WATER-RIGHT DOCKET

Saguaro National Park

Docket No: 23

TURKEY CREEK SPRING, RINCON MOUNTAIN AREA

Preliminary Docket Information

12-29-1976: water right/source docket information: turkey creek spring

WATER RESOURCES/WATER RIGHT — DATE: December 29, 1976

WATER RIGHT/SOURCE DOCKET INFORMATION

REGION Western AREA Saguaro National Monument, Rincon Mountain Area

SITE Turkey Creek Spring

STATE Arizona COUNTY Pima DOCKET NO WR# 10

LOCATION SE¼ NW¼ NE¼, sec. 28, T14S, R18E

REGIONAL BASIN LOCAL BASIN

ACQUIRED BY

APPLICATION PERMIT CERTIFICATE

ACTION DUE PRIORITY RESERVATION July 19, 1907

QUANTITY USE Stockwatering and wildlife

STATUS Active SOURCE Spring

REMARKS See addendum attached to bottom of this narrative on the back.

NARRATIVE:

By section 24 of the Act of Congress, March 3, 1891, the President of the United States was authorized to withdraw from time to time land in the public domain as forest reservations. Pursuant thereto, Theodore Roosevelt set aside certain land in Arizona on July 2, 1902, which was designated the Santa Catalina Forest Reserve. On July 19, 1907, this Forest Reserve was expanded to include a major portion of the present Rincon Mountain Area of Saguaro National Monument. Turkey Creek Spring and Turtle Spring were located within this enlarged area. The 1902 and 1907 legislation contained an exception stating that these reservations would not include any land covered by a legal entry by a private party, filed of record in a United States Land Office or settled upon under any valid law, prior to the establishment of the reservations. Santa Catalina National Forest was combined with Dragoon and Santa Rita National Forests on July 1, 1908, to form Coronado National Forest.

Grazing of cattle in National Forests was permitted under permit and took place on large parcels called allotments. Two such allotments, the Happy Valley and the Barney, covered much of the original Santa Catalina National Forest. Use of the two springs in conjunction with grazing was also allowed under permit, although such use appears to predate establishment of the earliest Forest Reserve. The Happy Valley allotment, to the south, had access to Turkey Creek Spring, which was eventually developed, while to the north, Turtle Spring, in its natural condition, watered cattle on the Barney allotment.

Saguaro National Monument was proclaimed on March 1, 1933, and land therefor was transferred from the Forest Service to the Park Service on August 10, 1933. However, the abovementioned grazing allotments remained in existence, although they were now partially within the Monument. Gradually the Park Service moved to eliminate grazing on Monument land and in 1975, the Forest Service cancelled those portions of the Happy Valley and Barney allotments within the Monument. Further, due to "protective needs", the Park Service decided to fence off the eastern boundary of the Rincon Mountain Area of the Monument. This has resulted in the potential restriction of use of the two springs for stockwatering, as they lie within the Monument. Thus, the fencing project has been delayed pending resolution of the conflicting claims to use of the water.

Compiled by Kevin Kidder

Approved by W. Werrell

Page 1 of 1

12-29-1976: water right/source docket information

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By memorandum dated April 1, 1977, the Field Solicitor for the Western Region concluded that the graziers had no legal right to the use of either spring. Further, the graziers could not purchase water from the springs nor use them under Park Service permission as they were unable to meet the requirements of 16 U.S.C. sec. la-2(e). That law is the only authority which allows the Park Service to dispose of water within national park system areas. Therefore, the graziers will be unable to use the springs for stockwatering and the fencing project can go forward.

K. Kidder
Sept. 15, 1977

State Water Rights Documentation

113-14 Turkey Creek Spring

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIMANT

(Leave Blank)

IN THE MATTER OF DETERMINATION OF)
RELATIVE RIGHTS TO THE USE OF)
WATERS OF THE SAN PEDRO RIVER AND ITS)
TRIBUTARY WATERSHED, INC. ARAVAIPA CK.)

File No. 39-000 8184

Filed: _____ at _____ M
(date) (time)

The State Land Department has enclosed with the accompanying Notice this form on which claimant shall present as required, the particulars of his claim of right to the subject waters. All applicable portions must be completed. A separate Statement of Claimant must be submitted for each source or point of diversion of public water unless those waters are commingled prior to use. A map published by the United States Geological Survey or a map of equal standard shall be submitted with this Statement showing on the face of the map the particulars of point of diversion, place of use and other pertinent information.

(Print or type. If more space is required, use explanatory at end of form, or attachment.)

1. Name of Claimant: USA USDA Forest Service Coronado NF
(Last) (First) (M.I.)

301 West Congress, Tucson, AZ 85701 602-792-6483
(Address, City, State, Zip) (Telephone No.)

2. State the nature of the right or use on which claim is based: (indicate, and attach supporting documentation)

A. X Right to surface water initiated by beneficial use prior to June 12, 1919. Indicate registry number if previously submitted under Water Rights Registration Act ~~In process~~ 36-16929

B. ___ Court Decreed Water Right. Cite Title and Date of Case _____
Cause No. _____ County _____.

C. ___ Application for Permit to Appropriate Water filed. State Land Department Application No. _____, Permit No. _____, Certificate of Water Right No. _____.

D. ___ Claim of Water Right for a Stockpond. State Land Department Application No. _____.

E. ___ Other. Describe: _____.

3. A. Date of initiation of right: _____.
(Month/Day/Year)

B. Date water first used for beneficial purposes: Stockwater use since 1880's Wildlife use since time immemorial.
(Month/Day/Year)

4. Purpose, annual amount and annual period of use:

Purpose	Amount		Month/Day	Month/Day
Irrigation	_____	ac.ft./gallons	From _____	to _____
Domestic	_____	ac.ft./gallons	From _____	to _____
Stockwater	.34	ac.ft./~~gallons~~	From Jan 1	to Dec 31
Municipal	_____	ac.ft./gallons	From _____	to _____
Power	_____	ac.ft./gallons	From _____	to _____
Mining	_____	ac.ft./gallons	From _____	to _____
Recreation	_____	ac.ft./gallons	From _____	to _____
Wildlife	.14	ac.ft./~~gallons~~	From Jan 1	to Dec 31
Other Uses	_____	ac.ft./gallons	From _____	to _____

5. A.(1) If for irrigation purposes, describe place of use: (also indicate on map)

Township (N/S)	Range (E/W)	Section	Legal Subdivision	No. of Acres.

(2) If land reclaimed over period of years, indicate schedule and amount of land reclaimed first and each subsequent year(s): _____

map 14

5. A.(3) Indicate kind of crops cultivated: _____

Character of soil: _____

B. If for domestic purposes, number of persons: _____, or families: _____

C. If for stockwater purposes, number and kind of stock watered: Cattle

200 max. - 25 Average

D. If for municipal purposes, population to be served, and estimate of future requirements: _____

E. If for power purposes, describe type of plant and capacity: _____

F. If for mining purposes, describe purpose of use, location and character of the mine(s) to be served: _____

G. If for recreational purposes, describe: _____

H. If for wildlife purposes, including fish, describe: Deer, Javelina, Turkey

I. If for other purposes, describe: _____

6. A. Direct source of public water diverted: Turkey Creek Spring tributary to San Pedro River on the San Pedro watershed.

B. Point of Diversion (indicate on map): NW ¼ NE ¼, Section 28 Township 14S (N/S), Range 18E (E/W), Gila and Salt River Base and Meridian, County Pima. Ownership USA

C. Place of use (indicate on map): NW ¼ NE ¼, Section 27 Township 14S (N/S), Range 18E (E/W), Gila and Salt River Base and Meridian, County Pima. Ownership USA

7. State all other sources of water supply not described in Question 6 of this form.

A. Type of Source: _____

B. Location of Source (indicate on map): _____ ¼ _____ ¼, Section _____ Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____

C. If other source is well, list following:

(1) Date well construction began: _____ (Month/Day/Year); Date well place in use: _____ (Month/Day/Year).

(2) Location (10 acre subdivision) (indicate on map): _____ ¼ _____ ¼ _____ ¼ Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base Meridian, County of _____.

(3) State Land Department Intent to Drill, File No. _____, or Application for Permit No. _____.

(4) State whether free flowing or pump: _____. If pump, list type of pump and capacity: _____

(5) Casing depth _____ ft. Total well depth _____ ft. Diameter of casing _____ inches.

(6) Depth to water: _____ ft. (Static Level)

(7) Annual amount pumped, or otherwise extracted: _____ Ac.Ft./Gallons

(8) State purpose of use: _____.

(9) Indicate annual period of use: _____ (Month/Day) to _____ (Month/Day)

8. Water storage reservoir and/or diverting works:

A. Location (indicate on map): NW ¼ NE ¼, Section 28, Township 14S (N/S), Range 18E (E/W), Gila and Salt River Baseand Meridian, County Pima. Ownership USA

B. Name of storage reservoir and/or diverting works (if known): Turkey Creek Spring

C. Maximum capacity: N.A. Ac.Ft.

D. Maximum depth of water: N.A. ft.

8. E.(1) Year construction began: 1902.
(2) Year construction completed 1902.
(3) Date water first stored: N.A. (Month/Year).

F. If dam, list following:
(1) Construction material: _____
(2) Maximum Length: Top _____ft.; Bottom _____ft.
(3) Maximum Width: Top _____ft.; Bottom _____ft.
(4) Maximum Height: _____ft.

G. If diverting works, describe: Spring Development, water used on site by wildlife since time immemorial and by cattle since 1880's

9. Distribution works:

A. If ditch or canal:
(1) Date construction began: _____ (Month/Day/Year)
Date construction completed: _____ (Month/Day/Year)
(2) Length of ditch or canal to first place of use: _____ft., total length of ditch or canal: _____ft.
(3) Top width: _____ft.; Bottom width: _____ft.
(4) Grade (slope) of ditch: _____
(5) If ditch or canal owned and/or operated by an association or company or such other entity, list name of association or company or such other entity: _____

B. If pipeline:
(1) Type: _____(i.e., aluminum, steel, etc.)
(2) Diameter: _____inches
(3) Length of pipeline to first place of use: _____ft. and total length of pipeline: _____ft.
(4) Grade (slope) of pipeline: _____

C. If other, describe: _____

10. Enlargement(s) of storage reservoir and/or diverting and/or distributing works

A. Date begun: _____ (Month/Day/Year)
Date completed: _____ (Month/Day/Year)

B. Describe details of enlargement(s): _____

C. Dimensions of works as originally constructed and as enlarged: _____

Explanatory

(continued on the next page)

(if more space is required, attach separate sheet(s)

STATE OF ARIZONA)
)SS
County of _____)

VERIFICATION

_____, _____
(please print Claimant-Affiant's name) (Claimant-Affiant representative's name)

being first duly sworn, deposes and says; That the affiant, or its duly authorized representative, possesses the knowledge and the authorization to execute this verification as to the correctness and truthfulness of the matters set forth in the "Statement of Claimant", except as to those matters alleged upon information and belief, and as to those matters believes them to be true and correct.

For Corporations, Partnerships, Associations, etc.

_____
Claimant-affiant signature

_____
Claimant-affiant representative's signature

_____
Claimant-affiant signature

Attest: _____
Claimant-affiant representative's signature

Subscribed and sworn to before me this
_____day of_____, 19___.

SEAL

_____
Notary Public or authorized Officer of the State Land Department

My Commission expires _____

22-78

06-20-1979: statement of claim of right to use public waters of the state: registry no. 36-16929

Copy sent OS

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIM OF RIGHT TO USE PUBLIC WATERS OF THE STATE

Filing Fee $5.00

(LEAVE BLANK)
Registry No. 36-16929
Filed 6/20/79 at 2:09 P M.
(DATE) (TIME)

INSTRUCTIONS:

1. Submit Statement of Claim in duplicate.
2. Answer all questions fully.
3. File separate claim for each claimed right to appropriate and for each source of water.

Originally filed by Forest Service

1. Name of Claimant USDA Coronado National Forest
(Print Last Name or Name of Co.) (First Name) (Middle Initial)
301 W. Congress, Tucson, Arizona 85701 602-792-6483
(Address, City, State, Zip) (Phone No.)

2. The purpose(s) and extent of use(s) Stockwater 70% Wildlife 30%
(Examples: Irrigation, Stockwater, Domestic)

3. The quantities of water used annually 0.48 ac.ft. from 1 January
(Gallons or Acre feet) (Day) (Month)
to 31 December each year
(Day) (Month)

4. The date(s) the water was first used beneficially Stockwater use since 1880's
Wildlife use since time immemorial
(Month) (Day) (Year)

5. The Name(s) of the water course(s) or Water Source(s) being claimed Turkey Creek Spring
(Source Name)
Tributary to San Pedro River on the San Pedro River Watershed
(Leave Blank)

6. The point of diversion is within the NW ¼, NE ¼, Section 28,
of Township 14S (N/S), Range 18E (E/W), G&SRB&M, in the County of Pima.

7. The Place(s) of use is in the SE ¼, SW ¼, Section 27, of
Township 14S (N/S), Range 18E (E/W), G&SRB&M, in the County of Pima.

8. The legal basis for the claim Appropriation Doctrine - "First in time, first in right"
(Attach copies of any documents being filed in support of Claim)

STATE OF ARIZONA)
) ss
County of Pima)

K. R. WEISSENBORN being first duly sworn on oath, deposes and states that the foregoing Statement of Claim is true and correct of his own knowledge except as to any matters stated therein to be on information and belief and as to all such matters so stated he believes the same to be true and correct.

K. R. Weissenborn
Forest Supervisor, Coronado NF
(CLAIMANT(S))

Subscribed and sworn to before me this 5th day of June, 1979.

My Commission Expires:
_____, 19____.

MARGUITA A. McCRONE NOTARY PUBLIC PIMA CTY. AZ.

Marguita A. McCrone
(NOTARY PUBLIC)

My Commission Expires April 1, 1983

Filed in Water Rights Claim Registry No. 36-16929 of the State Land Department of June 20, 1979 at 2:09 P M.

ARS 45-184 "FILING OF CLAIM WITH THE DEPARTMENT NOT DEEMED ADJUDICATION OF RIGHT"
28-76

Brian Kirby
Adjudication Section



Land History

May 14, 1995

Bill Hansen
Paula Rooney
Meg's file

The first sheet is a copy of the USFS map of Coronado National Forest, Santa Catalina Ranger District. They show Turkey Creek Spring in the north half of sec. 28. Using a bit of guesswork, I would give a legal decription as NE 1/4 of NW 1/4 of sec. 28, T14S, R18E. The next sheet has a red circle around the location that is my best guess about where the spring is based on where the FS mapped it. This has not been field-checked. The third sheet is part of a recreational map of the Rincon Mountains that is produced locally by combining old 1:62,500 topo maps. It shows the trail network and is therefore useful in navigating to the spring.

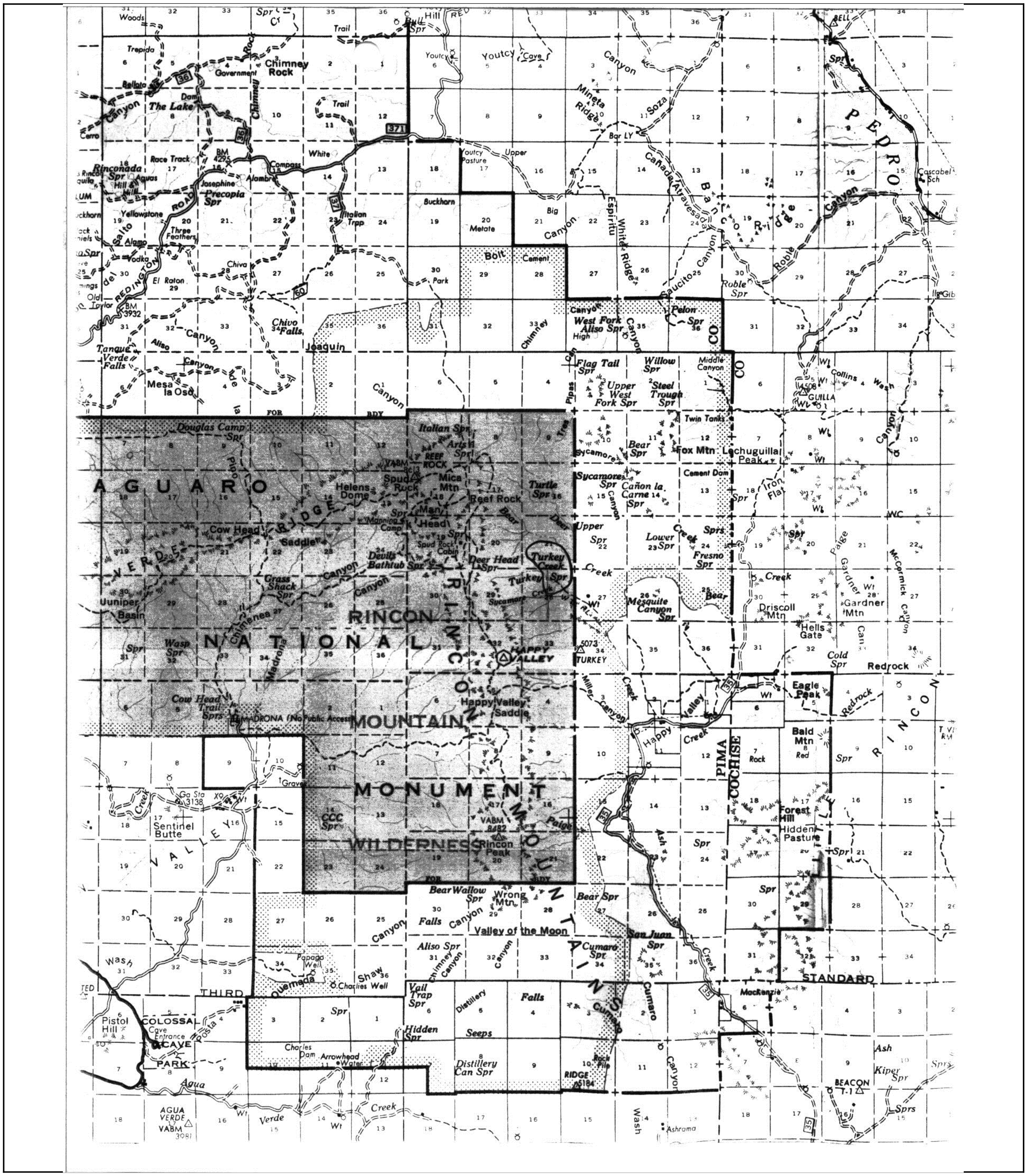
I will not be available to do any ground truthing for the rest of the month, but we might find a ranger who can if you need it.

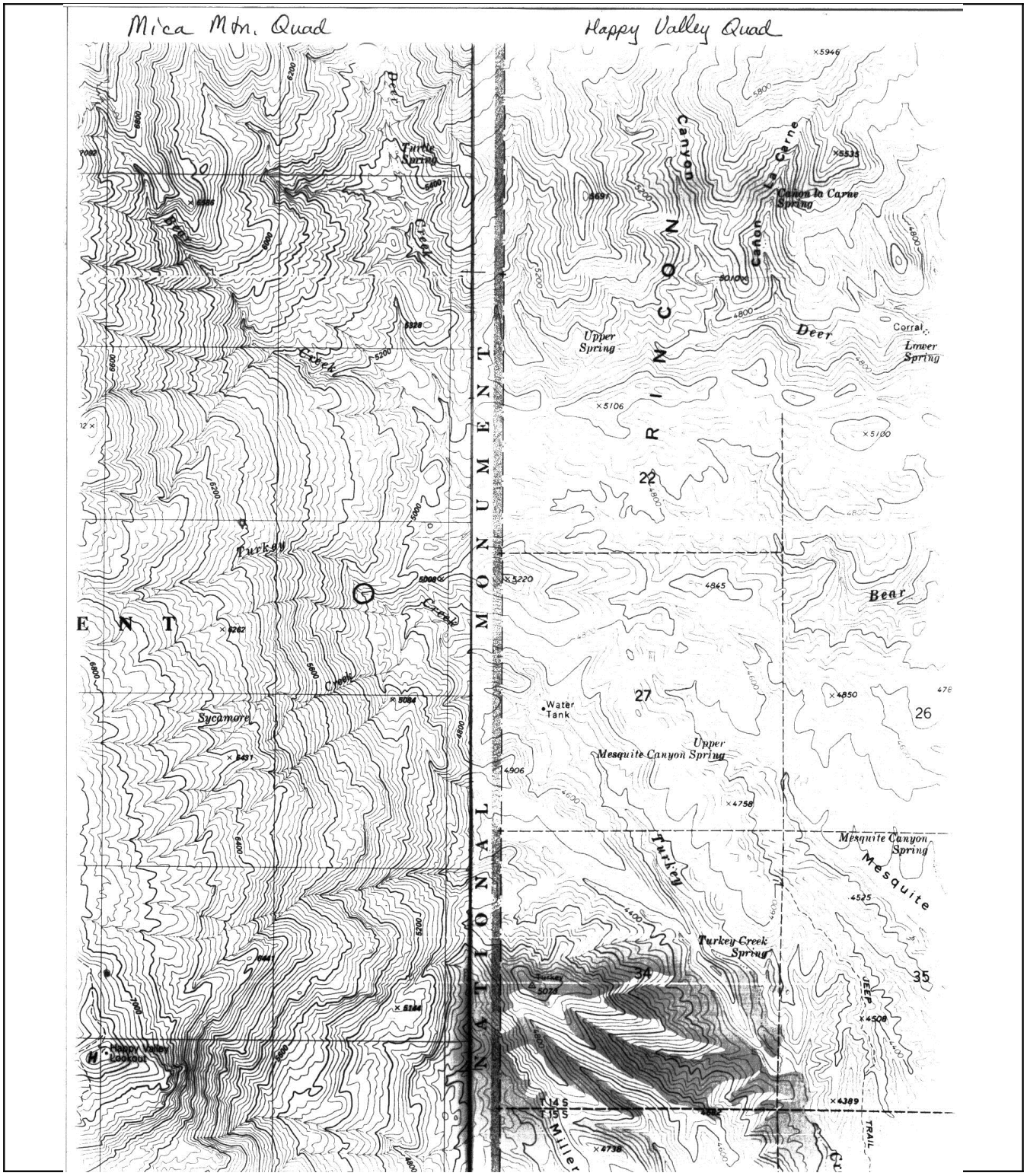
Meg Weesner

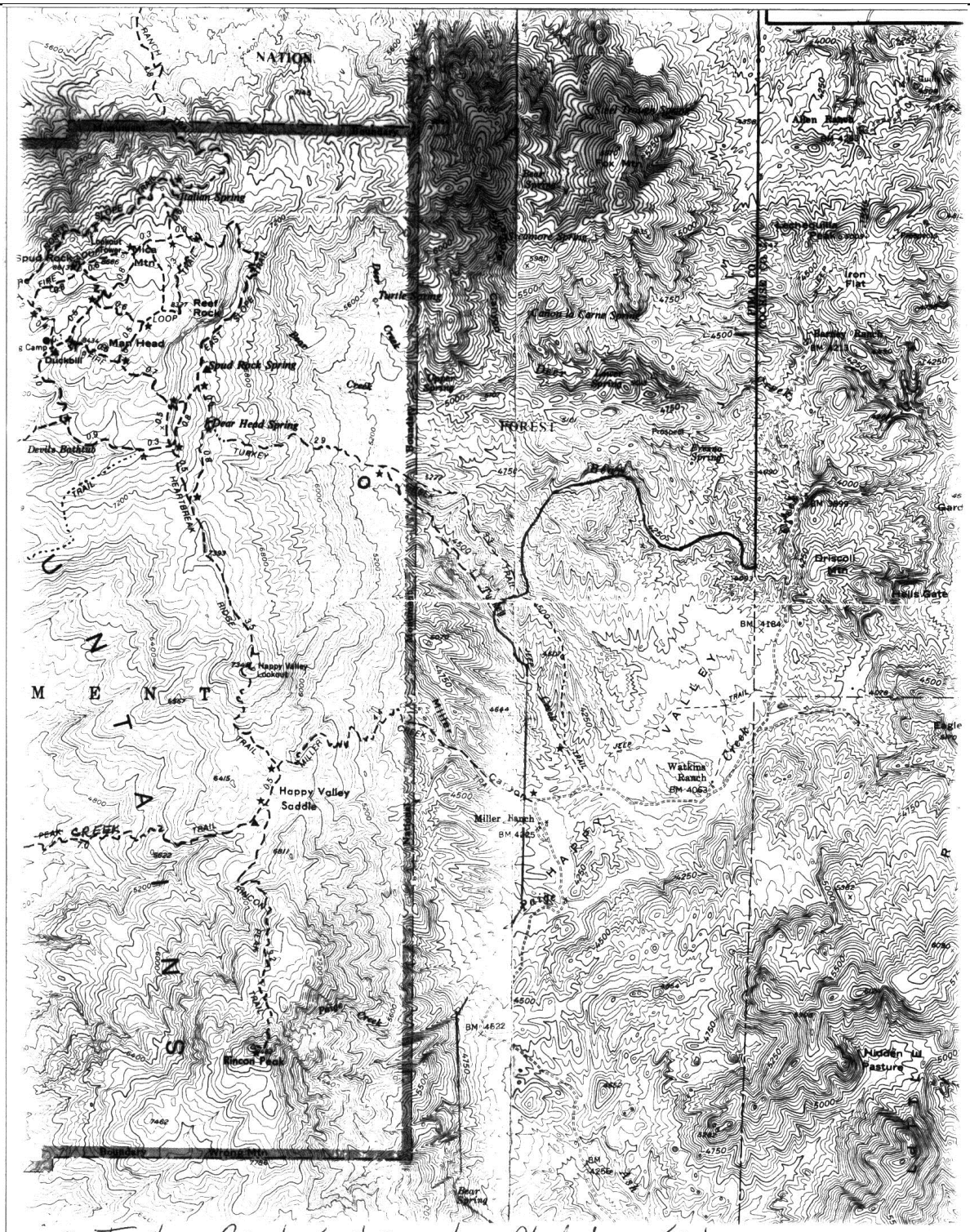
Location on Sec. Line.

Forest Service shows the spring on the NW¼, NE¼, Sec 28. We will use the Forest Service legal location because it was used on the Statement of Claimant form.

WRH 5/18/95


Chimney Rock
The Lake
Youtcy
Mineta Ridge
Soza
PEDRO
Rinconada
Race Track
Josephine
Precopia Spr
Alambre
Compass
Buckhorn
Italian Trap
Metate
Bolt
Cement
Espiritu
White Ridge
Cañada Atravesada
Bar LY
Roble
Tanque Verde Falls
Chivo Falls
Joaquin
West Fork Aliso Spr
Pelon Spr
Flag Tail Spr
Willow Spr
Upper West Fork Spr
Steel Trough Spr
Twin Tanks
Fox Mtn
Lechuguilla Peak
Cement Dam
Iron Flat
Bear Spr
Sycamore
Cañon la Carne
Douglas Camp Spr
Italian Spr
Arts Spr
REEF ROCK
Spud Rock
Mica Mtn
Helens Dome
Reef Rock
Turtle Spr
Manning Camp
Man Head
Cow Head Saddle
Devils Bathtub Spr
Deer Head Spr
Turkey Creek
Grass Shack Spr
SAGUARO
VERDE RIDGE
NATIONAL
RINCON
MOUNTAIN
MONUMENT
WILDERNESS
RINCON MOUNTAINS
Juniper Basin
Wasp Spr
Cow Head Trail Sprs
HAPPY VALLEY
Happy Valley Saddle
Happy Valley
Mesquite Canyon Spr
Fresno Spr
Lower Spr
Driscoll Mtn
Gardner Mtn
Hells Gate
Cold Spr
Redrock
Eagle Peak
Bald Mtn
PIMA
COCHISE
Forest Hill
Hidden Pasture
Sentinel Butte
CCC Spr
VABM 8482
Rincon Peak
Bear Wallow Spr
Wrong Mtn
Valley of the Moon
Aliso Spr
Cumaro Spr
San Juan Spr
STANDARD
Papago Well
Shaw
Charles Well
Vail Trap Spr
Distillery
Falls
Hidden Spr
Seeps
Distillery Can Spr
Charles Dam
Arrowhead
RIDGE 5184
COLOSSAL CAVE PARK
Pistol Hill
THIRD
AGUA VERDE
Ashroma
BEACON
Kiper Spr


Mica Mtn. Quad
Happy Valley Quad
CONSTITUTIONAL MONUMENT
Canyon
Canon la Carne
Canon la Carne Spring
Upper Spring
Deer
Corral
Lower Spring
Bear
Turkey
Creek
Sycamore
Canyon
Water Tank
Upper Mesquite Canyon Spring
Mesquite Canyon Spring
Mesquite
Turkey Creek Spring
Happy Valley Lookout
Miller
JEEP
TRAIL
22
27
26
34
35



O Turkey Creek Spring aka Blackberry Spring

[6] From: Meg Weesner at NP--WR 5/14/95 11:47AM (1867 bytes: 28 ln)
To: Bill Hansen at NP-WASO-WR
cc: Paula Rooney at NP--WR, SAGU Superintendent (Douglas K. Morris) at NP--WR
Subject: Location of Turkey Creek Spring
---------- Message Contents ----------

Bill--

Thanks for calling last week. It's a good question--where is Turkey Creek Spring? aka Blackberry Spring. It's not on our maps, and there are no maps in the file. We've had considerable turn over in staff and I'm not sure if anyone here now has seen it. However, I was hanging around Happy Valley this weekend and while looking at a Forest Service map, I saw its location marked as being inside the park boundary. Yet, the spring doesn't show up on our quad maps at all.

I've made copies of a few maps and I'm sending them to you by snail mail. I've also given copies to our chief ranger, Paula Rooney, in case you need to discuss it with her, or she can ask the rangers to investigate specifics while I'm out of the park from May 18 to June 5. She can be reached at 520/733-5110. Our backcountry ranger is John Williams, 520/733-5114, but I'm not sure if he's been to the spring.

The maps are FS Coronado National Forest, Santa Catalina District; combination of Mica Mtn. and Happy Valley 7 1/2 min. quads; and a special recreation map of the Rincon Mountains produced locally. The latter shows the trail network, which would help us locate the spring on the ground. You may want more details than this, but right now, this is the best I can do.

Thanks for all your help in resolving the water rights issue.

Meg Weesner
Saguaro National Park

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

August 8, 2001

IN REPLY REFER TO:
L54 (2380)
SAGU/Water Rights

Memorandum

To: Superintendent, Saguaro National Park

From: Chief, Water Rights Branch

Subject: Order and Partial Decree for Springs in the San Pedro River Adjudication

Please find attached the Order and Partial Decree of Stipulated Water Rights: San Pedro River Watershed (Saguaro National Park Monument [Rincon Mountain Unit]) and the abstracts from the referenced stipulation. The partial decree recognizes federal reserved water rights for Turkey Creek, Turtle, Mud, Spud Rock, and Deer Head Springs in the Rincon Mountain Unit contained within the San Pedro River Adjudication.

The NPS originally filed Statement of User Claims in the San Pedro River Adjudication in 1982. The NPS and several objectors entered into a stipulation defining the attributes of the water rights in 1996. This partial decree recognizes our rights to the five springs and represents the first recognition of federal reserved rights for any NPS unit in Gila River General Adjudication.

The five springs have a priority date of March 1, 1933 (the date of reservation) and may be used for wildlife, park administration including drinking and sanitation for visitors and Park Service personnel, maintenance of Park Service buildings, facilities and vehicles, and similar uses/firefighting. Because the five springs are located in the headwaters of the Rincon Mountains it is unlikely they will be threatened by future development around the park and, therefore, it is unlikely that long-term monitoring to protect these rights is required.

If you have any questions with regard to the Order or the abstracts please call Bill Hansen, of my staff, at (970) 225-3532.

Chuck Rattie

Enclosures: (6) [SAGU Dockets (12, 13, 18, 23 ,24, 30) and Adjudication File]

cc: SAGU – Weesner
IMRO – Wade, Ladd, Reber
2380 (email) – Soukup, Kliwinski, Kimball, Flora, Jackson, McGlothlin

Jim, concerning the Tur[illegible] Creek Spring in the Rincon Mo[illegible]ains:

Water Right: There is no water right held by anybody. The Forest Service has a Claim of Water Right # 36-16929, and it is the only claim existing for that spring. It indicates that water has been used from that spring since prior to 1919, but is not a water right. It could become a water right when the San Pedro Adjudication is completed. I spoke with a representative of the Department of Water Resources this morning and they indicated that since it is not on the Forest, the water right would probably go to the Park Service since they own the land. Arizona Administrative Code Rule # 12-15-301 provides for the Department issuing water rights to the Forest Service on behalf of permitees, and she felt that would be extended to the Park Service as well. Then we would be left with nothing because the Park Service has indicated they do not want to grant a permit for its use. However, that was just their guess. With the claim pending until the San Pedro Adjudication is settled, we still have the chance that the judge will grant us a right based on the pre-1919 (and pre-Saguaro Nat. Monument) claim. This is risky because there is no guarantee that the adjudication will be solved before 1993 (when the term permit expires) or that a judge would rule that way.

Along those same lines of thought, a new water right application under the current water laws would almost certainly result in the Park Service being awarded the water right, not us.

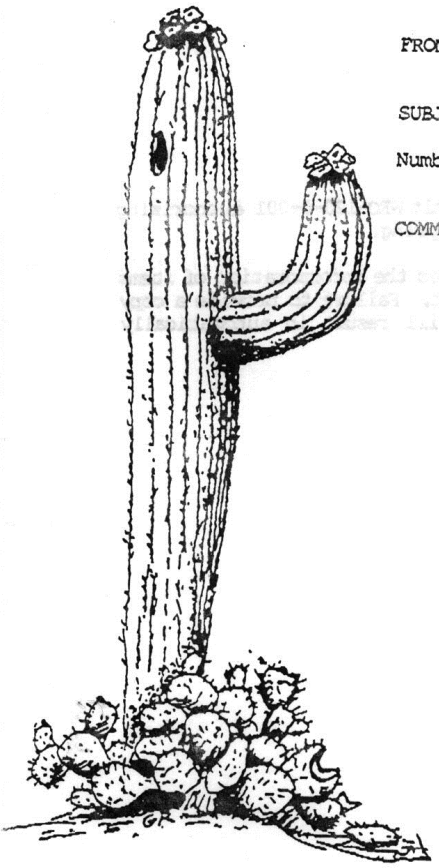
Alternatives to this source: Trick tank, cement dam & storage, dirt tank, or pipeline and pump system off an existing well. A new well does not look like a good idea based on the topography of that corner of the allotment.

Bl Defenbaugh
FS Hydrologist
Coronado N.F.

cc Steve Monel

SAGUARO NATIONAL PARK

3693 S. Old Spanish Trail - Tucson, Arizona 85730-5601 - (520) 733-5100 - Fax (520) 733-5183
Rincon Mountain Visitor Center - (520) 733-5153 - Fax (520) 733-5183 ~ Tucson Mountain Visitor Center - (520) 733-5158 - Fax (520) 733-5184





TO: Bill Hansen

FROM: Meg Weesner 520 733-5170

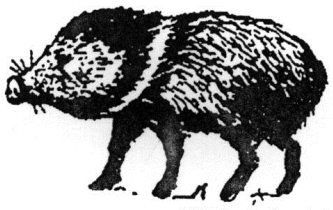
SUBJECT: Turkey Spring WR

Number of pages to follow 0

COMMENTS: My head isn't here this morning. I forgot to do a cover sheet for the ~~5~~ 5 pages that I just faxed to you. If the last page came through, on dark paper, I'll send the rest of that EA.

If it's still an issue with the FS, I'll try to attend the meeting.

Meg



TOTAL P.01

02-08-1991: letter to district ranger from superintendent regarding finalized copy of the special use permit wro-120-0-001

C3827

February 8, 1991

Mr. Steve R. Plevel, District Ranger
Santa Catalina Ranger District
Coronado National Forest
5700 North Sabino Canyon Road
Tucson, Arizona 85715

Dear Steve:

Enclosed is a finalized copy of the Special Use Permit WRO-120-0-001 authorizing temporary transport and use of water from Turkey Spring.

Your attention is drawn to Condition 14 which requires the incorporation of items 9, 10, 11, 12 and 13 into any current grazing permit. Failure to provide a copy of these modifications to me by March 11, 1991 will result in automatically voiding your Special Use Permit.

Thank you for your cooperation in this matter.

Sincerely,

William F. Paleck
Superintendent

Enclosure

bcc: Swift w/enc.
Bellantoni w/enc.
central file
reading files
W.F.Paleck:fjs 2/8/91

Form 10-114
Revised 86
OMB No. 1024-0026

UNITED STATES DEPARTMENT OR THE INTERIOR
National Park Service

Special Use Permit

Name of Use Stock Watering Dev.

Date Permit Reviewed 19 __ _____
Reviewed 19 __ _____
Reviewed 19 __ _____
Expires 19 93 10/13

Long Term X
Short Term _____

Permit # WRO SAGU - 120 - 0 - 00 1
Region Park Type No #

Saguaro National Monument
Name of Area

U. S. Forest Service of Coronado N. F., Santa Catalina RD
Name or Permittee 5700 N. Sabino Canyon Road 602-749-8700
Address Phone
Tucson, Arizona 85715

is hereby authorized during the period from (Time _____ day 1 Month 1 1991), through (Time _____ day 13 Month 10 1993), to use the following described land or facilities in the above named area:

Water from Turkey Creek Spring (a.k.a. Blackberry Spring) located within T.14S., R.18E., NE¼ Sec.28 transported via surface pipe to stock tank located on USFS lands.

For the purpose(s) of:

Management of the Happy Valley Grazing Allotment via U. S. Forest Service Permit Number 518.

Authorizing legislation or other authority (RE- NPS-53 Appendix 1):

NEPA Compliance: CATEGORICALLY EXCLUDED X EA/FONSI ___ EIS ___ OTHER APPROVED PLANS ___
516DM6, Appendix 1.4(B) (2) and 7.4 (A) (11)
PERFORMANCE BOND: Required ___ Not Required X Amount $ _____

LIABILITY INSURANCE: Required ___ Not Required X Amount $ _____

ISSUANCE of this permit is subject to the conditions on the reverse hereof and appended pages and when appropriate to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $ None.

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.

PERMITTEE _____ 1/29/91
Signature Date

Authorizing Official _____ _____ _____
Signature Superintendent Date

Additional Authorizing Official _____ _____ _____
(If Required) Signature Title Date

REGION/PROGRAM OFFICE

SAGU 10-114

SPECIAL USE PERMIT CONTINUATION SHEET

AREA	PERMIT NO.	PAGE NO.
SAGUARO NATIONAL MONUMENT	WRO-SAGU-1200-001	3 of 3

Conditions of this Permit

1-8. On the reverse side of the cover sheet of the Permit.

9. The Permittee shall not conduct, or allow, any modification to or maintenance of the existing water diversion and transport system without first supplying a written description of the proposed modification or maintenance actions and receiving written authorization from the Superintendent.

10. The Permittee acknowledges that no water rights nor rights-of-way have been document nor established by the U.S. Forest Service or any prior or present allottee.

11. The Permittee acknowledges that no water rights nor rights-of way are granted to the Permittee or any allottee, nor may they be perfected under this Permit or by virtue of the activities authorized by this Permit.

12. This Permit is not renewable; nor shall it be extended beyond October 13, 1993.

13. The Permittee and any prior or present allottees quit-claims all alleged rights and refrains from asserting any rights regarding Turkey Creek Springs to the National Park Service effective October 13, 1993.

14. The Permittee hereby agrees to incorporate the substance of items 9, 10, 11, 12, and 13 into its current grazing permit and provide a copy of the grazing permit as modified and signed to the Superintendent within 30 days of the effective date of this Permit.

11-15-1992: supplementary case/incident record for blackberry spring, turkey creek area

(Rev. 3-73)

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SUPPLEMENTARY CASE/INCIDENT RECORD

ORGANIZATION (PARK) NAME	CASE/INCIDENT NUMBER
SAGU	8 9 0 5 1 4
LOCATION OF INCIDENT	**DATE OF INCIDENT** MO DA YR
Blackberry Spring, Turkey Creek area	1 0 2 7 8 9

NATURE OF INCIDENT

Water Usage permit - Failure to Obtain

COMPLAINANT'S NAME	COMPLAINANT'S ADDRESS

RESULTS OF INVESTIGATION

On 11-1-92 while conducting a hunting patrol in the Turkey Creek area I visited Blackberry Spring. In 1989, I reported a water diversion system from the spring to a cattle tank located on U.S. Forest Service land. On 11-1-92 the cattle tank on U.S. Forest Service land was dry and appeared unused. The black, PVC pipe leading up to the spring was cracked in several locations. There was no evidence of recent activity at the spring. The pipeline at the spring was also dry.

SUBMITTED BY (SIGNATURE AND DATE)	APPROVED BY (SIGNATURE AND DATE)
Michael J. Murray 11/5/92	

DRAFT

ENVIRONMENTAL ASSESSMENT OF THE CONTINUED USE OF A WILDERNESS SPRING TO SUPPLY WATER FOR LIVESTOCK ON THE HAPPY VALLEY GRAZING ALLOTMENT RINCON MOUNTAIN DISTRICT SAGUARO NATIONAL MONUMENT

PURPOSE AND NEED

Grazing in southern Arizona is marginal and only succeeds when water is available to supply the needs of the livestock. Grazing in the Rincon Mountains of Saguaro National Monument ceased as of December 31, 1975 when the Special Use Permit allowing use of water from Turkey Creek (Turkey Creek Spring/Blackberry Spring) expired (NPS,1974a). Correspondence after that time referenced this use of water, but apparently followup ceased after the Superintendent rescinded the use of the spring and pipeline in 1977.

A Case Incident Record (NPS,1989) reported that a water diversion system was observed in Turkey Creek that drained water from within Saguaro National Monument to a cattle tank on U. S. Forest Service land. A pipeline had been constructed, in Saguaro wilderness, that runs from the spring located in T14S, R18E, NE 1/4 S28 (unsurveyed) to a watering trough outside the Monument boundary. Past correspondence between NPS officials and a former permittee on this allotment discussed the continued use of this water (See **HISTORIC PERSPECTIVE**).

This assessment is necessary to determine the impacts of the use of the spring in Turkey Creek and the location of the pipeline on this area of wilderness in Saguaro National Monument. This assessment will evaluate environmental impacts, evaluate the effects on wilderness values, and recommend a course of action to follow to protect all park resources including these values.

HISTORIC PERSPECTIVE

The National Park Service was created by act of Congress in 1916 as part of the Department of the Interior by the NPS Organic Act. A primary purpose of the act was to preserve natural areas in their natural state as is exhibited in the statement:

> ...which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same by such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 USC 1).

Saguaro National Monument was established by Presidential Proclamation Number 2031 on March 1, 1933 to promote the public

interest "...by reserving as much land as may be necessary for the proper protection..." of lands that "...are of outstanding scientific interest because of the exceptional growth thereon of various species of cacti, including the so-called giant cactus..." This proclamation also stated that "...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." The Monument was subsequently enlarged by Presidential Proclamation No 3439 of November 15, 1961. Seventy-one thousand four hundred acres of Saguaro National Monument were designated as wilderness under Public Law 94-526 of October 20, 1976.

The majority of the land included in the Monument had been under the supervision of the U. S. Forest Service since the withdrawal of the land for a Forest Reserve on October 2, 1905. The Forest Reserve was changed to a National Forest on March 4, 1907 and the name changed to Coronado National Forest with its establishment on July 2, 1908.

There are several documents relating to spring development and water rights in Saguaro National Monument extending back to 1951. A memorandum (NPS,1951a), to the Regional Director from Regional Counsel, discussed legal issues related to the proposed development of seven springs in Saguaro National Monument. Assumptions made in this memorandum suggest that "...none of the springs in question is tributary to a stream which flows outside the monument boundary." and "If that assumption is correct, the grazing permittees do not need to make formal appropriations of water." Further discussions revealed that "Although we feel that the principal justification is the need of water for wildlife..." and that Arizona law recognizes use by wildlife as a beneficial use, the National Park Service "...would be in a stronger position in case of future controversy over water rights, if we were to adopt the purpose of making additional water available both for stock and wildlife..." Another memorandum (NPS,1951b) lists the seven springs, but Turkey Creek Spring (a.k.a. Blackberry Spring) is not one of them. In another memorandum (NPS,1953a) it is reported that a check with the State Engineer found no water rights claims for any of the seven springs proposed for development. These springs were described again and legal descriptions given in another memorandum (NPS,1953b). This description of water systems (artificial structures), by which the Park Service claims water, does not list the spring in Turkey Creek.

Maps accompanying another memorandum (NPS,1956a) show the Happy Valley Allotment as "(OPEN)" and as there being "No Record of Permit, Estimated Capacity 60 cattle 12-months 720 AUM." A suggestion made for the Superintendent of Saguaro was that he "Investigate the possibility of abolishing the Happy Valley Allotment which has a record of non-use (NPS,1956b). The Happy

Valley Allotment is again referenced in a memorandum (NPS,1956c) on Grazing-Saguaro. In this document "...two "off and on" permits which would be difficult to abolish..." are discussed.

A Memorandum of Agreement between the National Park Service and the U. S. Forest Service (NPS/USFS,1956) stated that the Forest Service would "...issue new ten-year grazing permits to present permittees in 1956...and will continue to receive and account for grazing within the boundaries of the National Park Service lands." This agreement signed by the Forest Supervisor and the Monument Superintendent also stated that there would be "...no transfers of grazing permits made without the concurrence of the National Park Service." Echoing the terms of the agreement, on March 9, 1958 the Coronado National Forest Supervisor in reference to COOPERATION-U. S. Park Service stated that "...it was agreed that Rangers should secure approval from the local Park Service official before constructing or permitting construction of range improvements on National Monument lands (USFS;1958)".

On April 4, 1968 in a memorandum (NPS,1968) a summary of grazing permits is given "In view of the pending wilderness hearing scheduled for the fall of 1968..." and "...to make sure we are all fully aware of the total grazing commitment involving the Monument area." The Happy Valley allotment is shown as being under USFS Permit #05-00377.

A Special Use Permit (NPS,1974a) was issued to Betty Sue and D. Malcolm MacKenzie to replace USFS 05-00377. Under **CONDITIONS OF PERMIT** it is stated:

> 8. **Water Rights.--** Water rights will be perfected, when necessary, by the United States in its own name for water developed or used in connection with this permit. The permittee will furnish to the United States such information as is necessary for perfection, including statutory fees, and for management and protection of the resource (SAGU-2-74).

Another document, entitled a SUMMARY OF GRAZING, lists the allotment as having extended from "196? to present (NPS,1974b)." This summary explains that the MacKenzies' Special Use Permit terminated on December 31, 1975 and will not be renewed.

On July 23, 1976 the Superintendent of Saguaro sent a letter (NPS,1976a) to Mr. Malcolm MacKenzie apologizing for the delay in answering MacKenzie's letter. In his letter (MacKenzie,1976) reference is made to "Blackberry Spring" in the Turkey Creek drainage. MacKenzie discussed the use of this spring for watering cattle grazed in the Happy Valley Allotment and also wrote "You stated that we would be able to continue using this after the park is fenced off." MacKenzie then requested a

statement in writing from NPS that this use would continue.

In a memorandum (NPS,1976b) to the General Superintendent (SOAR) the subject of water resource development for grazing permittees was discussed. In this memorandum a statement was made that "It (Turkey Creek Spring) has been a part of USFS Grazing allotment permit." A request was made that Turtle Spring next to the Barney Allotment be developed wherein Mr. Barney "...be allowed to continue using the water from this spring..." and "...construct a pipeline from the spring to a tank on Forest land." Mention was also made of discussions with USFS personnel who felt that these springs were "...essential for good management on the adjacent allotments..." and that "Due to long-term usage of both springs for grazing purposes it is difficult to justify to the USFS and the ranchers that the water supply should be cut-off." In summation questions were posed about long-term legal implications of continued usage; if allow to continue what would the political implications be to future managers who try to stop such use; does the monument have the right to obligate water; and what are any rights of users based on long-term use. The last question posed was "Assuming we do allow them to continue use of the water, should we issue a Special Use Permit on a limited basis or is there some other form that would be better?"

Discussions in a solicitor's opinion (NPS,1977a) offered legal clarification of the above questions. It was concluded that as of August 10, 1933, the effective date of Executive Order 6166, that any national forest laws that might have been applicable to Saguaro ceased to be applicable as of this date. Further statements conclude that "In view of the fact that these graziers do not now hold, and cannot acquire, any water rights, the only way they can be allowed to use the water in these springs is if NPS is authorized to allow them to use the water. We do not believe such authority exists here." The opinion is given later that it is "...believe(d) that NPS has certain limited authority to allow use of the water within an area for stock watering. However, this authority is limited to instances where NPS authorizes the grazing of livestock on its land." In summary it is stated that "...since NPS does not plan to authorize these individuals to graze their livestock in the Monument, this authority is not applicable..." and "...we do not believe NPS can allow these graziers to use these springs."

In a letter (NPS,1977b) the Superintendent informed Forest Service officials that he "...cannot grant your request to maintain the Turkey Creek water and pipeline or Turtle Springs as viable water supplies for the Happy Valley and Barney Allotments." As a clarification of his April 8, 1977 letter, the Superintendent cited the specific statutory authority for disposing of water by the National Park Service (NPS,1977c).

This is a summation of the remarks made in the solicitor's opinion cited above.

Discussions among Coronado National Forest personnel (USFS,1977a) point out the need for the springs for the effective use of the allotments and also questioned the authority of the Superintendent to cancel use if he did not have the authority to permit use. The Forest Service considered that two alternatives existed with regard to the termination of use of the Turkey Creek pipeline (USFS,1977b). The first would be to attempt to replace the Turkey Creek Spring source (referred to as Turkey Spring in the memorandum) and secondly reduce the permit by the amount of AUM's which could be grazed in the area watered by this spring. The U. S. Forest Service, in a letter to the Happy Valley Permittee (USFS,1977c), referenced the fact that the National Park Service would not authorize use of the water from Turkey Creek and that it was the intention of the Forest Service, if on appeal use is denied, to "...pursue the possibility of a pipeline from the farmstead up Turkey Creek." It was further stated that the latter "...may be deemed necessary as supplemental water even if the Turkey Creek water use is approved."

In the management plan for the Happy Valley allotment it is pointed out that:

> Potential
>
> It is possible that Turkey Creek pasture will need an additional water development in order to sustain the livestock during May and June. This is especially true as the Park Service has terminated use of the Turkey Creek pipeline and water. Water is available in the creeks for usually all but the driest months and in the several springs. A pipeline from the farm to SE 1/4 of Section 34 should be installed as soon as funds permit and the necessary permission can be obtained (USFS;1977).

The latest plan for the area (USFS;1987) contains some inaccuracies when describing this allotment when it is stated that "Elevations range from 4000 feet to 8500 feet." after locating the allotment in the Rincon Mountains, Pima County. The only elevation that reaches the height of 8500 feet within the Rincons is in the wilderness area of Saguaro National Monument where no grazing has been permitted since December 31, 1975 and which is no longer a part of the Happy Valley allotment. In the DISTRIBUTION AIDS TO BE EMPLOYED section of this management plan is the statement that:

> B. Water. The Happy Valley Allotment has 25 dependable water sources. In regard to performance and dependability, six other additional waters are seasonally highly variable. Hidden Springs water storage and two wells located on

private land can be shut off periodically. These developments are connected to several troughs located on the allotment. The Happy Valley Allotment contains two dirt tanks, two wells, three temporary springs, eight developed springs, two storage tanks, 24 troughs, and three and one-half miles of pipeline (USFS;1987).

Nowhere in this latest management plan is the Turkey Creek Spring or pipeline mentioned, although such could possibly be included in the totals for springs and pipelines.

As a result of the Case Incident Report previously cited, the Superintendent sent a letter to the current grazing permittee on the Happy Valley Allotment (NPS,1989) stating that "...any action you take to make repairs, improvements or alterations to the water line will require written permission from the National Park Service." In answer the permittee (Weed,1989) made the National Park Service aware that he had filed a water rights claim in 1978 on the Turkey Creek Spring. Included with the letter was a copy of the claim and a map showing the location of the spring.

A meeting between U. S. Forest Service and National Park Service personnel was held on December 4, 1989 (USFS,1989). It was agreed at this meeting that:

1. The Forest Service would assess whether there is an alternate water source outside of Saguaro National Monument that is feasible to develop; and assess the impact of not having water for this part of the grazing allotment.

2. If no alternative is found the Forest Service would request a right-of-way for the pipeline.

3. The National Park Service would assess the environmental impacts of the use of the spring and pipeline and assess whether such use is consistent with the purpose for which the Monument was created.

4. Until the problem of this use is resolved, continued use of the water by the permittee will be allowed, but no additional work will be done on the spring or pipeline until there is a resolution.

ALTERNATIVES

A. No Action. This alternative offers no solution to the current problem of water use in Turkey Creek. In fact it leaves the matter in abeyance, unresolved as has been the case since the creation of the Monument in 1933 and more importantly since 1977 when opinions were forthcoming on how the matter could be resolved.

B. Grant a Right-of-Way for the Pipeline from Turkey Creek Spring/Issue Special Use Permit/Prepare an Interagency Agreement. It would appear that the Forest Service and permittee have been in de facto trespass since 1977 when the Superintendent of Saguaro National Monument stated he could not authorize the use of the water and pipeline in Turkey Creek. The objective of this alternative is to continue the status quo, but legally by the granting of a Right-of-Way to the U. S. Forest Service for the current pipeline and a Special Use Permit for a stock watering development. The National Park Service can issue such a right-of-way under 16 USC 5 which grants such authority to the Director of the National Park Service. The Superintendent, under 36 CFR, is authorized to issue permits for special park uses that:

> ...shall be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted (Part 1.6).

If the use of water is allowed outside the Monument, but on land controlled by a sister agency, then an Interagency Agreement could be the appropriate vehicle establish cooperative or mutual assistance relationships and in which the transfer of funds will occur to accommodate "sale" of the water. While Congress has delegated to the Secretary of the Interior limited authority to allow the use of water in areas of the national park system, the only specific statutory authority for disposing of water is 16 USC 1a-2(e) (NPS,1977a).

National Park Service Management Policies (NPS;1988) on water use management, conservation and in connection with grazing refer to uses within the parks. These policies also state that the Service may enter into contracts to sell water for public accommodations within the immediate vicinity of the park as authorized under 16 U.S.C. 1a-2(e). As previously stated the National Park Service has limited authority to allow use of water within an area for stock watering where grazing of livestock is allowed on land managed by the Service, since grazing is not allowed in Saguaro there is no other existing authority which would authorize the use of these springs for stock watering (NPS,1977a).

The Service's management policies (NPS,1988) also state:

> **Rights-of-Way**
>
> Existing rights-of-way that have been included in wilderness should be phased out where practicable. Where it is not

> practicable, rights-of-way subject to NPS administrative control may be renewed under conditions outlined in the park's wilderness management plan that protect wilderness character and resources and limit the use of motorized or mechanical equipment. The National Park Service will not issue any new rights-of-way or widen or extend any existing rights-of-way in wilderness (6:9).

It would appear from the above statement that policies negate the issuance of rights-of-way in wilderness where no right-of-way was in place at the time the wilderness was created.

Other considerations for granting such uses are found in guidelines (NPS-53,1986). Such a use does not relate to the legislative purpose for which the Monument was established nor does the proposed activity have value to the park itself. While it can be argued that this request needs special consideration because of the potential adverse effects as concerns a permittee with grazing rights on Forest Service land, but the long-term effects on park wilderness resources have to be determined also.

Section 1a-1 of Title 16 of the United States Code places affirmative obligations on the National Park Service to exercise its authority in a manner that will protect against the derogation of park values. It is important to note that derogation of values goes beyond physical resources. The derogation of the visitor's experience may be considered a derogation of values. The purpose and values referred to in the above statute are the purposes and values identified in the Organic Act, the enabling legislation establishing the Monument, the Wilderness Act, NEPA compliance and any other legislation that may apply to a particular area.

This option is not a preferred one when considering whether this use is authorized- apparently not. Whether a Special Use Permit is the appropriate vehicle to authorize such use is questionable since there is apparently no legal authorization and since management policies negate the issuance of new rights-of-way in wilderness. Derogation of park values appears to be the case when one considers water is park resource intended for use by native species, that a pipeline disrupts the natural scene and that Service policies are negative toward the placement of rights-of-way in wilderness.

Should it be determined that the authority for this use does lie with the Secretary and that an Interagency Agreement is the appropriate vehicle, the last factor to be considered is NEPA requirements. It is evident that this proposed use is not categorically excluded from the NEPA process (NPS-12,1982), hence the preparation of this environmental assessment. Whether this alternative requires a FONSI or whether it constitutes a major federal action significantly affecting the human environment,

thus requiring an NOI prior to the preparation of an Environmental Impact Statement, must be considered very carefully. Before a FONSI is prepared, the scoping process could be invoked to assure that all environmental consequences of this action are analyzed and to determine whether or the NOI is the proper document to prepare (CEO,1981).

C. Reaffirm the Superintendent's Decision of 1977. The previous citation of this decision (NPS,1977c) indicates that the Superintendent relied on legal opinions and exercised his permitting authority in denying the use of the water and pipeline in Turkey Creek. The Forest Service has produced documents affirming that they understood that such use would not be permitted and it would appear that they have been in trespass since the Superintendent's decision of 1977. Legal counsel has advised the Service that there is no statutory authority to allow such use and management policies specifically state that the Service will not issue rights-of-way in wilderness.

Based on the information presented in this assessment it is the recommendation that this alternative (Alternative C) be selected as the preferred alternative and that a FONSI be prepared affirming this preference.

AFFECTED ENVIRONMENT

Any of the alternatives listed affect an area in the Saguaro Wilderness of the Rincon Mountain District of Saguaro National Monument. This area which is in the Turkey Creek Drainage is found in T14S, R18E, NE 1/4 S28 (unsurveyed). Typically this area is a transition zone between grassland and woodland vegetative communities. The Turkey Creek Trail passes to the north of the spring and drainage so access has to be cross-country or on non-designated trails. The pipeline traverses the drainage partway to the Monument boundary and also crosses wilderness outside the drainage. Damage has been done to vegetation during pipeline maintenance, and should this line remain, maintenance would require continued resource impacts and derogation of wilderness values.

ENVIRONMENTAL IMPACT

Environmental impacts resulting from the preferred alternative (Alternative C) are minimal to vegetation, wildlife, soils, cultural resources and noise and air quality. Removing the existing pipeline, restoring disturbed areas and rehabilitating the spring development would mean that wilderness values would be restored, with time, and the wilderness experience of the visitor would not be derogated. The attached matrix gives a complete

rundown of impact comparisons for the four alternatives discussed.

There are no known cultural resources in the area, but before any action is undertaken the drainage and pipeline route will have to be surveyed by trained personnel. No known threatened or endangered species are known to use the area. Rehabilitation of the spring development will in no way impact wildlife or plant species, as the intent is to return to it as original a condition as far as can be determined.

CONSULTATION AND COORDINATION

Personnel

The Backcountry District Ranger discovered and reported the spring developement and pipeline. He has prepared a report of the incident, located the spring on a topographic map and taken photographs of the area to record existing conditions and delineate impacts. Consulatations have been held with U. S. Forest Service personnel concerning the history of this use. Such consultations will continue until the matter is resolved and, if deemed necessary, on a regular basis to prevent future conflicts and resolve existing misinterpretaions of National Park Service policies and responsibilities in protecting the resource.

Before any rehabilitation work or any permanent use of the pipeline and spring is allowed, an archeological survey of the area will be conducted. Further consultations will be requested if any objects of an archeological or historical nature are revealed during field actions to complete the selected alternative. If any objects of an archeological or historical nature are revealed during this project, further consultations will be requested from Regional/Park Archeologists.

References

Memoranda and Letters

MacKenzie, M. 1976. Letter dated 6/16/76. Archieved in park files under L3019.

NPS. 1951a. Memorandum (no code;5/28/51). Archieved in park files under L3019.

NPS. 1951b. Memorandum (L54-SAGU;8/7/51). Archieved in park files.

NPS. 1953a. Memorandum (no code;4/29/53). Archieved in park files under L3019.

NPS. 1953b. Memorandum (no code;5/30/53). Archieved in park files under L3019.

NPS. 1956a. Memorandum (L3019-J;1/31/56). Archieved in park files.

NPS. 1956b. Memorandum (L3019-J;2/28/56). Archieved in park files.

NPS. 1956c. Memorandum (L3019;3/7/56). Archieved in park files.

NPS. 1968. Memorandum (L3019;4/4/68). Archieved in park files.

NPS. 1976a. Letter (L3019;7/23/76). Archieved in park files.

NPS. 1976b. Memorandum (D5030 xL3019;11/11/76). Archieved in park files.

NPS. 1977a. Memorandum-Solicitor's opinion (no code;4/1/77). Archieved in park files under L3019.

NPS. 1977b. Letter (L54 xD5039;4/8/77). Archieved in park files.

NPS. 1977c. Letter (L54 xD5039;7/6/77). Archieved in park files.

NPS. 1989. Letter (L54 xL3019) Archieved in park files.

USFS. 1958. Memorandum (no code;3/9/580. Archieved in park files under L3019).

USFS. 1977a. Memorandum (2240;7/7/77). Archieved in park files under L3019.

USFS. 1977b. Memorandum (2230;9/26/77). Archieved in park files under L3019.

USFS. 1977c. Letter (2230;11/7/77). Archieved in park files under L3019.

Weed, R. C. 1989. Letter (11/26/89). Archieved in park files under L3019.

Reports, Regulations, Guidelines and Policies

CEO. 1981. Forty Most Asked Question Concerning CEO's National Environmental Policy Regulations (5/23/81). Fed. Reg. 46(55): 18030.

NPS. 1974a. Special Use Permit #SAGU-2-74. Archieved in park files under L30.

NPS. 1974b. Document dated 4/4/74. Archieved in park files under L3019.

NPS. 1986. Guideline NPS-53. Special Park Uses.

NPS. 1982. Guideline NPS-12. National Environmental Policy Act.

NPS. 1989. Case Incident Record-890514. Archieved in park files under W3415.

NPS/USFS. 1956. Memorandum of Understanding-NPS/USFS. (2/6/56). Archieved in park files under L3019.

USFS. 1977. Happy Valley Allotment Management Plan. Archieved in park files under L3019.

USFS. 1987. Happy Valley Allotment Management Plan. Archieved in park files under L3019.

December 7, 1989

L54(479)
WR/SAGU

Memorandum

To: Regional Director, Western Region

From: Chief, Water Resources Division

Subject: Trip Report for Travel by Owen Williams to Tucson, Arizona on November 27-28, 1989

The attached trip report by Owen Williams concerns his travel to Tucson to assist staff of Saguaro National Monument (SAGU) in their discussions with staff of the Coronado National Forest. These discussions concerned the transmission and use of spring water from within SAGU wilderness to a grazing permittee within adjacent National Forest wilderness, a use which may predate the creation of the forest, the park, and the wilderness. The issue, at first blush, appears to hold the potential for controversy. The Water Resources Division shall work closely with the park Superintendent and staff as the issue matures, and in the process will keep you and your staff advised.

If you have any questions, please feel free to call Owen or me at (303) 221-8301 or (303) 221-8305, respectively.

Stanley L. Ponce

Attachment

cc: WR - Kolipinski, Huddleston
SAGU - Superintendent, Swift, Hall
Coronado NF - Steve Flavel, Bob LaFevre
WRD - Hansen

FNP:OWILLIAMS:jr:221-8301:12/07/89:WANG #846

November 29, 1989

L54(479)
WR/SAGU

Memorandum

To: Chief, Water Resources Division

From: Chief, Water Rights Branch

Subject: Trip Report for Travel to Tucson, Arizona on November 27-28, 1989

PURPOSE: The purpose of this trip was to assist park staff in discussions with representatives of the Coronado National Forest (NF) concerning the water rights for, and use of, an NPS spring historically used for cattle grazing on adjacent NF land.

ITINERARY: Departed official station November 27, 1989, and arrived in Tucson, Arizona, the same day. Returned to official station November 28, 1989.

CONTACTS: Steve Pleval, District Ranger (Santa Catalina Ranger District, Coronado NF)
Bryan Swift, Chief Ranger (SAGU)
Robert Hall, Res. Mgt. Prot. Spec. (SAGU)
Bob LeFevre, Hydrologist (Coronado NF)
Paul Holley, Range Technician (Santa Catalina Ranger District, Coronado NF)

DISCUSSION: The WRD was requested by park staff to assist in discussions with staff of the NF as the parties attempt to resolve an apparent conflict involving a spring within the boundaries of Saguaro National Monument (SAGU). Of concern to the park is the conflict of this resource use with park and wilderness purposes while the NF fears the unuseability of the adjacent allotment if access to this previously used water source is lost.

The parties began with a discussion of the history of the water use and each agency's past actions. The group also discussed State water right considerations as well as the possible water right interests of the allotment permittee. It quickly became evident that the record is far from clear or consistent. This being the case, it is necessary that an evaluation of the factual situation be undertaken so that future actions may be initiated in an informed environment. Specifically, the record is confused as to what actions, if any, were officially taken in response to legal opinions prepared in the late 1970's.

ACTION ITEMS: Plavel recommended, and the group agreed, that the NF should initiate an evaluation of alternative water sources and probable consequences to the allotment if no other source is practicably available. Further, Plavel said he would discuss the issue with the permittee to make him aware of what was under consideration and that no precipitous action endangering his livelihood was imminent. Plavel suggested that this occur with an NPS representative in attendance so the permittee would know the agencies were coordinating, one with another.

If the NF evaluation reveals no practicable alternative water source and significant impairment of the viability of the allotment, then the NF will probably approach the NPS to request a right-of-way for use of the spring. It is anticipated that this will require the NPS to undertake an assessment of the impacts to park and wilderness resources and management objectives if the request were approved. It seems reasonable to assume that, along with this assessment, a request for a solicitor's opinion will be required. It also seems reasonable to assume that the issue will likely be elevated to the Director or the Secretary for final resolution.

As far as the WRD is concerned, no specific actions are required at this time. However, it would be appropriate to assemble whatever information is available in preparation for eventual requests from the park, Region, or WASO.

FNP:OWILLIAMS:jr:221-8301:12/07/89:WANG #846

11-03-1989: memo to district ranger regarding turkey creek pipeline (rincon mountains)

United States Department of Agriculture — Forest Service — Coronado NF — 300 W. Congress Tucson, AZ 85701

Reply to: 2200/2500 **Date:** November 3, 1989

Subject: Turkey Creek Pipeline (Rincon Mountains)

To: District Ranger, Santa Catalina R. D.

I have researched the files concerning the Turkey Creek Pipeline in the Rincon Mountains and found that the debate over uses that predate the Saguaro National Monument has been waged for a long time. The final result, however, is that the Park Service does not have any authority to allow the use of this water from the Monument nor does the Forest Service have any authority to get permission.

The attached letters from 1977 are the last entries in this file, which dates back to 1933. They sum up the situation.

Our Registration of Water Right 36-16929, dated June 5, 1979 is apparently null and void.

Robert E Lefevre

ROBERT E. LEFEVRE
Hydrologist

Caring for the Land and Serving People

FS-6200-28(7-82)

10-20-1977: memo to forest supervisor regarding termination of waters - happy valley and barney allotments

UNITED STATES DEPARTMENT OF A[illegible]RE
FOREST SERVICE
R-3

REPLY TO: 2240 Improvements

October 20, 1977

SUBJECT: Termination of Waters - Happy Valley and Barney Allotments
(Your memo 7/7)

TO: Forest Supervisor
Coronado National Forest

As requested, I discussed the termination of the use of water from two springs on the Saguaro National Monument with Regional Director Howard Chapman.

As Mr. Chapman explains, the Park Service does not have the authority to permit the continued use of the water by livestock grazed on the Coronado National Forest. (See copy of his September 28, 1977, letter enclosed).

We do not have any suggestions for resolving this problem. If you have any solutions, please advise and they will be pursued.

for M. J. HASSELL
Regional Forester

Enclosure

Copy sent Catalina

Jim, concerning the Tur[illegible] Creek Spring in the Rincon Mo[illegible]ains:

Water Right: There is no water right held by anybody. The Forest Service has a Claim of Water Right # 36-16929, and it is the only claim existing for that spring. It indicates that water has been used from that spring since prior to 1919, but is not a water right. It could become a water right when the San Pedro Adjudication is completed. I spoke with a representative of the Department of Water Resources this morning and they indicated that since it is not on the Forest, the water right would probably go to the Park Service since they own the land. Arizona Administrative Code Rule # 12-15-301 provides for the Department issuing water rights to the Forest Service on behalf of permitees, and she felt that would be extended to the Park Service as well. Then we would be left with nothing because the Park Service has indicated they do not want to grant a permit for its use. However, that was just their guess. With the claim pending until the San Pedro Adjudication is settled, we still have the chance that the judge will grant us a right based on the pre-1919 (and pre-Saguaro Nat. Monument) claim. This is risky because there is no guarantee that the adjudication will be solved before 1993 (when the term permit expires) or that a judge would rule that way.

Along those same lines of thought, a new water right application under the current water laws would almost certainly result in the Park Service being awarded the water right, not us.

Alternatives to this source: Trick tank, cement dam & storage, dirt tank, or pipeline and pump system off an existing well. A new well does not look like a good idea based on the topography of that corner of the allotment.

Bl Defenbaugh
FS Hydrologist
Coronado N.F.

cc Steve Flewelling

2210
Happy Valley

United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:
N1619

May 24, 1990

Tim
Paul
Debbie DN
Tim A
Larry
Bob L.

Mr. Steve Pievel, District Ranger
Santa Catalina District
Coronado National Forest
5700 N. Sabino Canyon Road
Tucson, Arizona 85715

Dear Steve:

I have carefully considered your request for a Special Use Permit to authorize the U.S. Forest Service to continue to use Turkey Creek Spring (also known as Blackberry Spring) and the existing pipeline as a water supply for part of the Happy Valley grazing allotment.

I understand that you are continuing to search for documentation to see if there is a legal water right for the spring and a right-of-way for the water line, and that you are also continuing to look for environmentally and economically sound alternative water sources located outside of Saguaro National Monument. Please pursue these efforts with all available resources and speed.

I appreciate that, without an alternative source, loss of Turkey Creek Spring water would necessitate the hauling of water or removal of 50 - 60 head of cattle. This would threaten the economic viability of the entire allotment.

I agree that your desire to maintain the status quo until the current grazing permit expires on October 13, 1993 is reasonable and prudent. That would provide ample time to complete a search for established water right and right-of-way; evaluate alternative water sources; and, if necessary, reconfigure the allotment based upon the loss of Turkey Creek Spring as a water source. In no case, would it be reasonable or prudent to continue the use of Turkey Creek Spring beyond October 13, 1993 without a clearly established legal right to the water, as well as an established legal right-of-way to move that water across National Park Service lands.

Now that the issue has been fully exposed only two questions remain. They are: 1) What is a reasonable and prudent period of time to allow discovery and establishment of legal rights to the water and its transport? and, 2) What access, maintenance and improvement activities can be taken regarding the water use while the search continues?

Again, in the context of an activity which may have been taking place for several years, if not decades, immediate change seems neither reasonable nor prudent. Three years tests the limits of reasonableness, but may not be excessive. Regular reports regarding efforts and progress made towards resolution of legal issues (I suggest one every six months) seem appropriate.

Certainly, no improvements will be allowed for what, in the absence of proof to the contrary, may constitute a trespass. Any access or maintenance activities must be carefully monitored and approved in advance. Let's hope that no major repairs are required since I could not foresee any conditions under which they could possibly be approved.

Any permit issued must expressly state that no water rights or rights-of-way have been documented to date. It should also state that no water rights or rights-of-way are granted or may be perfected under the permit, or by virtue of the activities under the permit. Finally, the permit must state that all alleged rights are quit-claimed to the National Park Service as of the expiration of the U.S. Forest Service Allotment (October 13, 1993).

Please give me your thoughts and suggestions as to how to proceed from here at your earliest convenience. Absent a response from you, I will expect the disconnection of the Turkey Creek Spring water source by September 30, 1990.

Sincerely,

William F. Paleck
Superintendent

ALLOTMENT MANAGEMENT PLAN
HAPPY VALLEY ALLOTMENT

SANTA CATALINA RANGER DISTRICT
CORONADO NATIONAL FOREST

PREPARED BY: Carol A.R. DeMuth — 2/2/87
CAROL DE MUTH, WILDLIFE BIOLOGIST — DATE

Robert C. Weed — 2/5/87
PERMITTEE — DATE

SUBMITTED BY: Steve R. Blevel — 2/2/87
STEVE R. BLEVEL, DISTRICT RANGER — DATE

APPROVED BY: for Larry L. Allen — 4/1/87
ROBERT B. TIPPECONNIC, FOREST SUPERVISOR — DATE

1. BASIC DESCRIPTION

The Happy Valley Allotment is located approximately 60 miles southeast of Tucson, in the Rincon Mountains, Pima County, Santa Catalina Ranger District, Coronado National Forest. It borders the Barney Allotment on the north, the Fresno Allotment on the northeast, and the Cumero Allotment on the south.

Elevations range from 4000 feet to 8500 feet. The land form ranges from steep, rugged rock encampments to gently sloping alluvial bottom land. Drainage is primarily to the northeast into the San Pedro River. Paige Creek is formed below Rincon Peak and flows north of the divide between it and Ash Creek. Ash Creek flows southeast to the San Pedro River. Paige Creek is joined by Miller Canyon, Turkey Creek, Mesquite Canyon, and Bear Creek as it runs northeast off the Forest.

Average annual precipitation is about 24.10 inches. Over half of the precipitation falls in the summer rain season, peaking in mid-July and August. The remainder falls during the autumn and winter months.

Vegetation ranges from semi-desert grassland/mesquite/woodland throughout most of the allotment to pinyon-juniper in the higher northern elevations. Main forage grasses are sideoats grama, sprucetop grama, hairy grama, and threeawns.

Soils are predominantly gneiss and granite with some limestone and shale in limited areas. Erosion hazard on the allotment ranges from low to high. In general, soil on the Happy Valley allotment has a low to moderate forage productive potential with a rating of low to unsuited for revegetation.

The Happy Valley Allotment has 10,870 acres on full capacity range and 1,225 acres of no allowable capacity range. Gross acreage of the allotment is 12,095 acres. This includes 11,855 acres of National Forest land and 240 acres of private land. Currently, 1,254 acres (12%) of the allotment are in good condition. Of these acres, 1,045 acres are in stable condition and the remaining 209 acres show a downward trend. Another 5,374 acres of the allotment (50%) are in fair condition with 4,331 acres remaining in stable condition and 1,043 acres showing a downward trend. In addition, 4,002 acres of the allotment (38%) are in poor condition, with 1,566 acres remaining in stable condition and 2,436 acres showing a downward trend. Twenty percent (20%) of the allotment is at no allowable capacity. A large portion of the acres found in a downward trend are not a result of livestock grazing but a lack of allowing natural fire succession to occur. Many areas on the allotment are heavily

infested with brush, both within and outside the Rincon Wilderness area. Additionally, evidence shows that the majority of poor condition riparian areas on the Happy Valley Allotment are due to heavy recreational use and not livestock grazing. A good example is a portion of Paige Creek, which has been fenced to exclude livestock since 1980. Heavy flooding in 1983 has also contributed to poor riparian conditions in Paige Creek. Acreage figures and classifications are based on data from the 1984 Range Environmental Analysis.

The Happy Valley Allotment has three large pastures: Turkey Creek, Bull Run, and Paige Creek. Additionally, there are six smaller units on the allotment used as holding pastures and an area known as the Farm. The Farm is used both as a holding pasture and to reduce grazing pressure within Paige Creek Pasture(has lower carrying capacity than Bull Run or Turkey Creek Pastures).Another small unit, the Paige Creek Management Area, is a riparian area closed to grazing. There are 25 dependable water sources on the Happy Valley Allotment. In regard to performance and dependability, six additional waters exist which are seasonally highly variable. Hidden Springs water storage and the two wells on private land can be shut off periodically. These developments are connected to several troughs. The allotment contains two dirt tanks, two wells, three temporary springs, eight developed springs, two storage tanks, 24 troughs, and three and one-half miles of pipeline. In accordance with the Coronado National Forest Plan, the wildlife objective of having one water per section by year 2027, has already been met on this allotment.

The permittee will graze a commercial cow/calf herd of purebred Angus animals. The bulls are kept with the cows year-round, with the two main breeding periods being April and September/October. Calves are usually marketed in the fall, and branding is in the spring.

Permitted numbers are for 140 cattle on a continuous yearlong basis. These numbers are consistent with the latest Range Analysis(1984) and Production/Utilization Study(1985). Once all structural and nonstructural range improvements called for in this plan are completed, it is anticipated that an increase will occur.

Dominant key species on the allotment are sideoats grama, sprucetop grama, and hairy grama. Proper management will result in an average of 35-40% utilization on these species. It is recognized that utilization will vary throughout the allotment. Problems with distribution in areas lacking water and a need to eradicate undesirable plant species are resulting in over-utilization in some areas and under-utilization in others. Continuing to ride and herd cattle will reduce some of these problems. As designated in the Coronado

National Forest Plan, the present poor condition of riparian areas(caused by recreationists and flooding) will need to be evaluated and managed under a riparian action plan. Livestock use of these areas is not, nor appears to have been a cause of poor conditions in these areas. Therefore, no management alternatives involving livestock control have been proposed at this time.

Thirty-two percent of the Happy Valley Allotment(west side) is located within the Rincon Wilderness(Management Area 9). It is recognized that certain needed range management opportunities are limited within a wilderness (i.e., reduction in the amount of oak, juniper, and pinyon pine in the northwest portion and manzanita on the southwest side of the allotment). In conformnce with the Coronado National Forest Plan, vegetative manipulation in the Rincon Wilderness will not be used for range improvement, except as a result of prescribed fire. Nonwilderness areas on the allotment also suffer from concentrated amole patches in the central portion of Turkey Creek Pasture, and mesquite and catclaw infestation in the northeast portion of Turkey Creek Pasture and along the exterior of the south boundary of the Paige Creek Management Area Exclosure.

2. GOALS AND OBJECTIVES

This management plan has been developed in accordance with the Coronado National Forest Plan. Management Areas 1, 4, 7, and 9 are found within the allotment. Grazing management is primarily done at level D(see appendix, Environmental Impact Statement for the Coronado National Forest Plan). The long-range goal of this plan is to develop direction which will provide for resource enhancement and protection through more efficient and effective utilization and management of the resources. The range management goal, as stated in the Coronado National Forest Plan, is to bring the permitted livestock use into balance with range capacity and achieve a fair or better range condition. This includes implementing management that will result in achieving an overall range condition rating of fair or better; leaving adequate forage to improve soil stability and reduce erosion; minimizing competition with wildlife for available water and forage; maintaining a carrying capcatiy of at least 1680 animal unit months (AUM's)which would be in balance with the carrying capacity of the land; providing a quality recreation experience for the public that visit the area; and a vigorous and healthy stand of uneven aged riparian species on approximately 463 acres of National Forest land.

Actions required include implementation and close adherence to the deferred rotation grazing plan, construction of a dirt tank in the northwest portion of Section 17, T.15S., R.19E., a rock trough in Section 13, T.25S., R.18E., of Paige Creek Pasture(water piped from Hidden Valley development) and

grazing of the Farm pastures to supplement grazing of Paige Creek Pasture(lower carrying capacity than Bull Run or Turkey Creek Pastures). Also needed is some vegetative manipulation in certain portions of the allotment to reduce dense stands of undesirable plant species. Implementation of these identified actions should help improve the condition of the livestock, forage plants, soil, watershed, and wildlife habitat on the allotment.

3. MANAGEMENT SYSTEM

In order to meet the long-range goals, a deferred rotation grazing system will continue to be implemented on the Happy Valley Allotment. Permitted livestock will be mature cows with calves. Under this system, the allotment will be grazed yearlong with a period of six months between pasture rotations (followed by a one year rest). Management will be in accordance with the standards and guidelines found for Management Areas 1, 4, 7, and 9 in the Coronado National Forest Plan.

The deferred rotation will result in each pasture being rested for a complete growing season (spring and summer) every two of three years. These rest periods will provide for improved plant vigor, seed production, and seedling establishment for both warm and cool season growers.

A graphic presentation of the system is as follows:

Grazing Pasture Schedule

Grazing Year	April-September	October-March
1	Bull Run	Turkey Creek
2	Paige Creek (On Farm 2 months)	Bull Run
3	Turkey Creek	Paige Creek (On Farm 2 mo.)

In order for this system to work, cattle must not be allowed to graze the "rested" pasture during the non-use period.

Evaluation of this system will be made after one complete cycle(three years) to determine if modifications to the system are needed.

Amole control in the central portion of Turkey Creek pasture and mesquite and catclaw eradication in the northeast portion of Turkey Creek Pasture and along the exterior south boundary of the Paige Creek Management Area Exclosure is needed. Additionally, construction of a dirt tank in the nortwest portion of Section 17, T.15S., R.19E. and a rock trough and pipeline in Section 13, T.15S., R.18E. is needed. All improvements proposed are located in Management Area 4, at grazing intensity level D.

4. DISTRIBUTION AIDS TO BE EMPLOYED

A. Salting. All salt will be located on feed and not in natural livestock concentration areas, such as saddles, canyon bottoms, and close to water. Salt locations will be moved periodically in order to prevent permanent damage to an area resulting from continued concentration of livestock.

Supplemental feeding may be used when forage quality is below animal nutritional requirements. Areas where this may be done are similiar to those identified for salt placement. Approval by the District Ranger is required before any supplemental feed can be placed on the allotment.

B. Water. The Happy Valley Allotment has 25 dependable water sources. In regard to performance and dependability, six other additional waters are seasonally highly variable. Hidden Springs water storage and two wells located on private land can be shut off periodically. These developments are connected to several troughs located on the allotment. The Happy Valley Allotment contains two dirt tanks, two wells, three temporary springs, eight developed springs, two storage tanks, 24 troughs, and three and one-half miles of pipeline.

Two additional waters are recommended for construction to aid in distributing livestock into areas now lightly grazed. These include the construction of a dirt tank in the northwest portion of Bull Run Pasture, T.15S., R.19E., and a rock trough and pipeline in Section 13, T.15S., R.18E., in Paige Creek Pasture.

C. Trails. Existing livestock trails are well laid out and most are in usable condition. Some brushing may be needed on a few of them.

D. Horseback Distribution. Riding will be needed to be done frequently and on a regular basis in order to distribute cattle throughout the pastures and to encourage the animals to use areas where feed is abundant. It is very important that they be regularly relocated away from concentration areas and into areas of lighter utilization. Riding will be less frequent based on the skill of the operator in keeping the cattle out of the flatter areas.

E. Other. There is a need to reduce the concentrations of mesquite and catclaw in the northeast portion of Turkey Creek Pasture and along the exterior south

boundary of the Paige Creek Management Area Exclosure. Additionally, the reduction of amole patches in the central portion of Turkey Creek Pasture is needed through some type of vegetative manipulation effort. A detailed plan will be developed following completion of the structural range improvements.

5. RANGE IMPROVEMENT CONSTRUCTION

A. Structural. The following is a list of improvements, in order of priority, needed to implement this plan and meet the goals and objectives identified herein.

1. Construct a dirt tank in the northwest portion of Section 17, T.15S., R.19E.(water rights permit issued). Forest Service to provide materials and assist in installation; permittee to provide labor for installation.

2. From Hidden Valley water storage development located in Section 18, T.15S., R.18E., pipe water to rock trough to be constructed in Section 13, T.15S., R.18E. Permittee to provide materials and labor for installation.

B. Nonstructural. A vegetative treatment plan will be developed to help reduce heavy concentrations of manzanita, amole, mesquite, and catclaw to allow for better livestock distribution, improved forage (availability, amount, and quality), and increased water availability(areas discussed are not located in Rincon Wilderness Area, Management Area 9). Reseeding of forage species may follow treatment if it is decided that natural seeding and regrowth will not be adequate.

6. MAINTENANCE OF IMPROVEMENTS

A list of improvements assigned to the permittee for maintenance responsibility is shown on Form CPO 2200-5 and is part of this plan. Maintenance items needed and a schedule for completion are noted on this form.

7. INSPECTION AND FOLLOW-UP ACTION

The last Range Environmental Analysis was completed in October 1984. No new analysis is planned before 1994. However, regular range inspections will be made annually, in the company of the permittee, to monitor the effects of this plan and to provide early recognition and solution to any problems, conflicts, or omissions that may appear. Additionally, Production/Utilization Studies will be conducted, as needed, to confirm that existing stocking levels are consistent with carrying cappacity and other

resource values. The permittee will participate in these studies to the maximum extent he is able.

Mtg @ Coronado NF, 28 Nov 89, 9:00
Santa Catalina R.D.
- Record Center doesn't have much

letter from SOL '77, there are other communications of that time period

Memo fr. RD Apr. '77 re: Turtle Spr. et al. Addressed Turkey Spr. use prob prior to creation of Monument & Forest

NFS first should look to all source
if NO ⇒ major probs re: ~~cost~~ allot Then two agencies will need to do analysis

FS Ques.
1. Alt H_2O source off mon. that can be developed?
2. What effect to allotment if not?

NPS.
1. Is it approp. to give right of way?
2. What are the effects to WPS resources

Answ
Use predater mons. & Pipeline predater mons.
Water right in name of U.S. (if issued)
~~What are the effects to~~
Use initiated legislatively when monument administered by USDA

FS will make formal request
target 1 Mar for Answers

STATEMENT OF CLAIM 36-16929

T14S R18E Section 28

NW of NE quarter

Source : Turkey Creek Spring

Applicant : Coronado National Forest

Amt : 0.48 cfs

Purpose : Stock & wildlife watering

Priority : 1880

— Bob Hall — 11/15/89 1530

SAGU — FS

Reg Water Rt June 5, 1979 → 36-16929 - from FS folks

Reg. well after monument & wilderness
Allotment Robert Weed

11-04-1989: memo regarding an unauthorized diversion of water from within the park to an outside point

November 4, 1989

L54(479)

Memorandum

To: Chuck Pettee

From: Owen

Subject: Call From Bob Hall (SAGU)

Hall called yesterday re: an unauthorized diversion of water from within the park to a point outside. He said the facility is probably originated no earlier than the 40's and was evidenced by PVC pipe. He would like us to check into the validity of any water rights in T14S R18E S27. An additional piece of information is the fact that nearby was the Happy Valley Allotment. The NPS is not permitting any grazing operations that I know of, so it must be or have been BLM.

Make a quick check of the dockets then let Hall know what you find. Tell him how you will proceed from there and when you'll likely get back to him. Keep me posted but this is not an urgent priority. Oh yeah, he said the water may have been used for growing pot.

Blackberry
Turkey Creek Spring

T 14 S R 18 E Sec 21 or 28
probably 28

Mica Mtn Quad

AZ Dept Water Resources Div of Operations
State ~~Water Board~~
(602) 542-1581
AZ - permits or applications certificates

Tele Conv. 11/9/89 1:30 pm

SAGU – Bob Hall
WRB – Chuck Pettee

I called Bob with info on the spring diversion issue. WRD records show that there are no NPS or Alien water rights for appropriated water on that spring. Bob had talked with the Forest Service (Coronado NF) about the diversion. They said there is evidence that the spring water had been used from before the 1905 FS reservation date. FS calls the spring Turkey Creek Spring. ~~[illegible]~~ Others call it Blackberry Spring. Grazing is no longer allowed on park lands. Last grazing lease expired 12/31/75 and 1979 Kaecker case ruled NPS can say no to grazing. Area was designated Wilderness 10/26/76. Spring is located in T14S R18E S21 or 28, probably sect. 28. It is on the Micca Mtn Quad (1:65 map). FS says their grazing allotment is not usable without water from this spring. Bob is going to meet with FS people on 11/28. Requested that someone from WRB be there to meet with them. I told Bob we would check with the State of Az to see if any recorded water rights existed.

Other background In 1951, NPS identified 7 springs within SAGU that could be developed. This spring is not one of these seven.

11-21-1989: letter regarding piping water from inside saguaro national monument to a water trough on us forest service lands

United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

L54
xL3019

November 21, 1989

Mr. Robert Weed
c/o Four Bar C Ranch
Naco, Arizona 85720

Dear Mr. Weed:

It is my understanding that you are grazing cattle on the Happy Valley Allotment under U.S. Forest Service Permit Number 518 and that you are piping water from inside Saguaro National Monument to a water trough on U.S. Forest Service lands.

The water source inside the Monument, and on legislatively designated wilderness, is variously known as Blackberry Spring or Turkey Creek Spring. It is in the Turkey Creek Drainage on unsurveyed land and is approximately located in Township 14 South, Range 18 East, northeast one-quarter Section 28.

This matter was brought to my attention by a Park Ranger who discovered that new piping between the spring and the trough has been recently installed.

While you may or may not have a legally established water right, we will not allow any trespass on public lands. We are presently researching this matter with the assistance of the U.S. Forest Service. Until this research is completed we do not have any record of a right-of-way and your pipeline is unauthorized. Until we determine whether or not you have a legal right-of-way any action you take to make repairs, improvements or alterations to the water line will require written permission from the National Park Service.

Please be assured that if you do have a clear legal right to secure water from inside Saguaro National Monument and wish to pipe it across monument lands we will work diligently to accommodate your rights to the extent authorized by law.

If you have any questions concerning this matter, please contact me at (602) 670-6680.

Sincerely,

William F. Paleck
Superintendent

Santa Catalina Ranger District
2500 N. Pantano Rd., Suite 126
Tucson, Arizona 85715

2230
November 7, 1977

Mr. Robert Weed
% 4-C
Naco, Arizona 85620

Dear Bob:

I'm sorry that you were unable to ride with me on October 27 when I looked at the Happy Valley allotment. As things worked out, I only had time to look at the Turkey Creek Pasture and at the new fence.

I rode from your ranch north along one of the eastern most ridges to the end of the Turkey Creek ridge road. This portion of the allotment appeared to be in better vigor than when last seen but still appeared to be much below its productive potential. On all of the ridge lines and most of the south facing slopes there has been a loss of the better forage producing species such as sideoats grama, Plains lovegrass and fairy duster. These have been replaced primarily by Curly mesquite and some 3-awns. It is obvious that this past years deferment has been a significant step in the long-term process of improving the productivity. It will be equally important that when you stock the allotment, the rotation system must be followed to the best of our abilities.

I continued my ride on down into Turkey Creek and on to the trough and pipeline. The trough is in excellent condition and Barney later told me that the pipeline only has a few places needing repair. In the matter of the use of the spring, we have requested that inasmuch as the Park Service feels unable to authorize the use of the water, they should proceed to determine the authority where the authorization can occur. Once this authority is determined, we will appeal to that office for the use of the water. If the use is denied, we will pursue the possibility of a pipeline from the farmstead up Turkey Creek. This may be deemed necessary as supplemental water even if the Turkey Creek water use is approved. The Wilderness Study is really the only complicating factor in obtaining approval of the pipeline, although this can probably be overcome if necessary. I will keep you advised of our progress.

I then rode to the top of Turkey Peak and on to the upper end of the new fence. I followed the fence line down to the end and Miller Creek. The fence is well constructed with only a few minor changes needed. First, the few corners need to be more securely braced as there is a great deal of "inward" stress at each of these points. Barney said thiat this will be taken care of. Also, at the Miller Creek end of the line, we need to install a walk through (see attached sketch) in order to prevent the hikers from leaving your gate open.

In order to close out the Coop Agreement, I need for you to fill in Section III with estimated costs, sign and return.

Thank you.

Sincerely,

/s/ VERNON E. ZARLINGO
District Ranger

Enclosure

CQuimby:is

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

IN REPLY REFER TO:

L-3019
(WR)D

September 28, 1977

Mr. M. J. Hassell
Regional Forester
U. S. Department of Agriculture
Forest Service, Region 5
517 Gold Avenue
Albuquerque, New Mexico 87101

Dear Jean:

I would like to cover two unrelated subjects with this letter: (1) The livestock watering request on the eastside of Saguaro National Monument; and (2) the public information center proposal in Flagstaff, Arizona.

According to our Field Solicitor, San Francisco, the National Park Service does not possess the authority to allow use of water from within Saguaro for the watering of livestock on grazing allotments outside the National Monument. Congress did delegate to the Secretary of the Interior certain limited authority to allow the use of water in areas of the National Park System. This authority enables the National Park Service to sell water within our field areas to a person who needs water to provide public accommodations or services within the immediate vicinity of the area for persons visiting the park and when there are no reasonable alternatives to the acquisition of water. It is also believed that the National Park Service does possess certain limited authority to allow use of water within a park for stock watering since the watering of stock is necessary for that type of operation and the Secretary of the Interior does have the authority to allow grazing. However, this authority is limited to instances where the Service has authorized the grazing of livestock on its own land. As you are aware, we have terminated the Happy Valley and Barney Allotments for grazing within the Monument and as a result no authority exists which would authorize the National Park Service to allow use of the springs for the watering of stock outside the National Monument.

I sincerely regret that the National Park Service is unable to participate as a 3rd signature to the proposed agreement between the Forest Service and the Museum of Northern Arizona again due to our lack of appropriate authority. What you presently propose is quite possible from our standpoint and we will be able to participate within that legal framework. I would like to emphasize that I strongly support the fact, as I am sure you do, that a combined effort is required. The Forest Service and National Park Service must share equally in the responsibilities and costs along with the service provided to people planning to visit both National Park Service and Forest Service lands.

I definitely look forward to a long and beneficial cooperative effort in providing better service to the visitor through this facility.

Sincerely yours,

Howard H. Chapman
Regional Director
Western Region

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SANTA CATALINA RD.
SCRD

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RECP.				
CLERK				

REPLY TO: 2230 Permits
(2240)

September 26, 1977

SUBJECT: Turkey Creek Pipeline
(Ref. your memo - 2240 Park Service

TO: Forest Supervisor, Coronado NF

On September 20, 1977, Ranger Zarlingo and Chuck Quimby met with Bill Lukens of Saguaro National Monument. The termination of use for the Turkey Creek pipeline of the Happy Valley allotment and Turtle Spring on the Barney allotment was discussed. At that time, Mr. Lukens gave us a copy of the memo from the Field Solicitor to the Regional Director, Western Region, NPS, (enclosed). This memo was the basis for Lukens contention that the Park Service has no authority to continue use of the water sources.

During the discussion, Lukens requested that a letter be written to his office stating the management problems which would be incurred by the loss of the water and on evaluation of the alternatives. He further asked that inasmuch as the Park Service has no authority to allow the use of the water, we request that the appropriate authority be determined and the case carried to its final conclusion.

We would be willing to forego the use of Turtle Spring as it is weak and undeveloped. This spring is not vital to proper management of the Barney allotment and continued use would involve spring box pipeline development; both within the Saguaro Wilderness.

It is our evaluation that two alternatives exist with regard to the use termination of Turkey Spring. The first would involve an attempt to replace the source. The only feasible means of doing this would be through the construction of a new pipeline from the Farmstead Well on private land in Section 11. This pipeline would be expensive to develop as the initial cost for the pipe would be about $2500.00 per mile plus labor involved in burying the line, pumping water, purchase of a pressure tank and new trough. Further, a feasible route would be difficult to locate due to the rugged topography. The primary route would involve about two miles of line and would still be about one mile short of the existing trough.

The second alternative would involve reducing the permit by the amount of AUM's which could be grazed in the area watered by Turkey Spring. This is unacceptable as much of the area is suitable range and should continue to be grazed. A reduction in permit would disrupt the grazing system currently in its initial stages and would result in the use of a less desirable program. Loss of the water, without a proportionate reduction in AUMs grazed, would result in overuse of areas around remaining water sources.

The situation is further complicated by the Wilderness Study. Due to the study, no new pipeline could be built until the final decision on wilderness status is reached. If the area is designated wilderness, no new pipeline could be installed.

It would appear, therefore, that the most desirable solution would be to continue the use of the present Turkey Creek pipeline. This would involve the least disturbance to the environment as it is believed that the present pipeline could be repaired to a satisfactory level with a minimum of pipe replacement.

We recommend that your office send a letter to Mr. Lukens stating the management problem caused by terminating the use of Turkey Spring and requesting that our needs receive further review by the appropriate authority.

Vernon E. Zarlingo

VERNON E. ZARLINGO
District Ranger

Enclosure

CQuimby;is

07-07-1977: memo regarding termination of water sources - happy valley and barney allotments

U ED STATES DEPARTMENT OF AGR L E
FOREST SERVICE

Coronado National Forest

Catalina

7-12-77 File Happy Valley Forest Barney

JUL 7 1977

REPLY TO: 2240 Range Improvements

SUBJECT: Termination of Water Sources - Happy Valley and Barney Allotments

TO: Regional Forester - Region 3

We have received the enclosed letter from the Park Service, Saguaro National Monument, wherein they are canceling our use of two springs, one on the Happy Valley Allotment and one on the Barney Allotment. The Park Service has fenced the east boundary of the Saguaro National Monument which excludes the source of these springs from use by livestock on 2 allotments.

Turkey Creek Spring has a pipeline to the Happy Valley Allotment while Turtle Spring has no pipeline. These Springs have been in use by permitted livestock for approximately 75 years. Since the Park Service no longer has an obligation for grazing in this area, they feel they have no authority to grant us continued use of these waters. They are both vital to effective use of these 2 Allotments. There is no alternative source of water.

I have discussed this with Superintendent Lukens and he maintains that he has no authority to enter into an agreement of any kind to permit us to use these waters and wants us to set a termination date. I suggested that perhaps since he did not have the authority to grant use, neither did he have the authority to cancel the use. It is our feeling that someone in the Park Service does have authority to enter into an agreement whereby we can use water.

I have requested Superintendent Lukens to furnish us a copy of the Solicitor's ruling that includes the specific situations where we can justifiably expect a permit to use these two springs. In our discussion, Mr. Lukens indicated that the only situation where this may be possible is for public use.

We would like to urge that this problem be placed on the agenda for the next meeting with the Park Service that you periodically hold in order to see if there is some way we can continue using this much needed water.

K. R. WEISSENBORN
Forest Supervisor

Enclosure
RS:CRAMS:ah 7/7/77
cc: Catalina

07-06-1977: letter to district ranger from superintendent regarding limited authority to allow the use of water in areas of the nationa

United States Department of the Interior

NATIONAL PARK SERVICE
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85731

File
2250
Happy Valley
&
Jeep

IN REPLY REFER TO:
L54
X D5039
(WR) RW

July 6, 1977

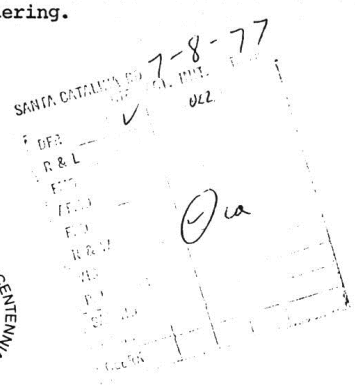
FOREST SERVICE
Coronado National Forest
TUCSON, ARIZONA
JUL 11 1977
RECEIVED

Vernon E. Zarlingo
District Ranger
Santa Catalina Ranger District
5363 E. Pima
Tucson, AZ 85712

Dear Mr. Zarlingo:

Chuck Ames asked for the references cited in my April 8 response to your request for use of certain springs on the east side of the monument.

Congress has delegated to the Secretary of the Interior certain limited authority to allow the use of water in areas of the national park system. The only specific statutory authority for disposing of water is 16 U.S.C. 1a-2(e) (1970). It authorizes NPS to sell water within an area of the system in the limited situation where the person requesting the water provides public accommodations or services within the immediate vicinity of an area of the national park system to persons visiting the park area and there are no reasonable alternatives to acquire the water. Obviously this situation does not come within the limitations of this authority. We believe NPS also has certain limited authority to allow use of the water within an area of the system for stock watering. However, this authority is limited to instances where NPS authorizes the grazing of livestock on its land. In view of the fact that grazing has been terminated on these units this authority is not applicable. No other authority exists which would authorize NPS to allow use of these springs for stock watering.



Sincerely,

William M. Lukens
Superintendent

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

UNITED STATES DEPARTMENT OF AGRICULTURE

FOREST SERVICE

2210

HAPPY VALLEY ALLOTMENT MANAGEMENT PLAN

SANTA CATALINA RANGER DISTRICT

CORONADO NATIONAL FOREST

1977

U.S. GOVERNMENT PRINTING OFFICE : 1973 O—522-184

6200—M7 (10/73)

HAPPY VALLEY ALLOTMENT

MANAGEMENT PLAN

1977

SANTA CATALINA RANGER DISTRICT
CORONADO NATIONAL FOREST
REGION 3
U.S. FOREST SERVICE

PREPARED BY: _____ DATE 6/17/77
Range Conservationist

_____ DATE 5/25/77
Permittee

SUBMITTED BY: _____ DATE 6/30/77
District Ranger

APPROVED BY: _____ DATE 8/2/77
Forest Supervisor

HAPPY VALLEY ALLOTMENT

MANAGEMENT PLAN

A. Objective

This plan will establish a 3-pasture rest rotation grazing system on the Forest ranching operation with the modification of using Paige Creek pasture for winter only.

B. Present Management

Prior to 1977, 150 head of cows/bulls used the allotment under a permit for 190 with a non-use agreement for 40 head. Grazing has been under a continuous yearlong grazing system. In addition, the one private State pasture has been grazed by approximately 60 head of cows/bulls under a continuous yearlong system.

C. Planned Management

Two hundred yearlings will graze the allotment under a modified 3-pasture rest rotation grazing system. The schedule is outlined on the Grazing System Management Unit Allocations Form.

Paige Creek Unit will be grazed as a winter-spring unit to best utilize this brushy pasture. This Unit will receive complete summer deferment. Turkey Creek and Bull Run pastures will be grazed under a system to provide for alternate years spring/summer deferrment. These two units will also receive complete winter deferrment. As these two units are primarily grass pastures, the alternate year spring/summer deferrment should provide adequate rest for range recovery.

NOTE: No animals will be allowed to remain in the deferred pastures.

Structural Range Improvements

Planned

In order to develop the third pasture, a division fence will be constructed (by the permittee under a cooperative agreement with the Forest Service providing materials) from the southeast one fourth of Section 3, T15S, R18E, to the boundary line of Saguaro National Monument near the W¼SW¼ Section 34, T14S, R18E. This fence will tie in with the boundary fence currently being constructed by the Park Service. This fence will form the Turkey Creek, Paige Creek and Bull Run pastures. Completion of this fence will be prior to October 1, 1977

Potential

It is possible that Turkey Creek pasture will need an additional water development in order to sustain the livestock during May and June. This is especially true as the Park Service has terminated use of the Turkey Creek pipeline and water. Water is available in the creeks for usually all but the driest months and in the several springs. A pipeline from the farm to SE¼ of Section 34 should be installed as soon as funds permit and the necessary permission can be obtained.

Salting

The permittee will continue to place salt in areas of light use and away from concentration areas. It will be necessary to maintain salt in only two pastures at a time due to the grazing system. The following salt locations will be used with modifications as needed to correct distributional problems. See plan map.

Turkey Creek	Paige Creek	Bull Run
Center Sec. 22, T14S, R18E	SESW Sec. 3 T15S, R18E	SWSW Sec. 8, T15S, R19E
Center Sec. 25 T14S, R18E	SW¼ Sec. 10, T15S, R18E	NE¼ Sec. 18, T15S, R19E
NWSW Sec. 34 T14S, R18E	Center Sec. 15 T15S, R18E	
	Center Sec. 13 T15S, R18E	

D. Term of Plan

This plan is intended to run through four years unless the cycle is interrupted by non-structural range improvement work. Prior to the completion of the cycle, the permittee and the Forest Service will meet to review the plan and to modify the program as needed.

E. Potential Non-Structural Range Improvements

There are two general potential improvements (non-structural) on this allotment. First, control of amole through prescribed fire will be planned when the grazing system will allow for a complete growing seasons rest following the burn. These prescribed burns will be planned and carried out on an individual basis.

Second, there is a potential for the use of a Marden brush cutter. In the Paige Unit, manzanita may be controlled by this device followed by reseeding of native species. In the Turkey Creek Unit, the cutter could be used to break up the soil compaction layer. This should be followed by seeding where needed. If the brush cutter is used, it will be necessary to totally defer use on the treated unit for two complete growing seasons and the intervening year.

An action of this nature may necessitate a delay in the planned rotation grazing system. It may be necessary to take non-use for the capacity of the treated pasture for the period of treatment and required deferrment. This non-use will depend on the condition of the two remaining pastures as to their ability to absorb any or all of the capacity of the treatment unit.

Range improvements of this nature will be planned on an individual basis.

F. Revision of Plan

It is recognized that a grazing system must remain flexible to allow for climatic variations and to provide for non-structural range improvements. Therefore, pasture entry or exit dates may be modified as previously stated. Further, the rotation system may be temporarily suspended as needed to provide for non-structural range improvement plans. Any modification of this plan (except as stated previously) must be approved by the District Ranger and the permittee.

Grazing Capacity and Length of Season Estimates

I. Current Status

The P&U Studies have indicated a Forest lands capacity of 115 CYL with continuous yearlong use and up to 150 CYL (1800 AUM's) under a three or four pasture grazing system with planned growing seasons deferrment. Capacity of the private State pasture is estimated at 45 CYL (540 AUM's).

II. Available Capacities

	AUM'S
Turkey Creek	665
Paige Creek	595
Bull Run	540
Red Rock (Pvt.)	540
TOTAL	2340
TOTAL FOREST	1800 or 2400 yearling months.

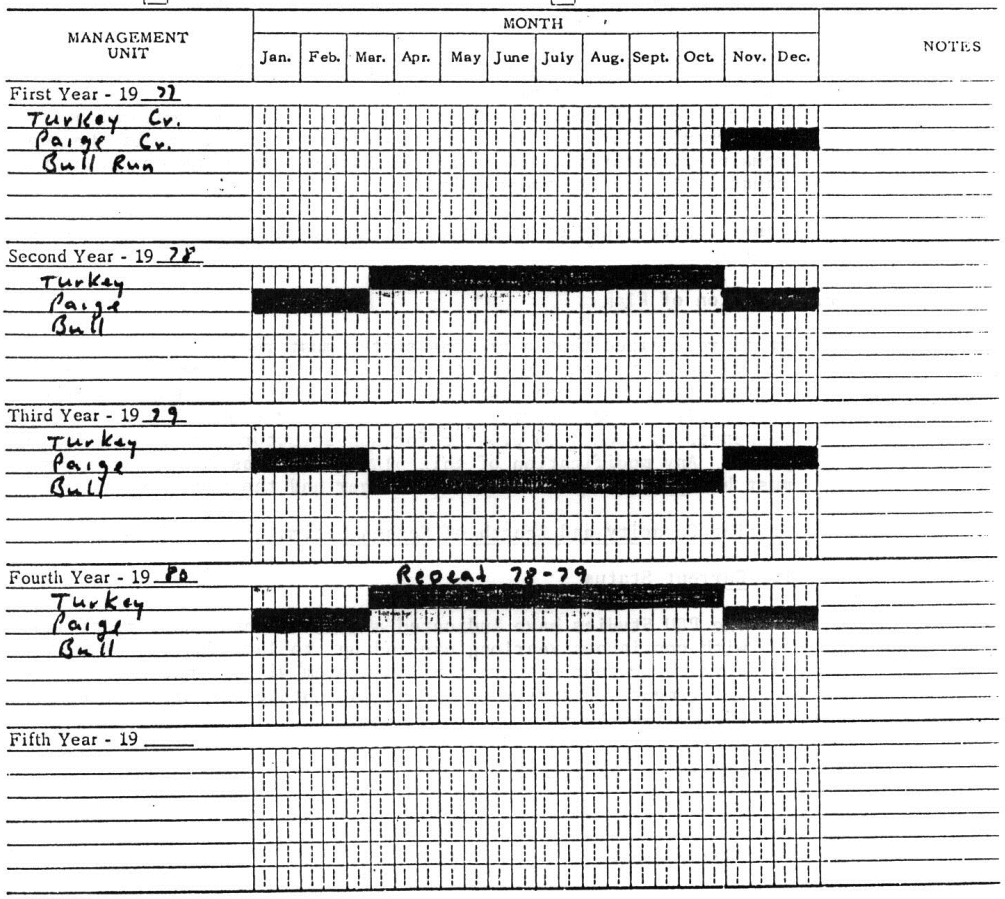
USDA—FOREST SERVICE

GRAZING SYSTEM
MANAGEMENT UNIT ALLOCATIONS

REGION: R3 | FOREST: Coronado
DISTRICT: S. Catalina | DATE PREPARED: 6-77

ALLOTMENT: Happy Valley
PERMITTEE: Robert Weed 6/26/77

LEGEND: ■ Graze ☐ Rest



REMARKS:

The Farm & holding pastures will be used when entering or leaving the Forest. Dates are approximate.

05-03-1977: memorandum to general superintendent, southern arizona group from regional director, western region regarding wat

Werrell
Witucki
Leding
(Actg) (WR)O
Kilgore
Reg Director

D5039
xL3019
xL54(WR)RW
SAGU/Water
Rights/Gen

May 3, 1977

Memorandum

To: General Superintendent, Southern Arizona Group

From: Regional Director, Western Region

Subject: Water Rights to use Springs within Saguaro National Monument for Stock Watering

In response to your memorandum of November 15, 1976, Request for Legal Opinion--Water Springs, Saguaro National Monument, enclosed is the Solicitor's April 1, 1977 analysis of the situation.

The analysis is somewhat self-explanatory. A carbon copy was sent to the Superintendent. That, in conjunction with the discussions of the Superintendent with Water Resources personnel at the recent Superintendents Conference, should put the situation in perspective.

If you or the Superintendent have any further questions, please contact us.

(Sgd) Howard H. Chapman

Enclosure

(WR)RW:WLWerrell:mpm 5/3/77

04-08-1977: letter to district ranger from superintendent regarding limited authority for nps to allow use of water from within an are

United States Department of the Interior

NATIONAL PARK SERVICE
Saguaro National Monument
P. O. Box 17210
Tucson, Arizona 85731

File 1 cy Happy Valley
1 cy Barney

IN REPLY REFER TO:
L54
X D5039
(WR) RW

April 8, 1977

Mr. Vernon E. Zarlingo
District Ranger
Santa Catalina Ranger District
5363 E. Pima
Tucson, AZ 85712

Dear Mr. Zarlingo:

I checked with the Department of the Interior Field Solicitor's Office concerning your request of October 12, 1976, Ref: Water Sources. The Field Solicitor's Office advises that the National Park Service's authority to allow use of water from within an area of the system is limited to certain specific situations none of which are applicable to your request. I therefore cannot grant your request to maintain the Turkey Creek water and pipeline or Turtle Springs as viable water supplies for the Happy Valley and Barney Allotments.

Would you let me know the approximate time that use of these two water sources can be terminated. I recognize that some time will be needed to locate other water sources or make other arrangements but in view of our lack of authority to permit such use we should agree to some fixed date for documentation purposes.

Sincerely,

William M. Lukens

William M. Lukens
Superintendent

cc:
Ollie Barney
Malcolm MacKenzie

SANTA CATALINA RD 4-11-77

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VIS				
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SABINO				
RECP.				
CLERK				

AMERICA'S REVOLUTION BICENTENNIAL 1776-1976

MEMORANDUM

APRIL 1, 1977

TO: REGIONAL DIRECTOR, WESTERN REGION, NPS

FROM: FIELD SOLICITOR, SAN FRANCISCO

Docket Information

Number of Documents in Docket 71

Documents Dated from 12/29/1976 to 5/14/1995

Docket Compiled: 6/9/2016