



WATER-RIGHT DOCKET

Saguaro National Park

Docket No: 24

TURTLE SPRING, RINCON MOUNTAIN AREA

Preliminary Docket Information

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

WATER RESOURCES/WATER RIGHT

DATE: December 29, 1976

WATER RIGHT/SOURCE DOCKET INFORMATION

REGION Western AREA Saguaro National Monument, Rincon Mountain Area
 SITE Turtle Spring
 STATE Arizona COUNTY Pima DOCKET NO WR# 11
 LOCATION ^{N 1/4, N 1/4, N 1/4} SE 1/4, sec. 16, 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

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. 1a-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



WMC:JJD
90-6-2-47C

U.S. Department of Justice

Environment and Natural Resources Division

General Litigation Section
Denver Field Office

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March 20, 1996

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Re: W1-11-556 and W1-11-2782

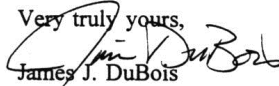
(Coronado National Memorial and Saguaro National Monument)

Dear Colleagues:

Attached are signed copies of the Stipulations which I filed with the Court yesterday afternoon. Thank you for your cooperation in bringing these matters to a close. I will be filing the Motion to Stay on the wells which were not fully agreed upon within the next week.

I appreciate your attention to this matter.

Very truly yours,


James J. DuBois
Trial Attorney

Counsel of Record
March 20, 1996
Page 2

cc: Robert Moeller
Edward Lopez
Bill Hansen
Court Mailing List

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COPIV

MAR 19 1996



DEPUTY CLERK

Attorneys for the United States of America

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE: THE GENERAL ADJUDICATION) Civil No. W1-11-2782
ALL RIGHTS TO USE WATER)
IN THE GILA RIVER SYSTEM)
AND SOURCE)

CONTESTED CASE NAME: In Re Saguaro National Park

HSR INVOLVED: San Pedro River Watershed HSR

DESCRIPTIVE SUMMARY: Stipulation to Entry of A Decree
for Springs Located on the Saguaro National Park.

STATEMENT OF CLAIMANT NUMBERS: United States of America
39-8184, 39-11131, 39-11132, 39-11133, and 39-11134

PROCEEDING NO.: SP 31

NUMBER OF PAGES: 13

DATE OF FILING: March 19, 1996

STIPULATION

Claimant United States of America and the Objectors
Gila River Indian Community and Silas Kisto, Salt River
Project, San Carlos Apache Tribe, Asarco Incorporated,
Phelps Dodge Corporation, and Magma Copper Co., by and

Stipulation
Civil No. W1-11-2782

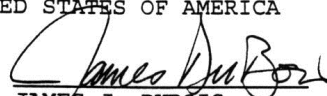
1 through their undersigned attorneys stipulate and agree as
2 follows:

3 1. Claim Nos. 39-8184, 39-11131, 39-11132, 39-11133,
4 and 39-11134 are claims to springs which both arise and
5 terminate on the Saguaro National Park. Abstracts setting
6 forth the elements of each of these claims are set forth in
7 Appendices 1, 2, 3, 4 and 5 attached hereto and incorporated
8 herein by reference. The parties hereto stipulate and agree
9 to entry of decrees for these claims on terms no less
10 restrictive than those set forth in the attached abstracts.

11 2. This Stipulation is the result of negotiation.
12 None of the legal issues regarding the bases or attributes
13 of the water rights involved in this matter have been
14 briefed or tried. The parties agree that this stipulation
15 shall have no precedential effect in this or any other
16 pending or future general stream adjudication or case.

17 DATED this 8th day of MARCH, 1996.

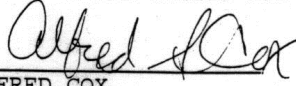
18 UNITED STATES OF AMERICA

19 BY: 

20 JAMES J. DUBOIS
21 GARY RANDALL
22 Attorneys
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ATTORNEYS FOR THE
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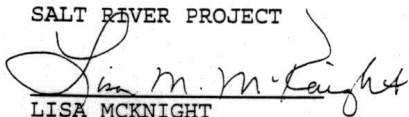
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SALT RIVER PROJECT

BY:



LISA MCKNIGHT

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Phoenix, AZ 85018

ATTORNEYS FOR

SALT RIVER PROJECT

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SAN CARLOS APACHE TRIBE

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Stipulation
Civil No. W1-11-2782

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26 Stipulation
Civil No. W1-11-2782

1 MAGMA COPPER CO.

2
3 BY:

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ROBERT B. HOFFMAN
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26 Stipulation
Civil No. W1-11-2782

CLAIM NUMBER:	39-008184
OWNER:	United States of America
NAME OF STRUCTURE:	Turkey Creek Spring (WFR No. 113-14-29, WL No. 5)
PRIORITY DATE:	03/01/1933
SOURCE:	Spring tributary to San Pedro River
POINT OF DIVERSION:	NWNE 28, T14S R18E
PLACE OF USE:	NWNE 28, T14S R18E
FLOW RATE/VOLUME:	.48 af
BENEFICIAL USE:	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
BASIS OF RIGHT:	Reserved Water Right - Reserved from Forest Service land in 1933

APPENDIX 1

Stipulation
Civil No. W1-11-2782

CLAIM NUMBER:	39-011131
OWNER:	United States of America
NAME OF STRUCTURE:	Turtle Spring (WFR No. 113-24-29, WL No. 1)
PRIORITY DATE:	03/01/1933
SOURCE:	Spring tributary to San Pedro River
POINT OF DIVERSION:	NWSE 16, T14S R18E
PLACE OF USE:	NWSE 16, T14S R18E
FLOW RATE/VOLUME:	1.0 GPM
BENEFICIAL USE:	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
BASIS OF RIGHT:	Reserved Water Right - Reserved from Forest Service land in 1933

APPENDIX 2

Stipulation
Civil No. W1-11-2782

CLAIM NUMBER:	39-11132
OWNER:	United States of America
NAME OF STRUCTURE:	Mud Spring (WFR No. 113-14-29, WL No. 2)
PRIORITY DATE:	03/01/1933
SOURCE:	Spring tributary to San Pedro River
POINT OF DIVERSION:	NWSW 21 T14S R18E
PLACE OF USE:	NWSW 21 T14S R18E
FLOW RATE/VOLUME:	0.1 GPM
BENEFICIAL USE:	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
BASIS OF RIGHT:	Reserved Water Right - Reserved from Forest Service land in 1933

APPENDIX 3

CLAIM NUMBER:	39-11133
OWNER:	United States of America
NAME OF STRUCTURE:	Spud Rock Spring (WFR No. 113-14-29, WL No. 3)
PRIORITY DATE:	03/01/1933
SOURCE:	Spring tributary to San Pedro River
POINT OF DIVERSION:	SWNW 20 T14S R18E
PLACE OF USE:	SWNW 20 T14S R18E
FLOW RATE/VOLUME	0.1 GPM
BENEFICIAL USE:	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
BASIS OF RIGHT:	Reserved Water Right - Reserved from Forest Service land in 1933

APPENDIX 4

Stipulation
Civil No. W1-11-2782

CLAIM NUMBER:	39-011134
OWNER:	United States of America
NAME OF STRUCTURE:	Deer Head Spring (WFR No. 113-14-29, WL No. 4)
PRIORITY DATE:	03/01/1933
SOURCE:	Spring tributary to San Pedro River.
POINT OF DIVERSION:	NESW 20 T14S R18E
PLACE OF USE:	NESW 20 T14S R18E
FLOW RATE/VOLUME:	8.0 GPM
BENEFICIAL USE:	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
BASIS OF RIGHT:	Reserved Water Right - Reserved from Forest Service land in 1933

APPENDIX 5

CERTIFICATE OF SERVICE

I certify that I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing STIPULATION TO ENTRY OF A DECREE FOR SPRINGS LOCATED ON THE SAGUARO NATIONAL PARK, Civil No. W1-11-2782, to the following, this 20th day of March, 1996:

ASARCO, Inc.
c/o Apker, Apker, Haggard & Kurtz
Attn: Burton M. Apker
2111 East Highland Avenue, Suite 230
Phoenix, AZ 85016

Clerk of the Superior Court
Maricopa County
Attn: Water Case
3345 West Durango Street
Phoenix, AZ 85009

Department of Water Resources
Litigation Support Section
Adjudications Division
500 North 3rd Street
Phoenix, AZ 85004-3903

Gila River Indian Community & Silas Kisto
c/o Cox & Cox
Attn: Alfred S. Cox
P.O. Box 4245
Phoenix, AZ 85030-4245

Magma Copper Co.
c/o. Snell & Wilmer
Attn: Robert B. Hoffman, Carlos Ronstadt
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National Park Service
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Phelps Dodge Corporation
c/o Apker, Apker, Haggard & Kurtz
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Cynthia M. Chandley
Assistant Counsel
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Salt River Project
c/o Salmon, Lewis & Weldon, P.L.C.
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L.M. McKnight, M.A. McGinnis
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Phoenix, AZ 85018

San Carlos Apache Tribe, Tonto Apache Tribe, Yavapai
Apache Indian Tribe (Camp Verde Reservation)
c/o Sparks & Siler, P.C.
Attn: Joe P. Sparks, John H. Ryley, Kevin T. Tehan
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Scottsdale, AZ 85251-4573

Special Master
Arizona General Stream Adjudication
John E. Thorson
Arizona State Courts Building
1501 West Washington, Suite 228
Phoenix, AZ 85007

U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
Attn: Gary Randall
P.O. Box 663
Washington, D.C. 20044-0663

U.S. Department of Agriculture
Forest Service
Coronado NF
301 West Congress
Tucson, AZ 85701


Misty Desalvo
Legal Technician

ARIZONA WATER COMMISSION
CENTRAL SECURITY BUILDING
222 N. Central Ave.
Suite 550
Phoenix, Arizona 85004
602-255-1581

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. 39-011131
Filed: 1/4/82 at PM 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: National Park Service, U.S. Government, Department of the Interior
(Last) (First) (M.I.)

450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102 (415) 556-8660
(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. Right to surface water initiated by beneficial use prior to June 12, 1919.
Indicate registry number if previously submitted under Water Rights Registration Act _____.

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. X Other. Describe: Federal Reserve Water Right - Turtle Spring (Saguaro Nat'l Mon.)

3. A. Date of initiation of right: July 19, 1907 (see explanatory)
(Month/Day/Year)

B. Date water first used for beneficial purposes: July 19, 1907
(Month/Day/Year)

4. Purpose, annual amount and annual period of use: (see explanatory)

Purpose	Amount	Month/Day	Month/Day
Irrigation	_____ ac.ft./gallons	From _____	to _____
Domestic	_____ ac.ft./gallons	From _____	to _____
Stockwater	_____ ac.ft./gallons	From _____	to _____
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	<u>X</u> ac.ft./gallons	From <u>Jan. 1</u>	to <u>Dec. 31</u>
Other Uses	<u>X</u> ac.ft./gallons	From <u>Jan. 1</u>	to <u>Dec. 31</u>

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): _____

5. A. (3) Indicate 1 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: _____
- 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: Natural water supply for indigenous flora and fauna.
- I. If for other purposes, describe: Fire suppression
6. A. Direct source of public water diverted: _____ tributary to _____ on the _____ watershed. (see explanatory)
- B. Point of Diversion (indicate on map): _____ $\frac{1}{4}$ Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____ Ownership _____
- C. Place of use (indicate on map): _____ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16, Township 14 (N/S), Range 18 (E/W), Gila and Salt River Base and Meridian, County Pima Ownership National Park Service
7. State all other sources of water supply not described in Question 6 of this form.
- A. Type of Source: (see explanatory)
- B. Location of Source (indicate on map): _____ $\frac{1}{4}$ 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: _____; Date well placed in use: _____
 (Month/Day/Year) (Month/Day/Year)
 - (2) Location (10 acre subdivision) (indicate on map): _____ $\frac{1}{4}$ 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: _____ to _____
 (Month/Day) (Month/Day)
8. Water storage reservoir and/or diverting works:
- A. Location (indicate on map): _____ $\frac{1}{4}$ Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____ Ownership _____
- B. Name of storage reservoir and/or diverting works (if known): _____
- C. Maximum capacity: _____ Ac.Ft.
- D. Maximum depth of water: _____ ft.

- E. (1) Year construction began: _____.
- (2) Year construction completed: _____.
- (3) Date water first stored: _____ (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: _____.
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

Item 3. This area of Saguaro National Monument was first reserved as a part of the Catalina Forest Preserve on the date shown. Saguaro National Mon. was established by Presidential Proclamation on March 1, 1933.

Item 4. The National Park Service claims the entire flow from this source for the indicated purposes. The volumetric flow from this source was measured at 1.0 gpm on 5/21/81. The estimated annual flow from this source is 6.4×10^4 gallons. All water from this source originates
(continued on the next page)

Explanatory (cont.)

and terminates within the boundaries of Saguaro National Monument.

All uses occur within the Monument boundary.

Item 6. Water from this source is allowed to flow in its natural stream channel
and is not diverted in any manner.

Item 7. There are numerous seeps, tinajas and areas of resurfaced underflow
within the drainage channels located throughout this portion of Saguaro
Nat'l Mon. Although these sources are small in comparison to the source
for which this form is being completed, they are important components
of the Monument's ecosystem. Therefore, the water discharged from these
sources is allowed to flow unrestricted. The National Park Service
claims rights to these waters for the purposes indicated in Item 4.
However, due to the large number, magnitude of flow, and seasonal
nature of these sources, a listing is not practical.

(continued on the next page)

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

STATE OF ARIZONA)
County of _____) SS

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. *

Gerard S. Witucki
Claimant-affiant representative's
signature

Gerard S. Witucki
Chief, Division of Water Resources

Attest:

Claimant-affiant representative's
signature



Claimant-affiant signature

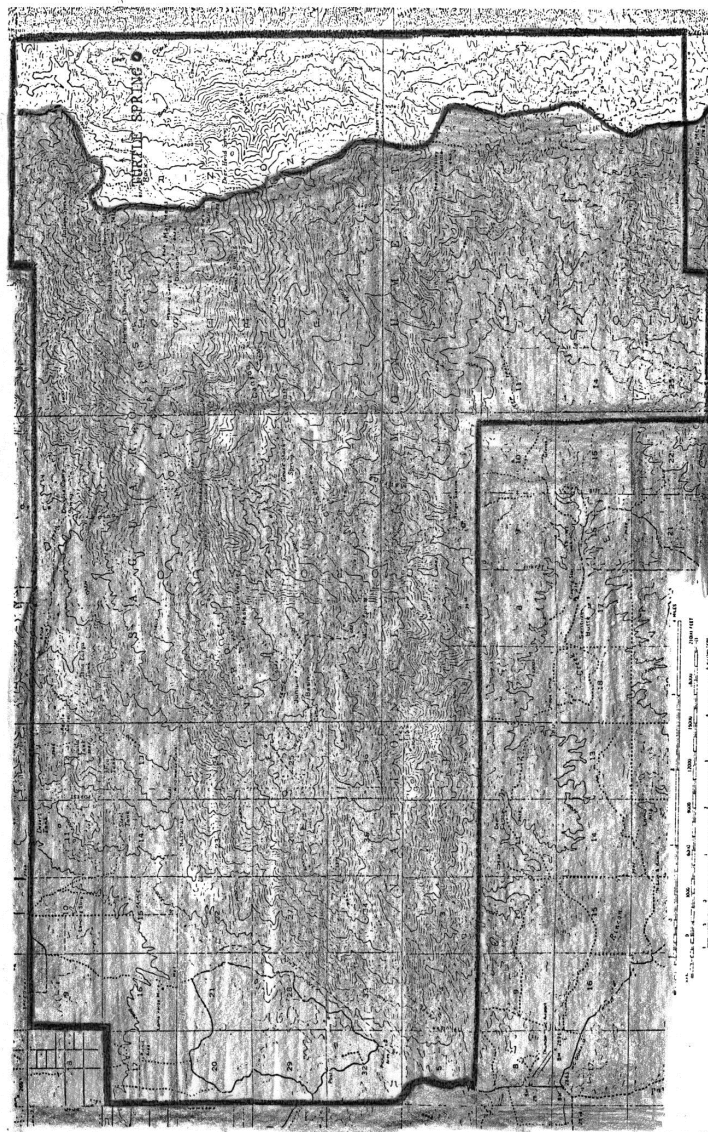
Claimant-affiant signature

Subscribed and sworn to before me this
30th day of November, 1981.

Mary E. Meredith
Notary Public or authorized employee
of the Arizona Water Commission

My Commission expires 3/26/85

* United States Government
Department of the Interior
National Park Service
Western Regional Office



SAGUARO NATIONAL MONUMENT

LEGEND
Park Boundary
Shaded Areas Not Included In
San Pedro Watershed

Other Supporting Information



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.

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

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

L54
X-95039
(WR)RW

July 6, 1977

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

CC:
General Supt., SOAR
WR(RW)

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Regional Director	
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Will Lukens
WR
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May 3, 1977

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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:WLWerrall:mpm 5/3/77



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

IN REPLY REFER TO:

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Western Regional Office	
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Regional Director	
Asst. Regional Dir.	
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April 1, 1977

Memorandum

To: Regional Director, Western Region, NPS
From: Field Solicitor, San Francisco
Subject: Use of Springs within Saguaro National Monument for Stock Watering

This is in response to your request for our review of the above-referenced subject. As we understand the situation, the grazing privileges of two graziers have been terminated with respect to certain lands within the eastern border of Saguaro National Monument. The Park Service is now in the process of building a fence on the eastern boundary which would exclude the two graziers' livestock. There are two springs inside the boundary of the Monument which have been used in these grazing operations. Some or all of the water in Turkey Creek Spring, the spring used in one grazer's operation, is now, and has been for some time, carried by pipeline to a location outside the Monument. Turtle Spring, the spring used in the other grazer's operation, has never been developed. Mr. Barney, the rancher whose livestock use Turtle Spring, has requested that he be allowed to construct a pipeline to carry some or all of the water of Turtle Spring to a point outside the Monument so that his cattle can continue to use that water. The Forest Service feels the continued use of these waters is important to properly manage grazing on the adjacent Forest Service lands.

We understand that these graziers or their predecessors in interest have been using these springs for stock watering for many years, apparently since prior to the establishment of the Monument on March 1, 1933, and possibly prior to the inclusion of these lands as part of a forest reservation in 1907.

If these graziers now hold, or could acquire, water rights to these springs, National Park Service could issue appropriate permits to them to transport some or all of the water in these springs to points outside Saguaro. However, we understand that these graziers have never applied for and received certificates of water rights to these springs from the appropriate State agency. Furthermore, our review of this matter has led us to the conclusion that they do not hold and cannot perfect any such rights today; that they could never have acquired such rights in the past; and that they could not acquire such rights in the future absent some change in the status of the Monument. Our reasons for so concluding are briefly set forth below.

Prior to the enactment of the Arizona Water Code in 1919, springs not constituting part of a stream or creek were not subject to appropriation under Arizona law. McKenzie v. Moore, 20 Arizona 1, 176 P. 568 (1918). Furthermore, in 1907 these lands were withdrawn and reserved as an addition to a national forest. At that point the use of water on those lands became controlled by 16 U.S.C. § 481 (1970).^{1/} The Forest Service takes the position that that statute is a permissive one, that is, it grants no right itself to use water but requires the permission of the Secretary of Agriculture. This position was affirmed in 1963 by the U.S. District Court for the District of Utah. Glenn v. United States, Civil No. C-151-61 (D. Utah, March 16, 1963). We might add that use under that statute can only be for "domestic, mining, milling, or irrigation purposes." Our research has led us to the conclusion that stock watering of commercial livestock is not a "domestic" purpose.

Even if 16 U.S.C. § 481 did confer the right to appropriate water for stock watering under Arizona law, we believe that when the Monument was created on March 1, 1933, 16 U.S.C. § 481 ceased to be applicable to the Monument (in spite of

^{1/} Prior to the 1907 reservation certain other Federal laws enacted in 1866, 1870 and 1877 were applicable to these lands and they permitted the appropriation of water on public land in accordance with State law. However, no one could have legally appropriated these springs prior to the 1907 forest reservation because, as pointed out above, Arizona law did not authorize the appropriation.

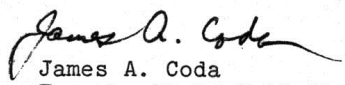
the fact that the Forest Service administered the area as a dual reservation until August 10, 1933). In addition, our office has previously concluded that the Reorganization Act of March 3, 1933, 47 Stat. 1517, and related Executive Order 6166 (signed June 10, 1933, and effective August 10, 1933) which consolidated all functions of the administration of the national monuments under an Office of National Parks, Buildings and Reservations (which later became the National Park Service), removed the dual reservation status of Saguaro and other national monuments within national forests and thus any national forest laws that might have been applicable to Saguaro ceased to be applicable as of August 10, 1933, the effective date of Executive Order 6166. See our memorandum of April 5, 1972, to Assistant Director, Operations, Western Region, NPS.

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. Ownership of unappropriated nonnavigable waters on Federal lands in the West remains in the United States and can be disposed of or otherwise regulated by Congress under the property clause, Art. IV, § 3, cl. 2, of the Constitution. Congress has delegated to the Secretary 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 our 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 that limited situation, authority to allow the use of water for stock watering can be implied from the Secretary's authority to allow grazing because water is necessary for the grazing operation. In view of the fact that NPS does not plan to authorize these

individuals to graze their livestock in the Monument, this authority is not applicable. No other authority exists which would authorize NPS to allow use of these springs for stock watering.

In view of the above, we do not believe NPS can allow these graziers to use these springs. If you have any further questions, please contact us.

Ralph G. Mihan
Field Solicitor
San Francisco


James A. Coda
For the Field Solicitor

cc:
Superintendent, Saguaro

L84
xD5039
xL3019
(WR)RW

December 22, 1976

Werrell
BX 12/28
Krigore (Ltr)
Director
12/23
Draft Reviewed
Witucki

Memorandum

To: Field Solicitor, San Francisco Office

From: Regional Director, Western Region

**Subject: Request for Assistance regarding Water Rights to use Springs
for Stock Watering, Saguaro National Monument, Arizona**

Two U.S. Forest Service grazing permits within Saguaro National Monument have recently been cancelled (see enclosure). The area now wishes to fence along the monument boundary to prevent future cattle grazing on National Park Land. Each of these permits relied heavily upon a water source - in each instance, the particular water source is situated within the monument. One source has been developed and water is piped from the source to a location outside the monument. The other source remains in its natural condition.

Recent communications from the U.S. Forest Service emphasizes the importance of continued use of these water sources in connection with the continued grazing permits which pertain to lands which border the monument. The pending monument boundary fencing threatens to deny the future use of these sources for cattle watering.

We request your opinion in evaluation of the legal aspects of the above situation. It appears that use of the springs for stock watering predates the establishment of the Forest Service boundary - that boundary later being utilized for establishment of the monument. Thus, the right to water usage is somewhat uncertain. However, considering if the Service is not legally bound to allow continued usage of these waters, but elects to allow continued use, what would the ramifications be?

Your opinion regarding this matter is appreciated.

(Sgd) Howard H. Chapman

Enclosure

cc:
General Superintendent, SOAR
Superintendent, SAGU

(WR)RW:Witucki:Werrell:mpm 12/22/76



IN REPLY REFER TO:

D5039
x-L3019
(WR) RW

United States Department of the Interior

NATIONAL PARK SERVICE
Southern Arizona Group
1115 N. 1st Street
Phoenix, Arizona 85004

November 15, 1976

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Western Regional Office	
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Regional Director	
Dep. Regional Dir.	
Exec. Asst.	
Admin. Asst.	
Operations	117
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Memorandum

To: Regional Director, Western Region

From: General Superintendent, Southern Arizona Group

Subject: Request for Legal Opinion--Water Springs, Saguaro National Monument

I am enclosing a memorandum from Acting Superintendent, Saguaro National Monument which raises legal questions regarding the continued use by cattlemen of water springs located within Saguaro National Monument.

Since we are in the process of fencing the monument boundary near the springs, it is imperative that we have legal advice regarding the continued use or non-use of these water sources by local ranchers.

John H. Clay

cc: SAGU

X



Let's Clean Up America For Our 200th Birthday



United States Department of the Interior

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

IN REPLY REFER TO:

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(WR) RW

November 11, 1976

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SOUTHERN AZ. GROUP	
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Memorandum

To: General Superintendent, SOAR

From: Acting Superintendent, SAGU

Subject: Water Source Development for Grazing Permittees

The National Park Service portion of the Happy Valley and Barney grazing allotments have been canceled. As a result of these cancellations and other protective needs, a fence is being built along the east boundary of the Rincon Mountain Unit of the monument. This fence will separate U.S. Forest Service land from National Park Service land along areas adjacent to the USFS Happy Valley and Barney grazing allotments which will continue to remain active.

In the past (more than 15 years) the Happy Valley grazing allotment has used a spring on Turkey Creek as a water supply for their grazing allotment. They have made a minor development and run a pipeline about 1 mile to a tank at a lower level on Turkey Creek. We do not know exactly how long ago the development was started. It has been a part of the USFS grazing allotment permit. At the time it was developed we are quite sure no one was aware that it was in Saguaro National Monument instead of on USFS lands.

In the past few years the boundary has been surveyed and now that a straight line fence is being constructed it becomes obvious that the spring is inside the monument at least 1/4 mile and that the fence will prevent the cattle from using the water directly. It does not appear at this time that continued use of the spring would be detrimental to the monument. However, if we do not allow the permittee to continue to use the water, it could have serious detrimental impact upon his ability to adequately graze the adjoining USFS allotment.

Another spring (Turtle Spring) adjacent to the Barney allotment has never been developed. It is about 1/4 to 1/2 mile inside the park boundary and has been used as a dependable water supply for grazing purposes for many years. Now that the fence is being constructed Mr. Barney has requested



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that he be allowed to continue using the water from this spring. It would be necessary for him to construct a pipeline from the spring to a tank on Forest land. We have not selected a route for such a proposed pipeline, but it would be difficult to completely bury the line due to the rocky terrain.

We have discussed the need to continue using these springs with the USFS personnel. They feel the springs are essential for good management on the adjacent allotments. Attached is a letter they wrote at our request so we could have a written record of their opinion. Due to the 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.

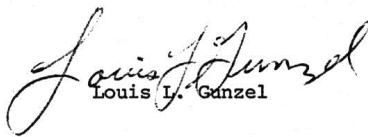
We believe it would be possible to continue use of the water by both wildlife and grazing purposes with the understanding that wildlife and monument purposes would be the dominant use. In times of short water supply the monument needs would have first call. However, we also know all of the problems that can develop over a period of many years that may not be obvious at present.

Questions:

1. What are the long-term legal implications of allowing usage to continue?
2. If we allow them to continue use now can we actually stop sometime in the future? Will future managers be politically forced to continue even if the monument finds the use detrimental or that they have a greater need?
3. Do we have the right to obligate water to grazing now even on a limited basis? (Example - the Kaecker grazing permit). Is it ours to give away?
4. What are their rights based on long-term usage?

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?

We would appreciate your opinion and comments before any decision is made at this level. A map is attached showing location of the springs.


Louis L. Gunzel

Enclosures

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Santa Catalina Ranger District
5363 E. Pima
Tucson, Arizona 85712

RECEIVED	
SAGUARO NATIONAL MONUMENT	
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ADMIN. OFFICER	
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CH. PARK RANGER	
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GEN. RM	
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2230
October

Superintendent
Saguaro National Monument
P.O. Box 17210
Tucson, AZ 85710

Ref: Water Sources

Dear Sir:

As requested by Les Gunzel, this letter states the Santa Catalina Ranger District's (U.S.F.S.) view of the need to maintain the Turkey Creek water and pipeline and Turtle Springs as viable water supplies for the Happy Valley and Barney Allotments of the Coronado National Forest.

The Turkey Creek water has a long history of supplying livestock water for the Happy Valley Allotment. Although water can be found in the creek for most of the year, the spring provides the most reliable source. The Happy Valley Allotment permittee is currently in the process of developing a pasture deferment system. This system provides alternate year summer rest as such is highly beneficial to the range. In order to insure that the required number of livestock can be maintained in the pastures as prescribed by the grazing system and further to insure that there are adequate water sources to properly distribute the livestock throughout the pasture (and prevent overgrazing in concentration areas), it is necessary that the Turkey Creek water supply be maintained.

Further, as the spring development and pipeline are in existence, no additional disturbance would be necessary except as needed for maintenance.

On the Barney Allotment, Turtle spring provides the major supply of water to the higher elevations of the Upper pasture. The Barney permittee has begun to develop a grazing system which will benefit the range through summer deferment. However, in order to maintain the livestock in the Upper pasture for the prescribed periods, it is necessary to utilize the water from Turtle spring.

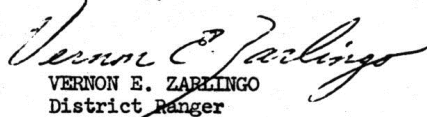
This spring is virtually undeveloped but it is our belief that a development with a pipeline could be built which would benefit both the livestock and wildlife.

2.

In our opinion, both waters are necessary for the proper management of the grazing allotments. Both allotments are in the beginning stages of a change from extensive management to intensive management. Maintenance of dependable, well distributed water supplies is vital to any degree of intensive management.

We therefore recommend that the appropriate steps be taken to provide for the continued use of the Turkey Creek water and Turtle spring if such action can be taken in accordance with National Park Service policies and Saguaro National Monument programs. We recognize that wildlife will have priority for the water and that the developments should be as unobtrusive as possible.

Sincerely,


VERNON E. ZABELINGO
District Ranger

cc: Ollie Barney
Malcolm Mackenzie

November 24, 1976

Memorandum

To: Field Solicitor, San Francisco Office

From: Regional Director, Western Region, National Park Service

Subject: Request for ^{assistance regarding water} ~~legal opinion~~ Rights to Use Springs for Stockwatering, ~~Saguaro National Monument, Ariz~~

*Wassell
Wofuck
Kilgore
Reg. Dir.*

*Keep as
reference in
Regional File
WW 1/77*

Some questions have been raised regarding the use of Turkey Creek Spring and Turtle Spring in Saguaro National Monument for stockwatering purposes. The problems arise because the aforementioned springs are the primary source of water for cattle being grazed on adjoining US Forest Service land. The Park Service is presently in the process of constructing a fence along the eastern boundary of the Monument. This fence would deny ~~access~~ the cattle access to the springs. Before completion of the fence, the Superintendent would like to be aware of the Park Service's legal position in respect to preventing further use of the springs for stockwatering (see enclosures, particularly questions 1-4, page 2 of the memo dated Nov. 11, 1976). Specifically, it is necessary to know if the users of the springs have some legal right to use them, and if the Park Service can allow their use in the future without being legally obligated to permit this continued use.

according to Forest Service

Such facts as have been ascertained show that use of Turkey Creek Spring and Turtle Spring for stockwatering predated the establishment of Coronado National Forest (USFS), and has continued for at least 75 years. Grazing, allowed in the National Forest under permit, took place on large parcels called allotments. Use of the two springs in conjunction with grazing was allowed under the same permits. (It appears that the private users of the springs have never filed on them with the State of Arizona.) Saguaro National Monument was proclaimed on March 1, 1933, and its boundaries were superimposed over part of Coronado National Forest. The National Forest land was transferred to the Park Service

on August 10, 1933. Those portions of the grazing allotments which were included within the Monument boundaries (Happy Valley, Barney, and others) remained in use. Gradually the Park Service moved to eliminate grazing on Monument land, and in 1975, the Forest Service cancelled the Happy Vally and Barney allotment portions which were within the Monument.

Noting these facts, and taking into account the pertinent material contained in the enclosures, your opinion as to the rights and obligations of the Park Service under the circumstances is requested.

Use of Springs at Saguaro for Stockwatering

Statement of Problem: The Happy Valley and Barney grazing allotment covered land in the eastern portion of Saguaro National Monument (Rincon Mountain Area) and in the adjoining Coronado National Forest (USFS). In 1976, that part of the allotment in the Monument was cancelled. In order to keep cattle out of the Monument, the Superintendent proposed building a fence along its eastern boundary. Before he does so, he has requested advice regarding a water problem. The main sources of water for the remaining grazing areas (on USFS land) are on Monument property. They consist of two springs, one on Turkey Creek, the other called Turtle Spring. Turkey Creek Spring has been developed, a pipeline leading from the spring onto Forest Service land. Development of Turtle Spring in a similar manner has been proposed, although the spring is presently in a natural state. The Superintendent wants to know if he can cut off use of these springs by the cattlemen, who have had access to them for at least 15 years. He also wants advice as to the best method of allowing continued use of the sources for stockwatering, if pursuing this course is desired.

Initial Responses: I have examined our dockets for Saguaro National Monument and have found nothing on either of the abovementioned springs. Thus, I do not know whether the cattlemen have any recorded water rights for their use. It is necessary to acquire this information before a final response to the Superintendent can be formulated. However, I doubt that they have such rights - the Superintendent's memo notes that the springs have been used in conjunction with the grazing allotments for only 15 years. The Monument was established in 1933, so it is unlikely that the State of Arizona would grant a water right to a source on Federal land. Even if so, the Park Service could rely on the Reservation Doctrine to deny stockwatering use, if the Park Service justifies its need for all the water.

One other problem might be the cattlemen's claim of a prescriptive right to use the water - long continued use of the water under claim of right. However, I do not think that such a right can be perfected against the Federal Government.

If the Park Service decides to allow continued use of the springs for stock-watering, a special use permit could be issued for this purpose. This would be no trouble for Turkey Creek Spring, as it is already developed. Thus, no access problems would be involved there. But, for Turtle Spring, allowing its use under special use permit would contemplate either allowing the cattle to wander over Monument land to gain access to it (thus defeating the purpose of building the fence), or allowing the spring to be developed by way of a pipeline installation to convey the water to Forest Service land. Either course is probably undesirable.

Kevin Kidder
November 19, 1976

Docket Information

Number of Documents in Docket 42

Documents Dated from 10/12/1976 to 3/20/1996

Docket Compiled: 6/9/2016