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Brief History of Water Rights at Fort Bowie National Historic Site

"The presence of a spring as much as anything else dictated the route through Apache Pass and the subsequent establishment there of Fort Bowie. And I might add that even to this day the water that made the pass important to travelers is vital and will continue to be used by man and animals." (Remarks by Mr. Udall, Legislative History on H.R. 946, Congressional Record, Vol. 110, August 3, 1964, p. 17814)

The development of the Southwest depended upon the location of a source of water. Springs at Apache Pass made it ideal as an overland route for settlers. In 1857, John Butterfield began to develop his overland stage coach route through the pass and in 1858 he established a stage station near the site of Apache Springs. The springs also supplied the first Fort Bowie in 1862. A second Fort Bowie was built just to the east and was supplied with water from Bear Spring. (Bear Spring is not within the Historic Site boundary.) Fort Bowie was finally abandoned in 1894 and the land was sold at public auction on June 20, 1911.

Sometime prior to 1964 (probably in the 1920's) a mine drift or adit was dug in the NE $\frac{1}{4}$ of section 12. This shaft encountered an aquifer resulting in a water source. Also prior to 1964, two seeps which are located at the NE corner of the second Fort were partially developed. These two seeps, and the mine shaft are now referred to as the "Mine Tunnel Springs." Also sometime prior to 1964 the waters of Apache Springs were collected in a pool by construction of a low dam and this water was transported by electric pump over the hill to the east and down a pipeline to the Shafer Ranch House.

On August 30, 1964, Congress established Fort Bowie National Historic Site (Public Law 88-510). The Secretary of the Interior was authorized "to designate, for preservation...the site and remaining historic structures of old Fort Bowie...together with additional land, interests in land, and improvements thereon,...Provided, that the Secretary shall designate no more than one thousand acres for inclusion in said site." (78 Stat. 681) Upon acquisition of the necessary lands and interests, the Secretary was to administer the Historic Site pursuant to the provisions of the Act to establish a National Park Service and for other purposes approved August 25, 1916 (39 Stat. 535); and pursuant to the Historic Site Act of August 21, 1935 (49 Stat. 666).

While neither the Act creating the historic site, nor the legislative history of the floor debate in the House and Senate mention grazing or water rights, the comments made by letter and testimony in House and Senate Committee hearings on Fort Bowie make it quite evident that there was great concern about both of these subjects. John A. Carver, Jr., Assistant Secretary of the Interior, in a letter to the Committee on Interior and Insular Affairs on April 1, 1963, states that

"Rights to the use of water from springs in Apache Pass on privately owned land and water now piped and used in cattle and ranching operations on the Neal (sic) Ranch will not be adversely affected. ...acquisition of privately owned lands at Fort Bowie will not include the water rights centering in these springs nor the related rights of piping and pumping water from them...."

Further, in testimony before the Committee, Jackson Price, Acting Director of the National Park Service iterated the same comments on grazing, water rights and piping for general ranching usage. He states: "Existing water rights and the related right of piping and pumping water from existing springs would be retained by the private owners." Letters and memorandums since have confirmed that such was the intentions of the parties. All of this in spite of the fact

that the Warranty Deed signed by Earl J. Neel, the owner of the lands containing Apache Springs, conveys the lands free and clear to the United States of America, except as to a water right to Apache Spring and a ten-foot wide right of way for a pipeline "to transport water for stockwatering." There is no language in this Warranty Deed of November 25, 1964, suggesting a right to stock grazing on the property. A later agreement executed on November 13, 1969 purported to convey and relinquish Neel's water rights to Apache Springs and his easement for the pipeline. However, failure to satisfy the conditions (construction and notification by NPS) have nullified the agreement.

The original National Park Service plan for the development of Fort Bowie included the establishment of a headquarters down at the old stage coach station site along with houses, visitor's center, and campgrounds. Also planned were stage coach rides and possibly a tram ride up to the old fort site. To further these plans, a well was drilled in early 1966 to provide an adequate water source.

By the early 1970's the Service's plan for development had been radically changed. The present plan calls for limited development and maximum preservation. As a result, no new roads have been built and almost all of the Monument has been left in its natural state. Visitors enter the area on foot and walk to the fort ruins. A small kiosk serves as the visitor's center and is located on the northwest corner of the old fort. The only other structures in the area are the ranger's mobile home and a small equipment shed. Vehicle access to this area was made possible by improvement of an old road. This road leaves the park on the east boundary and connects at the boundary with the dirt road which extends south across Shafer Ranch.

In view of the above changes in plan and/or development of the area, there was no need to utilize the well drilled in 1966. This well was the intended source of water to comply with the 1969 Neel agreement. As of this date the well is capped and has never been in use.

A call to William Lukens, Park Superintendent at Fort Bowie from 1972-76, was made (April 28, 1980) to ascertain information on the development and use of the water sources at the Historic Site. Particular attention was made to learn of the use by private parties for stockwatering and other purposes.

When Mr. Lukens arrived at Fort Bowie in 1972, the Apache Springs pumpage system was not in operation and appeared to have been inoperable for several years. The electric pump appeared to be worn out and the power lines were in need of replacement -- also, the pipeline was in a questionable state. Cattle were permitted to graze unrestricted and took water directly from the spring.

Because the visitor foot path to the fort leads visitors up the pass, past the springs, park visitors were meeting semi-wild cattle at Apache Spring. To avoid this situation and thus provide a better measure of visitor safety, the Park Service built a rock dam across the channel below Apache

Spring. The area behind the dam was backfilled with dirt. Water from the Spring box was piped (plastic pipe) to the dam where the water flows from the pipe at the top of the dam. At the end of the pipe a cut off valve and a "T" were placed (hidden from view). Another line was laid from the "T" and extends several hundreds of feet to the SW where a stockwatering tank was placed. Adjustment of the valve is such that water constantly overflows from the stock tank with the remaining spring flow leaving the pipe at the dam for visitor observation of Apache Spring (interpretive purposes). This system operates by gravity flow and is still in existence today.

Mr. Lukens stated that at this time (1972) the Park Service rehabilitated the "Mine Tunnel Source." This rehabilitation work was done shortly after a flood down the canyon damaged the pipelines and the sources themselves. Regarding the Mine Tunnel proper, the shaft was cleared out and the entrance was sealed with concrete. Mr. Lukens reports that working in the shaft was dangerous due to falling rocks. A plastic pipeline was laid from the source to a point on the old pipeline which extended from Apache Springs to Shafer Ranch. At that point a concrete collection box was built and the new pipeline ended at the box. Regarding the two seeps at the NE corner of the second fort, rehabilitation work involved placement of two short sections of corrugated culvert and minor concrete work. These sources are less than 10 feet apart. A single plastic pipeline which connects these two sources and extends North to the afore mentioned collection box was laid by Mr. Lukens. Along this line a "T" was placed to allow water to be diverted for NPS use as the line passes the residence area. This system operates by gravity flow and is still in existence today. Prior to this rehabilitation work the Service obtained water from the mine shaft source by pumping water uphill.

With the completion of the above work, the owners of the Shafer Ranch removed the old pump from Apache Springs and gave permission for the Park Service to remove the poles of the powerline. This was very desirable to the Service in that both the pump and the power line poles were a bad visual obtrusion to visitors of the Monument.

It is an important fact that the pipelines laid by Mr. Lukens were laid at random and do not lie upon the "Apache Spring easement," although the easement and pipelines may criss-cross several times because they trend in the same general direction. Another important fact is that it appears that the pipeline leaves the park at a point such that the single pipeline extends over another party's land before entering Shafer Ranch land.

In 1976, the State of Arizona was contacted regarding a possible water rights filing on Apache Springs. At that time no water rights filings existed on the Monument.

Mr. Lukens expressed the opinion that the right of way in the easement granted by the original Warranty Deed may run right over one of the collection sites for the Mine Tunnel Springs. If this is the case, there may be a real problem in restricting the future use of the water from Mine Tunnel Springs. However, Bill Lukens also is of the opinion that the water from the springs is too unreliable for any use except stockwatering.

Summary of Conversation with Bill Lukens:

The private ranchers had used the Apache Springs water in the past and had transported that water via a pump and pipes to watering tanks for stock. The pump has not been used since at least the early 1970's and stock had been watering directly at Apache Springs. In 1971-72 the Mine Tunnel Springs were redeveloped by the NPS and the over-flow was permitted to continue down the hill to stockwatering tanks outside the Historic Site and most certainly to the Shafer Ranch House. The Park Service apparently reconnected the Mine Tunnel Spring sources to the stockwatering tanks of the private parties, not out of any legal obligation, but merely to accommodate their neighbors.

The only legal obligations are those specifically contained in the original Warranty Deed signed by Mr. Neel; that is, the right to an easement to and use of the waters of Apache Springs for stockwatering.

In 1976 the Cardons, successors in interest to Earl Neel, filed suit in the U.S. District Court for the State of Arizona praying for relief in their efforts to obtain their alleged rights to water and access to Apache Springs and other water sources located on government lands at Fort Bowie. In their first count they claim that the 1967 agreement granting a license to the National Park Service for use of their Bear Springs road had a two year limitation on it and that the continued use of such road was trespassing and they seek damages for the trespass. The second count claims rights to water from both the Apache Springs and the Mine Tunnel Springs sources for both domestic and stockwatering. They claim the right to an easement to the 240 acres of private property sold to the United States to maintain their pipes for water transport. They further allege that the November 13, 1969 agreement is null and void. In their third count they claim the right to the Mine Tunnel Springs water for both domestic and stockwatering use. They claim a right to and seek access to the Mine Tunnel Springs to lay pipes and to maintain same. In their final count they claim that the November 13, 1969 agreement established a right to expect 10 gpm of water for domestic and stockwatering from the aggregate of the water sources found in the Fort Bowie site.

As of this date the Service has never completed the necessary construction (pipeline from well), nor given written notice, regarding the 1969 agreement with Neel.

Other NPS personnel who may be of benefit in clarification or verification of the status of the park at the time of its establishment are:

William Fields -- Southwest Region
 Dicky Stanburg -- Mt. McKinley
 Don Morris -- Southwestern Archeological Center

William Werrell
 James H. Hershey
 May 30, 1980