mountain Section of the Monument. Abundant water has produced, in addition, many exceptionally large individuals.

3. The trail to Happy Valley Saddle can now be reached only by trespass over private property. With proper access and control of the trail head, which would be acquired with this proposal, this would be a very popular trail. The trail provides the most direct route to Rincon Peak, and forms the final leg of a "loop" trip to the top of Mica Mountain.

4. Without protection, the area will almost certainly fall to the subdividers, and quite probably, soon. Nearby properties are already in the hands of syndicates, and a subdivision only four miles downstream is now offering lots for sale. From this point, a high standard road connecting with the Benson Highway is already under construction. Such use of this land would sharply reduce the population of Park animals which now emigrate from, or are partially dependent upon this habitat. The effect on the scenic, inspirational and recreational value of the area and adjoining Monument lands would be nothing short of disastrous.

5. The water resources of this land will ultimately be needed for Park development, and will become increasingly valuable as the local water tables continue to drop at an accelerated rate.

6. The U. S. G. S. has indicated that in order to obtain a reliable water supply for the Madrona Ranger Station development, it will be necessary for the Park Service to buy a well site from the X9 Ranch.

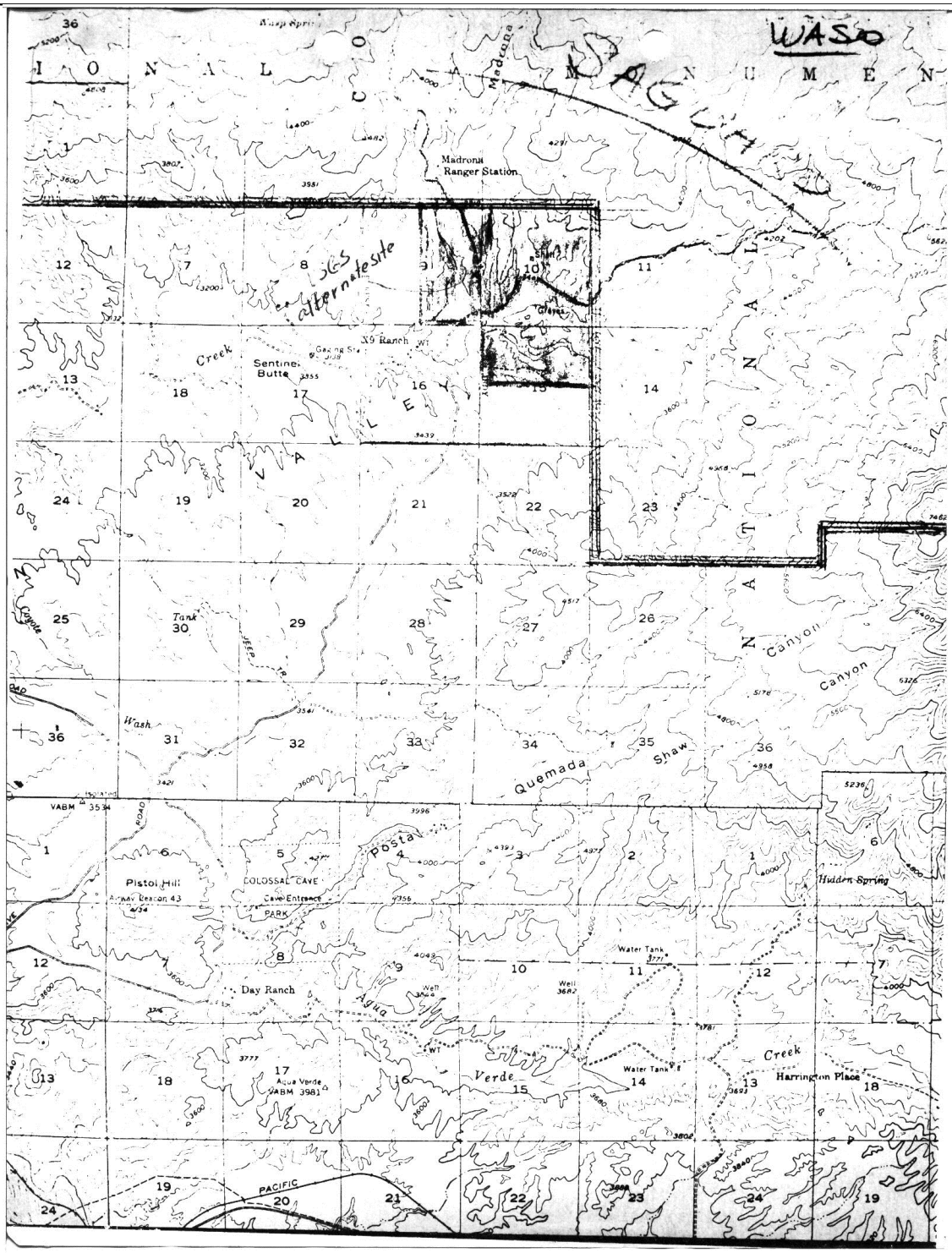
7. The X9 Ranch headquarters development has all the facilities necessary including residences for Madrona Ranger Station and Pack Base. If this could be acquired there would be no need for the expenditure of construction funds for the Madrona development. It is also ideally located for the Ranger Station.

Paul A. Judge

Paul A. Judge

Enclosure (in CA files)

08-11-1965: memorandum to regional director, southwest region from superintendent, saguaro regarding supplementary boundary



Mr. Klamm
sec

REC'D APR 29 1937

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

April 27, 1937.

Mr. Joseph E. Taylor, Attorney,
Branch of Land Acquisition and Regulation,
Legal Division, 110 Sutter Street,
San Francisco, California.

Dear Mr. Taylor:

It has been definitely decided by the Service to retain the entire area comprising Saguaro National Monument. Some 50,000 acres of this Monument lie back of the Tanque Verde Ridge. It will be necessary to establish a headquarters area for forest and wildlife protection purposes on or near the south boundary. Recent field study discloses the fact that one J. R. Jelks, a rancher who holds grazing permits and owns private land south of the boundary, is utilizing all of the waters from a spring within the Monument boundary having, it is said, a dependable flow of approximately 8,000 gallons a day. Mr. Jelks says that he filed on the waters of this spring under State water laws prior to establishment of the Monument. Since it appears that this spring is the only dependable source of water supply for the area on the Tanque Verde side of the Monument, this water right becomes an important consideration. There are also several intermittent streams, now flowing copiously, but which are said to dry up in the summer. There is also a spring at Manning Camp Ranger Station, within the Monument at an elevation of about 8,000 feet which is essential to the maintenance of a protection station in the timber at the high elevations within the Monument. The flow of this spring is said to vary greatly but it is said that even during the summer season flow is sufficient for the use of men and horses stationed at Manning Camp.

elk. deer.

Mr. Vincent W. Vandiver, District Geologist, is considering the area from the standpoint of developing an adequate headquarters water supply but is not considering the legal aspects of the situation. I should say that the problem is sufficiently large and complex to warrant consideration on the ground by your division. I would therefore be glad if you might place Saguaro National Monument on your program for field study with view to recommending the proper action to be taken legally to safeguard the government's water rights within the area.

yr.

It is difficult for us to provide detailed information because we have no personnel at the Monument at present.

Cordially,

Frank Pinkley

Frank Pinkley,
Superintendent.

Docket Information

Number of Documents in Docket 77

Documents Dated from 5/19/1919 to 6/23/1987

Docket Compiled: 6/9/2016