

1. Description of Bar Boot Ranch Conservation Easement activities.
2. Undated correspondence from Joe Austin to Jason Kline, Arizona Game and Fish Department.
3. July 8, 2004 correspondence received from William R. Radke, Refuge Manager, U.S. Fish & Wildlife Service.
4. Scope of Work prepared by Lawrence Engineering dated September 27, 2004.
5. October 1, 2004 correspondence addressed to Office of the Cochise County Attorney, from Janet Ronald, Deputy Counsel, ADWR, regarding Earthen Dams in the Vicinity of Leslie Canyon Creek.
6. Memorandum prepared by Lawrence Engineering dated November 7, 2004, regarding Bar Boot Ranch – Investigation of Structures, together with attachments.
7. Correspondence received by Christine Young from William R. Radke, Refuge Manager, U.S. Fish & Wildlife Service, enclosing copy of Challenge Cost-Share Agreement between U.S. Fish & Wildlife Service and Bar Boot Ranch L.L.C.
8. June 20, 2006, correspondence from J. Darrell Jordan, Manager of the ADWR Office of Water Engineering, regarding Gate Tank (02.08) and Crow Tank (02.09) Dams, May 10, 2006 Inspection Reports with enclosures.
9. February 16, 2007, Notice of Violation, received from the Arizona Department of Water Services (“ADWR”).
10. February 28, 2007, correspondence from William R. Radke, Refuge Manager, United States Department of the Interior Fish and Wildlife Service, together with enclosures.
11. March 14, 2007, correspondence prepared by Maguire & Pearce to the ADWR, regarding “Notice of Violation for Bar Boot Ranch, LLC Dated February 16, 2007.”
12. May 17, 2007, ADWR correspondence to Maguire & Pearce regarding “Meeting on May 15, 2007.”
13. June 20, 2007, correspondence prepared by Maguire & Pearce to Michael Johnson, Ph.D., P.E., Section Manager, Dam Safety Section, ADWR, regarding “Bar Boot Ranch,” together with enclosure.

14. July 7, 2007, correspondence from Michael Johnson, Ph.D., P.E., Section Manager, Dam Safety Section, ADWR, in response to Maguire & Pearce letter of June 20, 2007, regarding "Bar Boot Ranch Notice of Violation".
15. September 25, 2007, correspondence from Maguire & Pearce to Michael Johnson, Ph.D., P.E., ADWR, Dam Safety Section, regarding Bar Boot Ranch.
16. September 25, 2007, correspondence from Maguire & Pearce to Kathleen Donoghue, ADWR, Legal Division, regarding Bar Boot Ranch.
17. October 11, 2007, correspondence received by Josiah Austin from Michael Johnson, Ph.D., P.E., Section Manager, Dam Safety Section, ADWR, regarding "Notice of Violation".
18. October 23, 2007, correspondence received by Maguire & Pearce, PLLC, from Scott M. Deeny, Deputy Counsel, ADWR, regarding Public Records Request Dated September 25, 2007.

Bar-Boot Ranch Conservation Easement

A Conservation Easement between the U.S. Fish & Wildlife Service and Josiah and Valer Austin, covering the 13,713 deeded acres of the Bar-Boot Ranch culminated successfully during 2004. The purpose of the Conservation Easement is to assure that the Bar-Boot Ranch, located upstream from Leslie Canyon National Wildlife Refuge, will be retained in its current condition to provide for a diversity of wildlife habitat, maintenance and enhancement of watershed health, education, cattle grazing, and limited residential uses. The Service and the Austins agreed to prevent any use of the property that will significantly impair or interfere with these values, and to confine the use of the property to activities consistent with the purpose of the easement.

The Bar-Boot Ranch is located in Cochise County, Arizona in a high valley lying between the 7,140-foot elevation Swisshelm Mountains to the west and a southern portion of the 9,854-foot elevation Chiricahua Mountains to the east. The property lies about 15-miles upstream from Leslie Canyon National Wildlife Refuge, and adjoins portions of the Coronado National Forest on the east, and the 11,585-acre 99-Bar Ranch on the south (which also entered into a Conservation Easement with the Service in 2001). The elevation of the ranch ranges from 4,800 - 6,300 feet. Rainfall reaches up to 18" annually.

The Ranch consists of about 25,940 acres, including 13,713 acres of deeded lands, 640 acres of State Grazing Allotment, 424 acres of Bureau of Land Management Grazing Allotment, and 11,163 acres of U.S. Forest Service Grazing Allotment. The property is dedicated to livestock production, grassland and wetland habitat restoration, research, and associated activities.

U.S. Forest Service Grazing Allotment for the Bar-Boot Ranch is for 450 head from November 1 - through June 30. The Bar-Boot Allotment is a portion of the Bar-Boot Ranch, which furnishes winter pasture for the ranch. It has been grazed by livestock since before establishment of the National Forest. Originally the allotment was grazed yearlong, with a change to winter only use in 1950. The State Grazing Lease and Bureau of Land Management Grazing Allotments are for 6 and 7 head annually, respectively. The ranch will carry approximately 650 cattle on an annual basis. There are few human improvements on the ranch, but assorted buildings, wells, windmills, pipelines, stock ponds, water impoundments, roadways, electrical power distribution lines, corrals, fences, and related facilities exist.

The ranch is dedicated to maintaining a variety of conservation values of substantial importance to the Austins and to the Service. Over several years, the Austins have restored this ranch and other properties and made improvements to the watershed and rangelands, both to enhance livestock production and ecosystem health. Their efforts at ecosystem repair by headwater erosion control are well known and recognized by conservationists. The Austins have expressed interest in establishing safe harbor agreements for a number of federally-listed endangered species, which are expected to pioneer onto the ranch due to habitat restoration efforts, or could be

introduced/reintroduced onto the ranch in appropriate habitats. An example would be introduction of Yaqui topminnow and Chiricahua leopard frogs into stock tanks or other ranch wetlands.

The ranch falls within the original 25,000-acre Leslie Canyon National Wildlife Refuge acquisition boundary identified in the Preliminary Project Proposal approved on August 25, 1992 to pursue expansion and protection of the Refuge. This conservation easement seeks to ensure survival of native fish and wildlife on both the ranch and the Refuge while providing for normal livestock ranching operations and watershed restoration activities to continue on the ranch. The easement limits division, subdivision, and surface development on the ranch's private fee land into perpetuity while encouraging its traditional ranching and watershed restoration activities to continue. By limiting subdivision and surface development in the upstream reaches of the Leslie Creek watershed, the easement also helps assure the water supplies historically available to sustain native fish, wildlife, and plants, including federally-listed threatened and endangered species, found downstream of the ranch on the Refuge.

The Service purchased the Conservation Easement on the Bar-Boot Ranch from the Austins for a total amount of \$1,949,000.00. The August 10, 2004 Purchase Agreement provided for acquisitions of easements in increments as funding becomes available.

This Conservation Easement enables economic viability to continue on the privately owned ranch, and at the same time helps to protect the watershed that supports crucial downstream wetlands at Leslie Canyon National Wildlife Refuge. The 2,765-acre Refuge was established in 1988 under the authority of the Endangered Species Act of 1983 and the Fish and Wildlife Act of 1956 in order to "...conserve fish or wildlife which are listed as endangered species or threatened species...or plants." The Refuge was established specifically to protect native fish, and recovery actions include stabilizing and maintaining existing populations, establishing self-sustaining populations, and restoring wetland habitat so that the fish will be able to thrive once again.

The U.S. Fish & Wildlife Service's purchase of Conservation Easements from private landowners is recognized as a win:win relationship for everyone involved, but it remains dependent upon acquisition funds remaining available. Plants and animals in danger of extinction can be protected and managed at a huge cost savings to taxpayers because the federal government is not required to have fee title of an environmentally valuable property in order to help protect it from development. Private landowners are able to continue using their property as they wish within the framework of the conservation easement that they helped develop and implement. Private properties remain on county tax roles. The mutual interest in this Conservation Easement provides an opportunity for private landowners and government agencies to collaborate in the management of a unique area to help ensure that its existing economic and environmental values are maintained for the benefit and enjoyment of future generations.

Jason Kline
Arizona Game and Fish Department,

The El Coronado Ranch has a long history of support of native fish projects in West Turkey Creek. We would like to continue our support by allowing the Arizona Game and Fish Department to establish a population of Mexican stonerollers (*Campostoma ornatum*) onto the El Coronado Ranch. I understand the stonerollers will be translocated from Rucker Canyon, treated for parasites, and released onto the El Coronado Ranch. We will grant access to the creek from our ranch for the stocking of these fish, and for the continued monitoring of all the fish in West Turkey Creek, that is done annually in October. We look forward to working together on another native fish project.

Sincerely,

Josiah Austin
El Coronado Ranch



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
SAN BERNARDINO NATIONAL WILDLIFE REFUGE COMPLEX
P. O. BOX 3509 DOUGLAS, ARIZONA 85608-3509



Josiah and Valer Austin
12626 E. Turkey Creek Road
Pearce, Arizona 85625-6166

July 8, 2004

Dear Mr. And Mrs. Austin;

Thank you for your patient persistence in helping establish a perpetual Conservation Easement on your 13,713-acre BarBoot Ranch, located in the Leslie Creek watershed upstream from Leslie Canyon National Wildlife Refuge (NWR) in Cochise County, Arizona. Your private land occupies a beautiful valley between the Chiricahua and Swisshelm Mountains. The area remains little changed from the last century, is rich in human history, and supports a tremendous variety of wildlife. As you know, your BarBoot Ranch is within the delineated project area boundary of Leslie Canyon NWR because it contains important characteristics toward protecting and maintaining the watershed that supports crucial refuge wetlands and endangered species.

Potential land use activities that could degrade the refuge watershed's integrity include groundwater withdrawal for irrigation or residential purposes; septic tanks that could pollute groundwater; contamination as well as erosion in the riparian corridor and sedimentation of Leslie Creek; and intensive residential development that contributes to public use problems of vandalism, arson, poaching, erosion, water contamination, and direct threats to the fish and wildlife through unlawful taking or introduction of non-native fish competitors or predators. Residential development in the watershed has recently emerged as the most serious, likely, and permanent threat to the protection of the downstream refuge's biotic values.

Because of your interest and willingness to protect the values imperative to both the refuge and to your ranch, your dedication in establishing this Conservation Easement on your upstream private property will have positive effects far into the future. The Conservation Easement we are implementing is a strong and positive way to protect the refuge watershed. It prohibits subdivision of the property, and assures that the BarBoot Ranch will be retained in its current private ownership condition to provide for a diversity of wildlife habitat, maintenance and enhancement of watershed health, education, cattle grazing, and limited recreational uses. While within the Congressionally approved project area boundary for Leslie Canyon NWR, together we have found a way to protect fish and wildlife without the expenses associated with total fee-title government ownership, maintenance, and management.

It is rewarding to work together with you to preserve, restore, and protect this beautiful valley. The Fish and Wildlife Service is dedicated to purchasing this Conservation Easement following the provisions explained to you on June 28, 2004. As described in the Purchase Agreement, increments of your property will be covered by the Conservation Easement proportional to available funding. Naturally, it would be in the best interests of everyone involved if this transaction can happen quickly and efficiently. This concept is highly supported by the Fish & Wildlife Service and I will do everything that I can to keep this acquisition alive and well. Thank you for your vision and dedication in making the world a better place in which to live.

Sincerely,

William R. Radke
Refuge Manager

Scope of Work Bar Boot Ranch Dam Investigation

Lawrence Engineering has been contracted by ADWR through solicitation No.2005-2561 at the contract price of \$101.62 per hour.

Lawrence Engineering met with ADWR representatives on Sep. 23, 2004 to discuss the contract requirements and we were directed to begin with Task 3. We were further asked to provide a more detailed scope of work than provided in the contract, including estimated hours to complete the task as defined in the meeting. This memorandum is intended to provide this requested information.

During the meeting information was provided that was used to formulate this estimated scope of work and the associated work hours. Some of this information was:

1. The structures in question are on property owned by Joe Austin and I in or near Pearce, AZ.
2. There are approximately 67 structures to investigate. The jurisdictional status of most can be determined by simple observation, but it is likely that as many as 3 will require further investigation.
3. All three of the structures could be of jurisdictional size and will therefore require a detailed inspection.
4. The ADWR has not spoken to the owner or his representative and does not have a phone number for him.
5. The owner or his representative must be given notice of the inspection and his rights with regard to the inspection (Form 1009).

Lawrence engineering will complete the following tasks:

1. Meet with ADWR to receive pertinent information and to coordinate activities as we move forward to complete this task.
2. Obtain appropriate contact information and schedule on-site visit with Joe Austin or his representative.
3. Travel to site with David Keadle of ADWR.
4. Obtain signature of Joe Austin or his representative on 1009 form.
5. Make a visual assessment as to which structures require further investigation to determine their jurisdictional status.
6. Inspect the structures that require further investigation and determine jurisdictional status of each by conducting a field survey to determine the height and storage capacity of the structures.
7. For the dams determined to be jurisdictional we will do the following:
 - a. Obtain GPS coordinates to assist the Department in locating the structure.
 - b. Gather necessary facts required to fill out the Department's standardized inspection report form. (i.e. outlet size, outlet material, spillway dimensions, slope of embankment, crest width, length of dam)
 - c. Provide photographic documentation of the facts when possible.
 - d. Determine downstream hazard potential, including assessments of persons at risk.
8. Compile an inspection report using the Department's standardized inspection report form. The finished report will be provided to the Department with a copy for the owner.

Estimated hours needed to complete these tasks are stated in the following chart.

Task	Hours
1	8
2	3
3	32
4	0
5	16
6	18
7	18
8	9
Total Hours	104

Lawrence Engineering will perform services described above for this Project. Lawrence Engineering has developed the Project Scope of Service, and compensation based on available information and various assumptions. The Department acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Lawrence Engineering in performing their services.

ARIZONA DEPARTMENT OF WATER RESOURCES

Legal Division

500 North Third Street, Phoenix, Arizona 85004
Telephone 602 417-2420
Fax 602 417-2415



October 1, 2004

Janet Napolitano
Governor

Herbert R. Guenther
Director

John A. MacKinnon
Chief Civil Deputy County Attorney
Office of the Cochise County Attorney
P.O. Drawer CA
Bisbee, AZ 85603

RE: Earthen Dams in the Vicinity of Leslie Canyon Creek

Dear Mr. MacKinnon:

Previously, the Arizona Department of Water Resources (Department) provided you with copies of correspondence concerning earthen dams alleged to have been constructed by Mr. Joe Austin in the vicinity of Leslie Canyon Creek. These dams appear to have been constructed without proper legal authority, in violation of A.R.S. § 45-112. By letter of August 16, 2004 to Liza Logan, Manager of the Water Management Support Section, Surface Water Rights for the Department, you asked three sets of questions concerning these earthen dams. This letter responds to your questions and confirms our conversation of last week.

1. Your first set of questions concerns whether a dam may be constructed to store water for flood control purposes without first having obtained a permit to appropriate water from the Department. As further explained below, the answer to this question depends upon whether the dam is constructed so that it stores (retains) water, or instead slows down (detains) the flow of water.

A dam that is constructed so that it stores (retains) water, rather than just slows down (detains) the flow of water may not be constructed unless the stored water will be put to beneficial use, and a permit to appropriate the water has been issued by the Department prior to construction. A dam that retains water without the stored water being put to beneficial use, may not be constructed at all. However, if the stored water will be put to beneficial use, then prior to construction, a permit to appropriate water must be obtained from the Department.

A dam that does not store water for beneficial use but instead is designed to only detain the flow of water, may be constructed without a permit from the Department. A typical detention dam has outlet features at grade so that water is released immediately, albeit at a slower rate. A detention dam only stores water during the time that is required to release the water completely through the outlet features.

There are several statutes that relate to the storage and appropriation of water for beneficial use. Under A.R.S. § 45-141, water from all sources flowing in natural channels, including floodwater, is subject to appropriation and beneficial use. Legal authority to store water may only be obtained if the stored water will be put to beneficial use. Arizona law does not allow "dead" storage, i.e., water stored without a beneficial use. Under A.R.S. § 45-151, beneficial uses of water include stockwatering and wildlife, but do not include floodwater or

sediment control. Under A.R.S. § 45-152 and 158, in order to appropriate water for beneficial use, an application must be filed with the Department, and construction may not begin until after the application has been approved. Under A.R.S. § 45-272.D, these provisions apply to stockponds.

Enclosed is a picture taken in February 2004 by the Department of earthen dams constructed in Whitewater Draw, which is in the vicinity of Leslie Creek Canyon. During a field visit, the Department observed numerous similar structures in the washes in this area, including Mesa Draw.

2. Your second set of questions concerns determinations of whether surface water is being illegally diverted, stored or used in violation of A.R.S. § 45-112. Specifically, you questioned how such determinations could be made in light of the ongoing general stream adjudications.

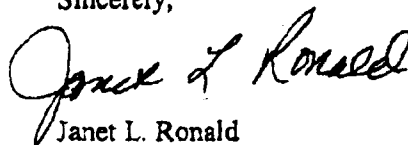
In Arizona, there are two general stream adjudications, one within the Gila River System and Source and the other within the Little Colorado River System and Source. These general stream adjudications will determine the nature, extent and relative priority of claimed water rights. The area in which the subject dams are located is not within either of these general stream adjudications.

Also, as we discussed, even if these dams were within a watershed that was being adjudicated, this matter does not involve a conflict of water rights. Rather, the allegation made to the Department was that water was being stored without the necessary legal authority in violation of A.R.S. § 45-112. This alleged illegal storage appears to capture water that would otherwise flow down Leslie Canyon Creek.

3. Your third set of questions concerns the "jurisdictional parameters" of the Dam Safety program. Whether a dam is subject to the jurisdiction of the Department is determined by statute and rule. Under A.R.S. § 45-1201(1) and A.A.C. R12-15-1203, a jurisdictional dam must satisfy certain height and storage criteria. Copies of the statute and the rule are enclosed.

We appreciate your questions regarding the Department's recent correspondence concerning the construction of earthen dams in the vicinity of Leslie Creek Canyon. Upon receiving information about possible violations of A.R.S. § 45-112, the Department routinely brings these violations to the attention of the County Sheriff and the County Attorney. See A.R.S. § 45-112(C). Involvement by local officials, even if formal action is not taken, has proven to be helpful on occasion in the past. Thank you for your concerns.

Sincerely,



Janet L. Ronald
Deputy Counsel

JLR/gsw

Enclosures

c: Liza Logan

MAGUIRE & PEARCE, PLLC

ATTORNEYS AT LAW

2999 North 44th Street • Suite 630 • Phoenix, Arizona 85018
Phone (602) 277-2195 • Fax (602) 277-2199

FACSIMILE TRANSMITTAL

TO: Scott Deeny

Arizona Department of Water Resources
Legal Division
Phone:
Fax: 602-771-8683

Date Sent: June 20, 2007

Number of Pages (including cover page): 8

Regarding:
Bar Boot Ranch

FROM:

Mike Pearce
Maguire & Pearce, PLLC
Phone: (602) 277-2198
Fax: (602) 277-2199
mpearce@mpwaterlaw.com

COMMENTS:

Scott,

As we discussed, here is our response to Mr. Johnson's May 17, 2007 letter.

- mike

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Lawrence Engineering

Water Resource and Dam Specialists

DATE: November 4, 2004
COMPLETED BY: Lawrence Engineering
RE: Bar Boot Ranch - Investigation of Structures

Background:

On November 3, 2003, the Arizona Department of Water Resources (Department) received a letter of concern from Mr. Peter Bennet, Owner of the 99 Bar Ranch near McNeal, Arizona. The Surface Water Rights Section and Office of Water Engineering were informed that several earthen structures had been constructed in the Mesa Draw subwatershed in Township 20 South and Range 28 East.

David Keadle and Thomas Whitmer of the ADWR visited the site with Mr. Stanearth, Ranch Foreman for the 99 Bar Ranch on February 9, 2004. Their report can be found in the ADWR files.

On September 21, 2004 the Department contracted with Lawrence Engineering to assist in determining the Dam Safety Jurisdictional status of these alleged violation structures. Contact was made with Joe Austin, Owner of the Bar Boot Ranch where the structures are located. On October 14, 2004 Dan Lawrence and Michael Lawrence of Lawrence Engineering accompanied David Keadle of the Department on a site visit and made cursory investigation of the structures on the property. During this visit we determined there were four or five structures that would need additional investigation in order to determine their jurisdictional status.

On November 4, 2004 we returned to further investigate these structures. We met Jim Tout, the Ranch Manager of the Bar Boot Ranch, and Mark Austin, brother of the owner Joe Austin, at the beginning of Turkey Creek Road and proceeded to the location of the structures with them.

Summary:

We visited each of the five structures discussed below and determined the height (by hand level survey) and surface area at the spillway elevation using a gps unit to map the area. Using the general formula of $1/3 H \times A$ we computed the storage capacity. Two structures were determined to be of jurisdictional size. More detailed inspections were completed for each of them. No further inspection was made on the three structures found to be too small for ADWR Dam Safety Jurisdiction.

DAMS OF JURISDICTIONAL SIZE:

Gate Tank

Location: SE ¼ NE ¼ Section 34 Township 20 South 28 East
Longitude 109.467, Latitude 31.6489999
Height: 22.8ft.
Surface Area at Spillway Crest: 33 acres --see figure--
Depth of Max. Storage at the Upstream Toe: 12ft.
Storage Capacity (1/3 height x surface area): 132 acre ft.

Given the above findings, we determined this structure to be a Jurisdictional Dam.

A more detailed inspection report with photos is attached. --see also figures--

Crow Tank

Location: NW ¼ SE ¼ Section 33 Township 20 South 28 East
Longitude 109.4869999, Latitude 31.644
Height: 38.5ft.
Surface Area at Spillway Crest: 6.5 acres* --see figures--
Depth of Max. Storage at the Upstream Toe: 29.3ft.
Storage Capacity (1/3 height x surface area): 63 acre ft.

Given the above findings, we determined this structure to be a Jurisdictional Dam.

* Given the height of the dam, it was only necessary to show the storage capacity to be greater than 15 acre feet. We did this by taking a point level with the spillway and drawing a triangle from the ends of the dam crest to create a very conservative estimate of surface area but still enough to show that it is of jurisdictional size.

A more detailed inspection report with photos is attached. --see also figures--

DAMS SMALLER THAN JURISDICTIONAL SIZE:

Lower Crow Tank

Location: SE ¼ SE ¼ Section 33 Township 20 South 28 East
Longitude 109.4849999, Latitude 31.64
Height: 18.6ft.
Surface Area at Spillway Crest: 4.7 acres
Depth of Max. Storage at the Upstream Toe: 14.2ft.
Storage Capacity (1/3 height x surface area): 22 acre ft.

Given the above findings, we determined this structure not to be a Jurisdictional Dam.

Lane Well

Location: NW ¼ NE ¼ Section 4 Township 21 South 28 East
Longitude 109.4959999, Latitude 31.637
Height: 17.6ft.
Surface Area at Spillway Crest: 3.6 acres
Depth of Max. Storage at the Upstream Toe: 17.6ft.
Storage Capacity (1/3 height x surface area): 21 acre ft.

Given the above findings, we determined this structure not to be a Jurisdictional Dam.

Apple Orchard

Location: SE ¼ NE ¼ Section 28 Township 20 South 28 East
Longitude 109.4842066, Latitude 31.6645064

Based on observation and comparison to the structures studied earlier, we determined this structure not to be a Jurisdictional Dam.

ATTACHMENTS

Location Map

Historic Gate Tank Dam

Gate Tank Dam Aerial Photo with Overlay

Gate Tank Dam Topography with Overlay

Crow Tank Dam Aerial Photo with Overlay

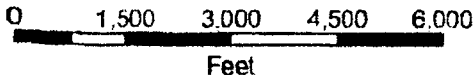
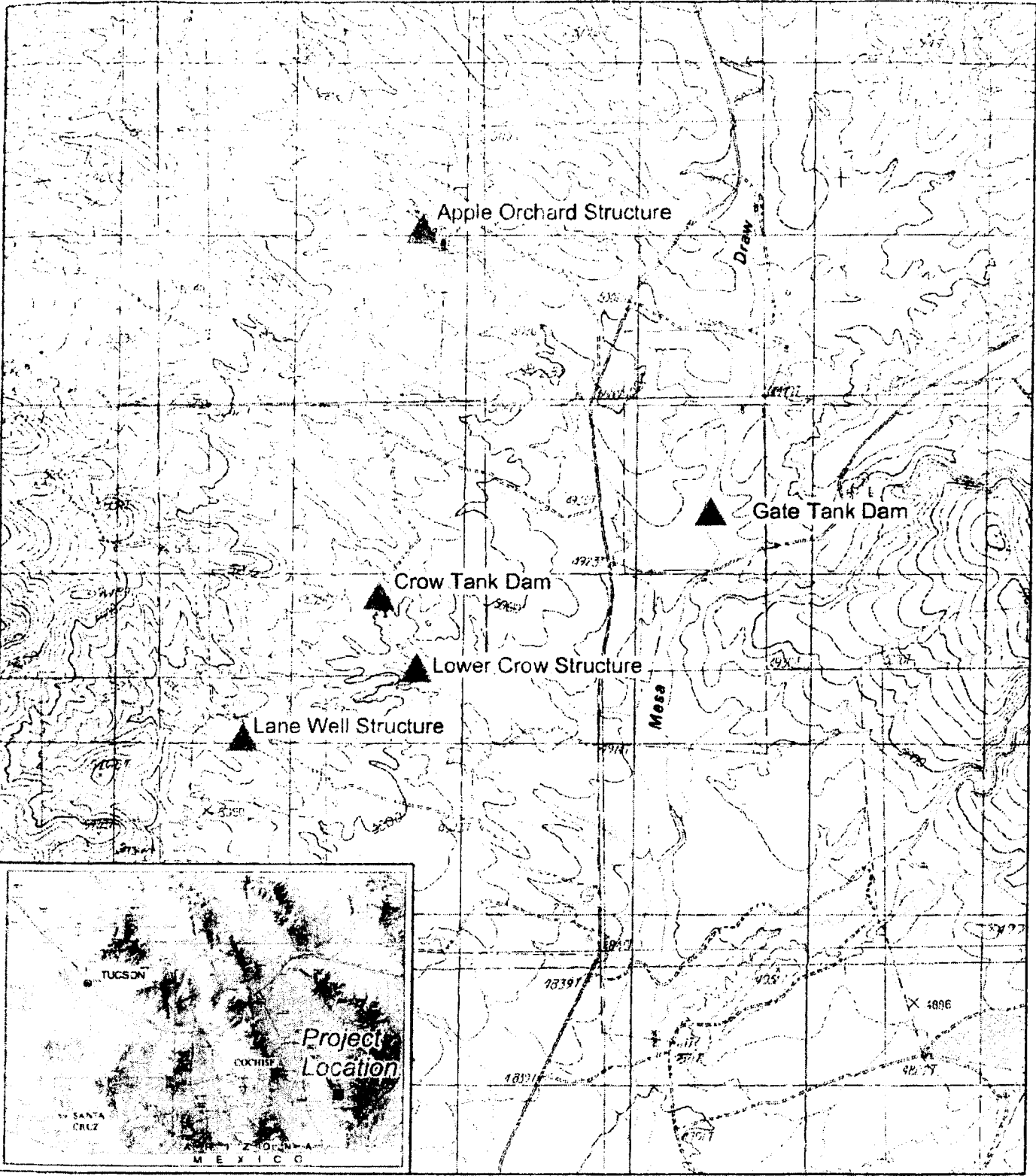
Crow Tank Dam Topography with Overlay

Embankment Dam Inspection Checklist/report – Gate Tank Dam

Photos of Gate Tank Dam

Embankment Dam Inspection Checklist/report – Crow Tank Dam

Photos of Crow Tank Dam



Feet

Source:
Imagery, USGS Quadrangle Bruno Peak

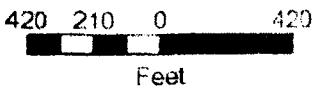
Location Map
Bar Boot Ranch
Investigation of Structures

Lawrence Engineering

location_map.pdf



Historic Gate Tank Dam



Source:
Imager, USGS DOQQ
Bruno Peak NE 1992/10/16
Elevation data USGS 10m DEM
Bruno Peak

Historic Gate Tank Dam
Bar Boot Ranch
Investigation of Structures

Lawrence Engineering
10/20/2014



83.03 acres

Gate Tank Dam



270135 0 270



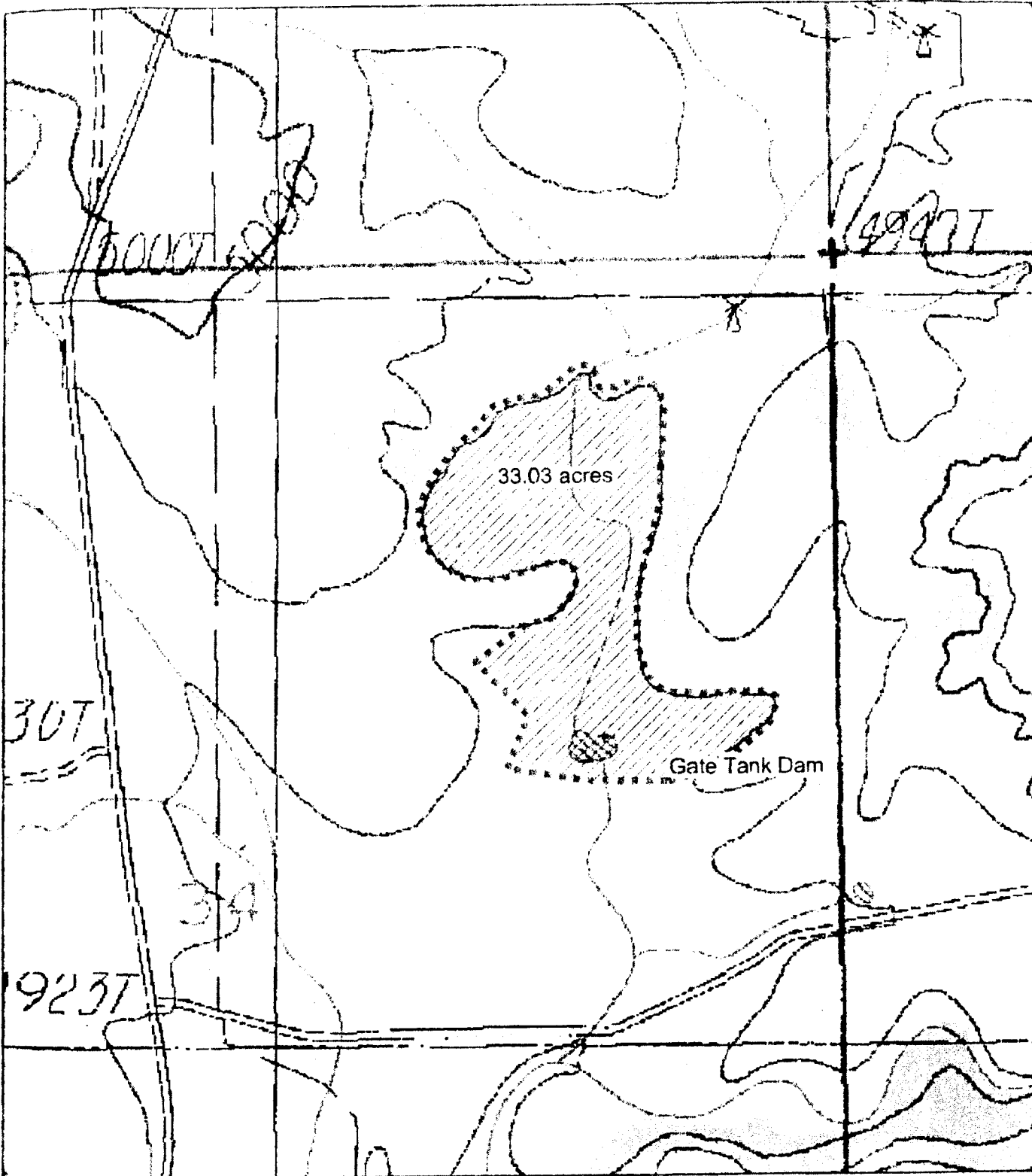
Feet

Source:
Imagery: USGS DOQQ
Bruno Peak NE 1992-10-16
Elevation data: USGS 10m DEM
Bruno Peak

Gate Tank Dam
Bar Boot Ranch
Investigation of Structures

Lawrence T. Johnson

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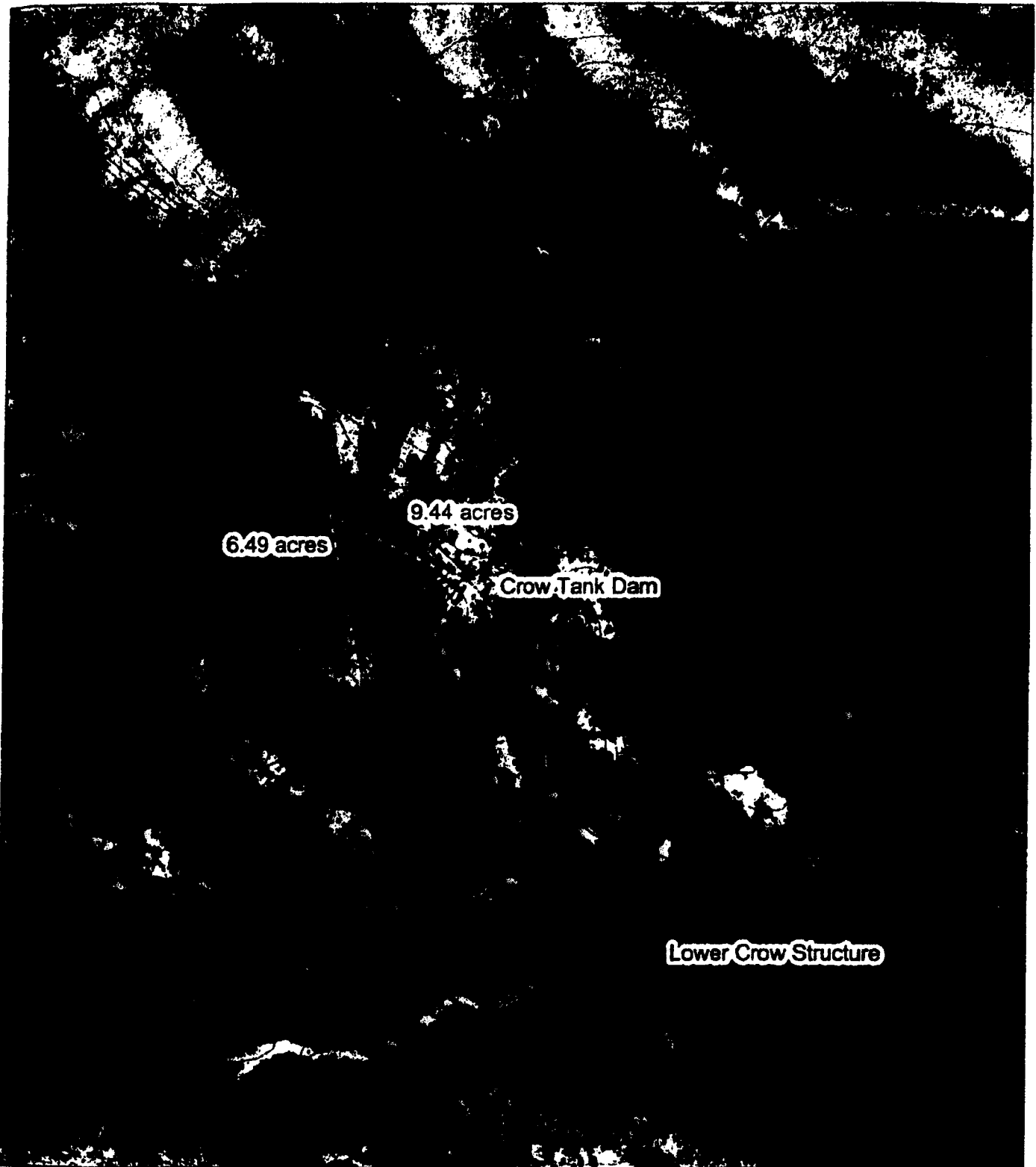
270135 0 270
Feet

Source:
Imagery, USGS DOQQ
Bruno Peak NE 1992/10/16
Elevation data: USGS 10m DEM
Bruno Peak

Gate Tank Dam
Bar Boot Ranch
Investigation of Structures

Lawrence Engineering

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6.49 acres

9.44 acres

Crow Tank Dam

Lower Crow Structure



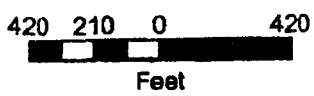
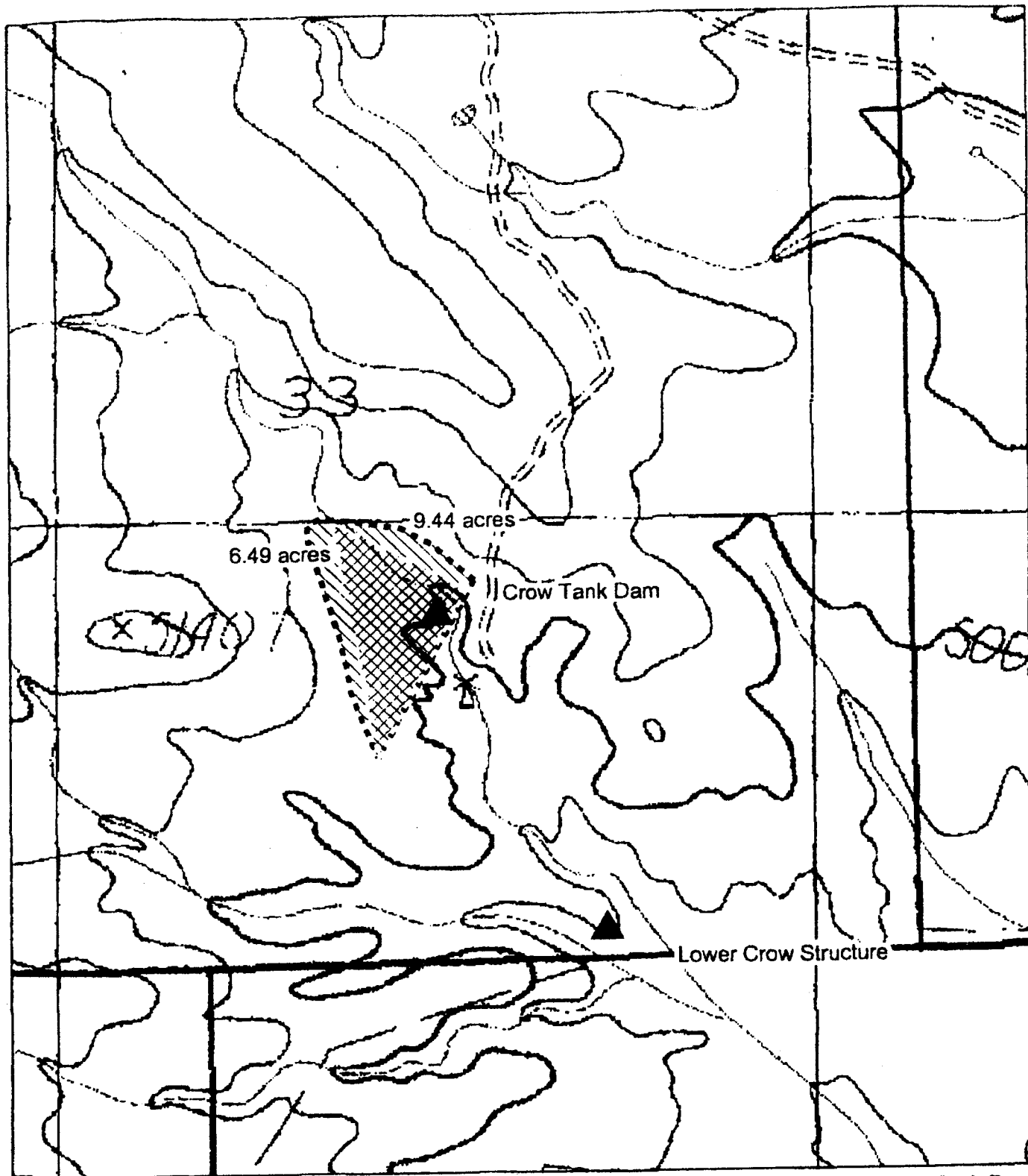
Feet

Source:
Imagery, USGS DOQQ
Bruno Peak NE 1992/10/16
Elevation data: USGS 10m DEM
Bruno Peak

Crow Tank Dam
Bar Boot Ranch
Investigation of Structures

Lawrence Engineering

location_map.pdf



Source:
Imagery, USGS DOQQ
Bruno Peak NE 1992/10/16
Elevation data: USGS 10m DEM
Bruno Peak

Crow Tank Dam
Bar Boot Ranch
Investigation of Structures

Lawrence Engineering
location_map.pdf

EMBANKMENT DAM INSPECTION CHECKLIST/REPORT

DAM NO.: NONE		DAM NAME: GATE TANK		TYPE: Earth		NOT A P P L I C A T E	NO	YES	MONITOR	REPAIR	INVESTIGATE
CONTACTS: Joe Austin, Jim Tout			REPORT DATE: November 4, 2004								
INSPECTED BY: Dan Lawrence & Mike Lawrence			DATE: November 4, 2004								
REVIEWED BY:			DATE:	PAGE 1 of 3							
STORAGE LEVEL: Empty			TOTAL FREEBOARD: 10.1 ft.	PHOTOS? YES							
Comments											

UPSTREAM SLOPE - 3:1							
CREST - Slopes in upstream direction							
a. Settlements, slides, depressions?	Soil placed unevenly			X	X		
b. Misalignment?	Alignment is semi straight			X	X		
c. Longitudinal/Transverse cracking?			X				
d. Animal burrows?	A few noted			X	X		
e. Adverse Vegetation?	Only vegetation is tumbleweeds			X	X		
f. Erosion?	Up to 6 in. deep			X	X		
UPSTREAM SLOPE - 3:1							
a. Erosion?	Up to 8 in. deep			X	X		
b. Inadequate ground cover?	Only vegetation is tumbleweeds			X	X		
c. Adverse vegetation?	Tumbleweeds			X	X		
d. Longitudinal/Transverse cracking?			X				
e. Inadequate riprap?	None		X				
f. Stone deterioration?		X					
g. Settlements, slides, depressions, bulges?			X				
h. Animal burrows?	A few noted			X	X		
DOWNSTREAM SLOPE - 2:1 - soft fill on surface							
a. Erosion?	Up to 12 in. in soft soil			X	X		
b. Inadequate ground cover?	Only vegetation is tumbleweeds			X	X		
c. Adverse vegetation?	Tumbleweeds			X	X		
d. Longitudinal/Transverse cracking?			X				
e. Inadequate riprap?	None	X					
f. Settlements, slides, depressions, bulges?	Soft soil on most of the slope		X				
g. Soft spots or boggy areas?				X	X		
h. Movement at or beyond toe?			X				
i. Animal burrows?	A few noted			X	X		

N / A	N O	Y E S	M O N	R E P	I N V
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RAINAGE-SEEPAGE CONTROL - NONE

a. Internal drains flowing?	Est. Left gpm; Est. Right gpm	X					
b. Boils at or beyond toe?		X					
c. Seepage at or beyond toe?	Estimated gpm	X					
d. Does seepage contain fines?		X					

ABUTMENT CONTACTS

a. Erosion?	Some Erosion of soft soil			X	X		
b. Differential movement?			X				
c. Cracks?			X				
d. Settlements, slides, depressions, bulges?		X					
e. Seepage?	Est. Left gpm; Est. Right gpm			X	X		
f. Animal burrows?	A few noted						

OUTLET WORKS-CONDUIT - NONE

EMERGENCY SPILLWAY-APPROACH CHANNEL Unlined, Has not flowed

a. Eroding or backcutting?			X				
b. Sloughing?			X				
c. Restricted by vegetation?			X				
d. Obstructed with debris?			X				
e. Silted in?			X				

EMERGENCY SPILLWAY-CONTROL STRUCTURE

c. Spillway is unlined:				X			
1. Are slopes eroding?	Some slight erosion due to rain		X				
2. Are slopes sloughing?				X	X		
3. Is crest eroding?	Some slight erosion due to rain		X				
d. Is weir in poor condition?							
e. Where is control structure?	At right abutment						

EMERGENCY SPILLWAY - CHANNEL Unlined

a. Obstructions or restrictions?			X				
d. If an unlined channel, does it show:				X			
1. Erosion?	Due to rain		X				
2. Slopes sloughing?			X				
3. Poorly protected w/ vegetation/riprap?							

GATE TANK DAM INSPECTION REPORT		PAGE 3 of 3	DAM NO.:																					
INSPECTED BY: Dan Lawrence & Mike Lawrence		DATE: November 4, 2004																						
Item	Comments					<table border="1"> <tr> <td>N</td> <td>N</td> <td>Y</td> <td>M</td> <td>R</td> <td>I</td> </tr> <tr> <td>/</td> <td>O</td> <td>E</td> <td>O</td> <td>E</td> <td>N</td> </tr> <tr> <td>A</td> <td></td> <td>S</td> <td>N</td> <td>P</td> <td>V</td> </tr> </table>	N	N	Y	M	R	I	/	O	E	O	E	N	A		S	N	P	V
N	N	Y	M	R	I																			
/	O	E	O	E	N																			
A		S	N	P	V																			

EMERGENCY SPILLWAY - OUTLET CHANNEL Unlined						
a. Eroding or backcutting?			X			
b. Sloughing?			X			
c. Obstructed or restricted?			X			

RESERVOIR						
a. High water marks?	Old marks. 6ft. below spillway			X		
b. Erosion/Slides into pool area?				X		
c. Sediment accumulation?	Old reservoir sediment			X		
d. Floating debris present?				X		
e. Depressions, sinkholes or vortices?				X		
f. Low ridges/saddles allowing overflow?				X		
g. Structures below dam crest elevation?				X		

CONDITION SUMMARY / LICENSE / EAP / NEXT INSPECTION						
a. Any safety deficiencies? Describe:	See comments below					X
b. ADWR license required?						X
c. Any Statute or Rule violations? Describe and list required action:	See comments below					X

ADDITIONAL COMMENTS AND RECOMMENDATIONS:

This dam is a recent "repair" of a smaller historic structure at this location. 1992 aerial photos show a much smaller structure. The old stream channel is about 7.5 feet below the rest of the area. The embankment was pushed up from the reservoir and slopes are generally 2:1 downstream and 3:1 upstream. The owner indicated that there was no foundation treatment and no moisture added to the soil during "compaction." The crest is about 20 feet wide. The dam is 22.8 feet high from the low point in the historic channel to the spillway elevation. The surface area of the reservoir is about 33 acres. The storage depth at the upstream toe is approximately 12 feet. Using $1/3 H \times A$, the storage capacity is 132 acre feet. This dam is large enough to be within ADWR Dam Safety jurisdiction as defined by ARS § 45-1201. Construction of a jurisdictional dam without ADWR approval is a violation of ARS § 45-1202A. ARS § 45-1217 outlines the procedures the Department may take. The owner must reduce the size of the dam (storage capacity) or register it with ADWR.

The Downstream Potential Hazard Class is Very Low since the failure of the dam would be unlikely to result in loss of human life and would produce very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long term lease (AAC R12-15-1206B2a).

Bar Boot Ranch – Gate Tank
Site visit conducted November 4, 2004
Photographers: Dan Lawrence & Mike Lawrence



PHOTO NUMBER: 34

PHOTO DESCRIPTION: Downstream slope of Gate Tank from the east



PHOTO NUMBER: 25

PHOTO DESCRIPTION: View of reservoir and upstream slope of embankment from spillway channel.

Bar Boot Ranch – Gate Tank
Site visit conducted November 4, 2004
Photographers: Dan Lawrence & Mike Lawrence



PHOTO NUMBER: 30
PHOTO DESCRIPTION: Gate Tank reservoir from the right side of the dam



PHOTO NUMBER: 32
PHOTO DESCRIPTION: Looking downstream from the spillway of Gate Tank



PHOTO NUMBER: 31
PHOTO DESCRIPTION: Crest and downstream slope from right abutment

EMBANKMENT DAM INSPECTION CHECKLIST/REPORT

DAM NO.: NONE		DAM NAME: CROW TANK		TYPE: Earth		NOT APPLICABLE	NO	YES	MONITOR	REPAIR	INVESTIGATE
CONTACTS: Joe Austin, Jim Tout			REPORT DATE: November 04, 2004								
INSPECTED BY: Dan Lawrence & Michael Lawrence			DATE: November 04, 2004								
REVIEWED BY:			DATE:	PAGE 1 of 3							
STORAGE LEVEL: Empty			TOTAL FREEBOARD: 5 ft.	PHOTOS? YES							
Comments											

UPSTREAM SLOPE - 3:1							
a. Settlements, slides, depressions?			X				
b. Misalignment?			X				
c. Longitudinal/Transverse cracking?			X				
d. Animal burrows?				X	X		
e. Adverse Vegetation?			X				
f. Erosion?			X				
UPSTREAM SLOPE - 3:1							
a. Erosion?	Rillets up to 6 in. deep			X	X		
b. Inadequate ground cover?	Medium grass growth			X	X		
c. Adverse vegetation?			X				
d. Longitudinal/Transverse cracking?			X				
e. Inadequate riprap?		X					
f. Stone deterioration?		X					
g. Settlements, slides, depressions, bulges?	Slope is misaligned - likely constructed that way			X	X		X
h. Animal burrows?	A few burrows throughout slope			X	X		
DOWNSTREAM SLOPE - 2:1							
a. Erosion?	Rillets up to 8 in. deep			X	X		
b. Inadequate ground cover?	Little to no cover			X			
c. Adverse vegetation?			X				
d. Longitudinal/Transverse cracking?			X				
e. Inadequate riprap?		X					
f. Settlements, slides, depressions, bulges?			X				
g. Soft spots or boggy areas?		X					
h. Movement at or beyond toe?			X				
i. Animal burrows?	A few burrows throughout the slope			X	X		

CROW TANK DAM INSPECTION REPORT		PAGE 3 of 3	DAM NO.: NONE								
INSPECTED BY: Dan Lawrence & Mike Lawrence			DATE: November 4, 2004			N		Y	M	R	I
Item	Comments					/	N	E	O	E	N
						A	O	S	N	P	V

EMERGENCY SPILLWAY - OUTLET CHANNEL Unlined											
a. Eroding or backcutting?								X			
b. Sloughing?								X			
c. Obstructed or restricted?								X			

RESERVOIR											
a. High water marks? Appear to be about 10 feet deep									X		
b. Erosion/Slides into pool area?								X			
c. Sediment accumulation?								X			
d. Floating debris present?								X			
e. Depressions, sinkholes or vortices?								X			
f. Low ridges/saddles allowing overflow?								X			
g. Structures below dam crest elevation?								X			

CONDITION SUMMARY / LICENSE / EAP / NEXT INSPECTION											
a. Any safety deficiencies? Describe: See comments below								X		X	
b. ADWR License required?								X			
c. Any Statute or Rule violations? Describe and list required action: See comments below								X	X		

ADDITIONAL COMMENTS AND RECOMMENDATIONS:

The owner and his representative both indicated that the structure was compacted without water. This silty, sandy, gravel material appeared fairly stable. They also indicated that there had been no foundation treatment. The fill was placed on the existing ground. They said "the embankment is "designed" to drain quickly." There is no outlet through the embankment. This structure is of jurisdictional size! The height is 38.5 ft. The storage capacity is greater than 15 acre feet. (A simple triangular shaped reservoir surface area was 6.5 acres. The maximum depth of storage available in the reservoir was 29 ft. Using 1/3HxA the capacity is 62.8 acre feet.)

The Downstream Potential Hazard Class is Very Low since the failure of the dam would be unlikely to result in loss of human life and would produce very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long term lease (AAC R12-15-1206B2a).

This structure is in violation of ARS § 45-1202A. ARS § 45-1217 outlines the procedures the Department may take. The owner must reduce the size of the dam (height & storage capacity) or register it with ADWR.

The easiest solution would be for the owner to lower the spillway to an elevation 24 ft. above the lowest point at the downstream toe. We believe this would result in a reservoir storage capacity of less than 50 acre feet. This action would remove the structure from State Dam Safety Jurisdiction.

Bar Boot Ranch -- Crow Tank

Site visit conducted November 4, 2004

Photographers: Dan Lawrence & Mike Lawrence

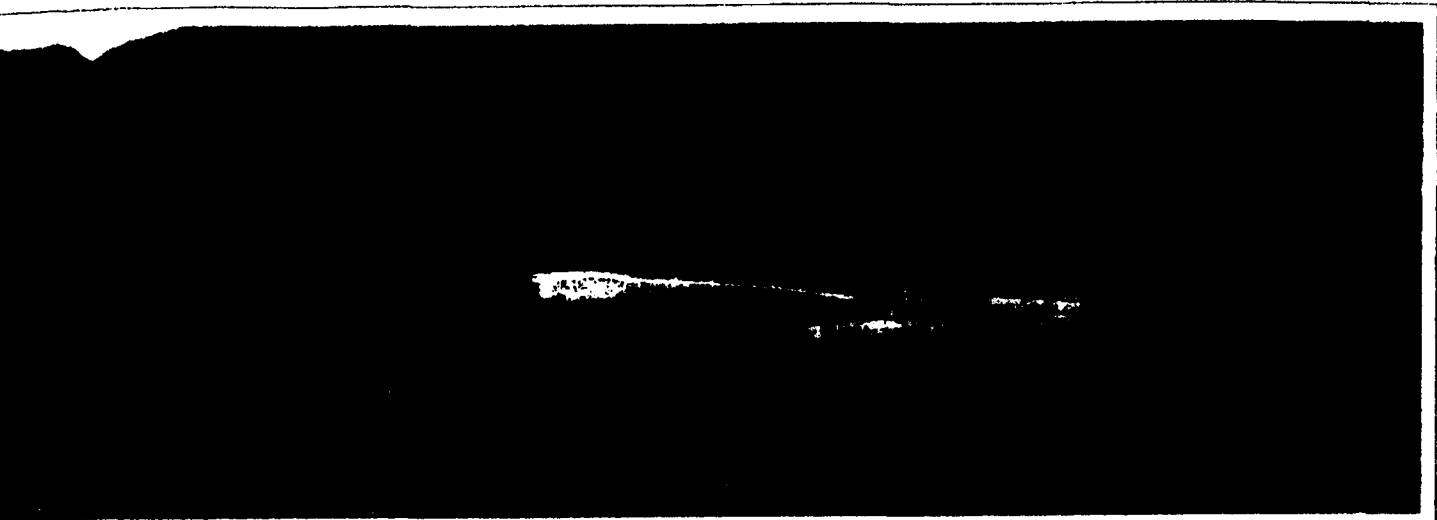


PHOTO NUMBER: 11

PHOTO DESCRIPTION: View from the north of Crow Tank



PHOTO NUMBER: 03

DESCRIPTION: Looking downstream from atop Crow Tank

Bar Boot Ranch – Crow Tank

Site visit conducted November 4, 2004

Photographers: Dan Lawrence & Mike Lawrence

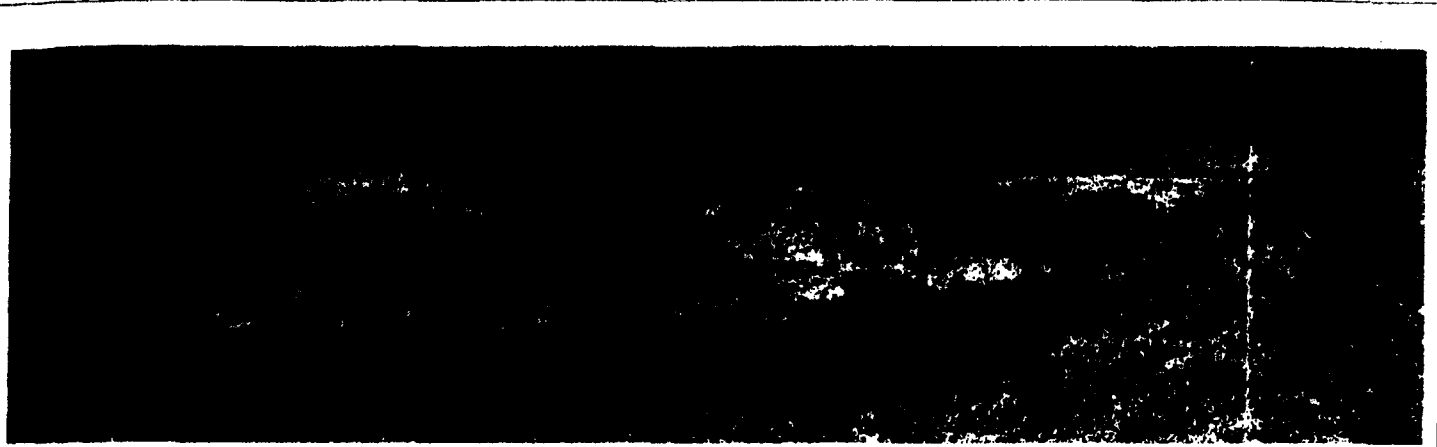


PHOTO NUMBER: 19, 20, 21

PHOTO DESCRIPTION: reservoir seen from right abutment at dam crest.

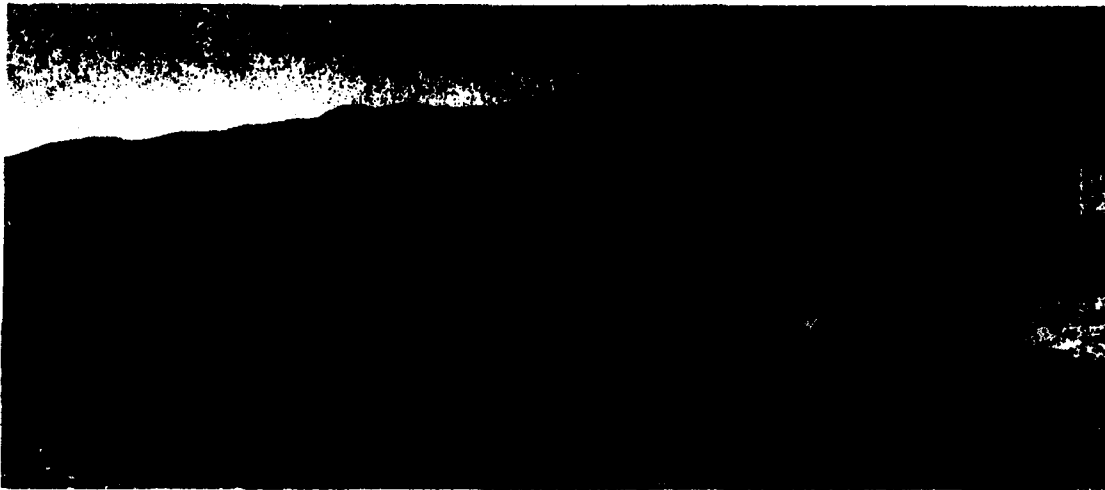


PHOTO NUMBER: 21, 22

PHOTO DESCRIPTION: Upstream slope and spillway from mid point of dam crest.

RECEIVED BY

NOV 08 2004

RUSING & LOPEZ

CHRIS —

HERE IS THE COST-SHARE AGREEMENT
WE SPOKE ABOUT ON 11/1/04 WHICH SUPPORTS
THE CONSTRUCTION OF "EROSION CONTROL
STRUCTURES"

I STILL HAVE NO WORD ABOUT THE STATUS
OF THE PURCHASE AGREEMENT/CONSERVATION
EASEMENT ON BARBOOT RANCH. I WILL LET
YOU KNOW AS SOON AS I LEARN SOMETHING.

Bill Radke



U.S. Fish & Wildlife Service

William R. Radke
Refuge Manager
San Bernardino/Leslie Canyon NWR

P.O. Box 3509
7628 North Hwy. 191
San Gabriel Road
Douglas, AZ 85608

520/364 2104 x101
520/364 2130 Fax 520/508 7180 Cell
Bill_Radke@fws.gov

FWS Agreement No: 1448-20181-____-_____

Charge Code: _____

Amount: \$30,000.00

CHALLENGE COST-SHARE AGREEMENT

between

U.S. Fish and Wildlife Service
500 Gold Avenue SW, Suite 5108
P.O. Box 1306
Albuquerque, New Mexico 87103-1306

and

Bar Boot Ranch L.L.C.
Josiah and Valer Austin, Landowners
c/o 12626 E. Turkey Creek Road
Pearce, Arizona 85625-6166

I. PURPOSE AND AUTHORITY

This Challenge Cost-Share Agreement between the U.S. Fish and Wildlife Service (hereafter referred to as the "Service"), and Josiah and Valer Austin, owners of the BarBoot Ranch L.L.C. (hereafter referred to as the "Cooperator") is hereby entered into under the authority of the Fish and Wildlife Coordination Act, 16 U.S.C. 661-667(e), and the provisions of the Interior and Related Agencies Appropriation Act, Public Law 103-332 (Department of the Interior and Related Agencies Appropriations Act 1995). The purpose of this agreement is to implement watershed restoration activities on private land that are intended to stabilize and help restore habitat conditions in the Leslie Canyon watershed as much as possible, to protect and enhance populations of native plants and animals, to promote protection, down-listing, and de-listing of federally protected species, and to avoid deterioration to preclude future listings. Management of Leslie Canyon National Wildlife Refuge is intended to complement the habitat restoration efforts on adjacent private lands, as well as to augment efforts to increase and optimize biodiversity and sustainability of regional ecosystems.

The focus of this project is to construct and repair earthen erosion control structures in a variety of locations within the watershed upstream from Leslie

Canyon National Wildlife Refuge. The structures will include a variety of sizes and styles depending on the configuration of the site, but will generally consist of earthen berms constructed of on-site materials. Each structure will function as a filter, helping slow water resulting from annual floods and spreading excessive water during these flood events. The structures will eliminate scouring and damaging erosion by absorbing excessive energy, slowing the water, and allowing suspended silt from upstream areas to settle out. This silt, trapped and collected behind the structures, will collectively provide a secure base upon which native grasses and other plants will reestablish themselves. The structures will also allow flood water to better infiltrate the aquifer, benefitting local vegetation and ultimately helping recharge the downstream perennial creek on the refuge.

II. SCOPE OF WORK

For the period hereinafter set forth, the Cooperator and the Service will provide the necessary personnel, materials, services, facilities, funds and otherwise perform all things necessary for, or incidental to, the performance of this cost-share agreement. Specifically, the parties to this agreement will:

A. The Service will:

1. Reimburse the Cooperator up to \$30,000.00 for actual costs incurred as provided in the attached financial project plan. Payment will be made upon receipt of itemized invoices furnished by the Cooperator.

B. The Cooperator shall:

1. Complete a total of \$60,000.00 worth of watershed restoration activities, which may include any combination of materials, equipment, fuel, and labor, to construct erosion control structures as described under I. Purpose and Authority. Work will be conducted on the Bar Boot Ranch L.L.C., private property owned by Josiah and Valer Austin (\$30,000.00 of this total effort will be reimbursed by the Service). The Bar Boot Ranch L.L.C. project site includes about 14,000-acres of privately owned lands in Cochise County, Arizona, portions of which are located within Township 20 South, Range 28 East, Sections 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 33, 34, 35, 36; Township 20 South, Range 29 East, Sections 19, 31; Township 21 South, Range 28 East, Sections 1, 2, 3, 4, 12.

2. Be responsible for invoicing the Service for project expenditures outlined in below in III Financial Administration

III. FINANCIAL ADMINISTRATION

The Cooperator will provide \$30,000.00 and the Service will provide \$30,000.00 toward the total project cost of \$60,000.00 (itemization included herein as Attachment A).

The Service will obligate to the Cooperator its portion of the cost-share under this agreement, and shall reimburse the Cooperator up to \$30,000.00 for actual costs incurred in completion of this project. The Cooperator shall invoice the Service, either monthly or upon completion of the project, for actual costs incurred. Invoices shall consist of a statement and itemized receipts submitted to the Service Project Officer identified in Section V below for review and recommendation for payment to be forwarded to the Service Contracting Officer for approval and submission for disbursement. The Cooperator will expend its portion of the cost-share by contributing a combination of labor salaries, purchase of materials, equipment, and fuel.

IV. PERIOD OF PERFORMANCE

- A. This agreement shall be in effect for 10 years beginning on the date of last signature below.
- B. The work identified in Section II above will be completed no later than 12 months from the agreement effective date beginning on the date of last signature below. It may be modified, extended, or terminated at any time by either party by giving 15 days written notice or mutual agreement of the parties. Any change warrants a formal amendment to the agreement signed by the parties.

V. PROJECT OFFICERS

- | | |
|---|--|
| A. U.S. Fish and Wildlife Service
William R. Radke
Refuge Manager
P.O. Box 3509
Douglas, AZ 85608
(520) 364-2104x101
Fax 520 364-2130 | B. Bar Boot Ranch, L.L.C.
Josiah Austin
Landowner/Manager
12626 E. Turkey Creek Road
Pearce, AZ 85625-6166
(520) 824-3566
Fax 520 824-3476 |
|---|--|

Bill_Radke@fws.gov

Justin@elcoronadoranch.net

VI. SPECIAL PROVISIONS

- A. The scope of work and terms of the agreement may be modified at any time by mutual consent of the signatory parties. No change to this agreement shall be binding upon the Service or Cooperator unless and until reduced to writing and signed by both/all parties.
- B. The parties to this agreement agree to be responsible for damages to their own property and injuries to their own employees/volunteers, except for damages/injuries resulting from the fault or negligence of the other party. Any claim for damages to property or persons made against the Government will be pursued in accordance with the provision of the Federal Tort Claims Act.
- C. The Cooperator shall give the Service, the Comptroller General, or any other auditor selected by the Service, through any authorized representative, access to and the right to examine all books, papers, or documents related to this agreement.
- D. The Cooperator shall comply with all Federal statutes relating to non-discrimination. These include but are not limited to Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, handicap, or national origin.
- E. No member of, or Delegate to, Congress shall be admitted to any share or part of this agreement, or any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.
- F. The Cooperator shall obtain the prior review and approval of the Service for all printed and other informational materials distributed to the public by the Cooperator in connection with this agreement.
- G. If the Cooperator is an individual or a business (not to include Corporations), the Cooperator will provide his/her Taxpayer Identification Number to the Service upon final execution of this agreement. Taxpayer Identification Number (TIN) means the number required by the Internal Revenue Service (IRS) to be used in reporting income tax and other returns. The Service is required to obtain this information to process any

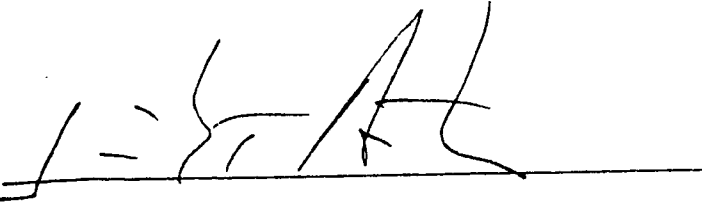
payment(s) to the Cooperator amounting to \$600.00 or more as a result of this agreement. This information will be furnished to the IRS as required by the Tax Reform Act of 1986 and may be shared with the Department of Justice.

- H. The Cooperator guarantees ownership of the above-described land and warrants that there are not outstanding rights which interfere with this wildlife management agreement. A change of ownership shall not change the terms of this agreement which shall remain in effect on the described property for the duration of the period specified in Section IV below. The Cooperator agrees to notify the Service of planned or pending changes of ownership at least 30 days in advance.
- I. The Cooperator retains all rights to control trespass and retains all responsibility for taxes, assessments, and damage claims.
- J. The Cooperator agrees to allow the Service (its members, agents, or assignees) access to the project site relative to this specific project, upon prior notification by the Service, for fish and wildlife habitat restoration purposes and to inspect work completed relative to this project. All Service members, agents, and assignees will be in uniform or will have proper identification as government employees or agents.
- K. The Service will not be held liable in any way to restore the property to its prior condition upon termination or expiration of this agreement.

VII. CERTIFICATION ADDENDUM

By signature below, the Cooperator affirms that no less than 50 percent of the total cost of the project will be contributed by the Cooperator and that no portion of the Cooperator's contribution is of Federal origin. Cost share value can be derived from labor, materials, equipment, land, water, and/or cash.

IN WITNESS WHEREOF, the parties hereto have caused this Challenge Cost-Agreement to be executed as of the date of last signature below.



Josiah Austin, Landowner/Manager
Bar Boot Ranch, L.L.C.

Date

9/24/03

Contracting Officer, FWS Warrant #29031
U.S. Fish and Wildlife Service, Region 2

Date

ATTACHMENT A

**ITEMIZATION OF CONTRIBUTIONS
Bar Boot Ranch Habitat Restoration
Cooperative Conservation Challenge Cost Share Agreement**

A. SERVICE CONTRIBUTION

TOTAL

Funds for the purchase of any combination of labor, materials, equipment (including rental), and fuel for the construction of erosion control structures.

TOTAL SERVICE CONTRIBUTION

\$30,000.00

B. COOPERATOR CONTRIBUTION

Funds for the purchase of any combination of labor, materials, equipment (including rental), and fuel for the construction of erosion control structures.

TOTAL COOPERATOR CONTRIBUTION

\$30,000.00

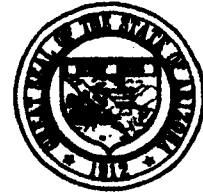
PROJECT TOTAL

\$60,000.00

Total **Service** Share \$30,000.00 and 50% of Project Value
Total **Cooperator** Share \$30,000.00 and 50% of Project Value

**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING**

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone (602) 771-8649
Fax (602) 771-8686



June 20, 2006

JANET NAPOLITANO
Governor

HERB GUENTHER
Director

**CERTIFIED MAIL (7005 1160 0003 7583 9603)
RETURN RECEIPT REQUESTED**

Mr. Joe Austin
Bar Boot Ranch, L.L.C.
12626 East Turkey Creek Road
Pearce, Arizona 85625

**Subject: Gate Tank (02.08) and Crow Tank (02.09) Dams
May 10, 2006 Inspection Reports**

Dear Mr. Austin:

Pursuant to Arizona Revised Statutes (ARS) § 41-1009, enclosed are copies of the May 10, 2006 inspection reports completed by the Department pertaining to the Gate Tank and Crow Tank Dams.

The Department is still considering what action it will take regarding these dams. After the completion of inspections of the remaining structures on your property the week of June 26th, the Department will notify you of its intended action.

If you have any questions regarding this matter, please contact me at 602-771-8649.

Sincerely,

A handwritten signature in cursive script that reads "J. Darrell Jordan".

J. Darrell Jordan
Manager

Enclosures

CC: Alisa Schiebler, Deputy Counsel, ADWR Office of Legal Services
Elizabeth Logan, Manager, ADWR Water Management Support Section

**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING**

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602 771-8649
Fax 602 771-8686



Janet Napolitano
Governor

Herbert R. Guenther
Director

NOTICE OF INSPECTION

June 12, 2006

Bar Boot Ranch, L.L.C.
Attn: Mr. Joe Austin
12626 East Turkey Creek Road
Pearce, Arizona 85625

Re: Notice of Inspection

Dear Mr. Austin:

You are hereby given notice that the Arizona Department of Water Resources ("Department") intends to inspect all earthen structures constructed on your property in the Mesa Draw and Whitewater Draw subwatersheds (Township 20 South, Range 28 East, Sections 33 & 34) in Cochise County, except the two structures the Department already inspected on May 10, 2006.

You or your representative may be present during the inspections. The inspections will commence at 10:00 a.m. on June 26, 2006 and continue on June 27th and June 28th, if necessary. The inspections are authorized by Arizona Administrative Code R12-15-1219(F)(1) and Arizona Revised Statutes § 45-105(B)(8). The purpose of the inspections is to verify dam safety jurisdictional status of any and all structures on your property and to investigate based upon a complaint alleging impoundments or uses of surface water that may violate Title 45, Chapter 1, Arizona Revised Statutes.

One or more authorized Department personnel will conduct the inspection in a manner that will minimize disruptions to on-going operations.

If you have any questions regarding this matter, please contact me at 602-771-8649.

Sincerely,

A handwritten signature in cursive script that reads "J. Darrell Jordan".

J. Darrell Jordan
Manager

Registration No. _____ Application/Right No. _____ Permit/License No. _____
Person JOE ALSTIN / BAR BROT Address _____ Phone _____

ARIZONA DEPARTMENT OF WATER RESOURCES
500 North Third Street, Phoenix, Arizona 85004
NOTIFICATION OF INSPECTION AND DUE PROCESS RIGHTS

Compliance with A.R.S. § 41-1009, this document is being provided to you by the Arizona Department of Water Resources (ADWR) to inform you of your rights concerning this inspection of the following described property:

BAR BROT RANCH, SECTIONS 9, 10, 14, 16, 18, 20, 25, R28E
on the following date(s): MAY 10, 2006

You must present this document for your signature, or the signature of an authorized representative, indicating that you have been notified of your rights concerning this inspection and have read both sides of this document. If you decline to sign, or signature is illegible, ADWR must note that fact on this document and the inspection will proceed.

ADWR Inspector. This inspection is being conducted by an inspector for ADWR who must present photo identification upon entry to the inspected property, and whose name and phone number are indicated below. The ADWR inspector will be available to answer questions regarding this inspection.

Name: DAVID KEADLE THOMAS WITMER Phone: (602) 771-8500

Purpose of Inspection. This inspection is being conducted by an ADWR inspector either for the purpose of issuing a permit/license, or determining compliance with permit/license requirements.

Legal Authority. This inspection is being conducted under the following legal authority: AR 5 @ 45-1201

Fees. The following inspection fees apply and will be billed separately: _____

Ombudsmen. Questions regarding due process rights described in paragraph 10 on the reverse should be directed to one of the following Ombudsmen:

(ADWR): PATRICIA HILL Phone: (602) 771-8425

(Arizona): _____ Phone: _____

(continued on reverse)

Signature. This signature below is made by either the regulated person or the regulated person's authorized representative who has been notified of inspection and due process rights relating to this inspection and who has read both sides of this Notification.

(please print): James E. Tout

Signature: [Signature] Title: Mgr

Signature Declined. The regulated person or the regulated person's authorized representative indicated below was present during the inspection but declined to sign this Notification.

Title: _____

Signature Unavailable. Neither the regulated person nor the regulated person's authorized representative was present during this inspection. ADWR inspector contacted or attempted to contact the regulated person by the following method: _____

ARIZONA DEPARTMENT OF WATER RESOURCES

ADWR Inspector: [Signature] Date: 6-10-06
(SIGNATURE)

Photo identification presented: [Signature]
Photo provided prior to inspection to: JAMES TOUT Time: 10:00 AM

**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING – DAM SAFETY SECTION
DAM SAFETY INSPECTION REPORT**

The checklist should be completed. Repair is required when obvious problems are observed. Monitoring is recommended if there is a potential for a problem to future. Investigation is necessary if the reason for the observed problem is not obvious.

99	DAM NAME: CROW TANK	TYPE: Earth	PURPOSE: Stockwatering	NOT APPLICABLE	NO	YES	MONITOR	REPAIR	INVESTIGATE
CONTACT(S): JOE AUSTIN, Owner ; JIM TOUT, Ranch Manager			REPORT DATE: 5-15-06						
INSPECTED BY: David Keadle, Thomas Whitmer			INSPECTION DATE: 5-10-06						
APPROVED BY: Not necessary for low hazard dams			DATE:						
DAM CREST ELEVATION: Unknown		DESIGN SPILLWAY CREST ELEVATION: Unknown							
TOTAL FREEBOARD (FT): Unknown		MEASURED TOTAL FREEBOARD (FT): 3.0							
TORY DAM HEIGHT (FT): 41.7		MAXIMUM EMBANKMENT HEIGHT (FT): 44.7							
CREST LENGTH (FT): 923	UPSTREAM SLOPE: 3:1	DOWNSTREAM SLOPE: 1.5:1							
CREST WIDTH (FT): 18	GPS Lat: 31°38'42.501" Long: 109°29'12.363"	WATER RIGHTS: NONE							
AREA (AC): 9.4 **	RSRVR. STORAGE (AC-FT): 79.9	MAX. STORAGE (AC-FT):							
DESIGN FLOOD / SAFE FLOOD-PASSING CAPACITY: Unknown									
VOIR LEVEL DURING INSPECTION: DRY			PHOTOS: Yes	Page 1 of 6					

COMPLIANCE CHECKLIST

CONDITION SUMMARY / LICENSE / EAP / NEXT INSPECTION					
Recorded downstream hazard: _____ Should hazard be revised? Recommend Very Low Hazard.				✓	
High Hazard, estimate downstream persons-at-risk (PAR): _____ Is there a significant increase since the last inspection?	✓				
Recorded size: _____ Should size be revised? Recommend Small size		✓			
Safety deficiencies? Describe: None observed, dam is operating without a license.		✓			
Statute or Rule violations? Describe and list required action: A.R.S. 45-1202.A. which states that it is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the Director. No water rights exist for this impoundment.			✓		✓
Storage level on License: _____ Should level be revised? Unregistered dam-license required.	✓				
License violations? Describe and list required action: Unregistered dam-license required.			✓		✓
Expiration of current License: _____ Should new License be issued? Unregistered dam-license required. Must follow procedure for obtaining a license.			✓		✓
Revision of last Emergency Action Plan revision: _____ Should EAP be revised?	✓				
Annual inspection frequency: _____ Should inspection frequency be revised?					✓
Recommended date for next inspection:					✓

MONITORING CHECKLIST

INSTRUMENTATION AND MONITORING					
Describe: No instrumentation observed at structure	✓				
Any repair or replacement required? Describe:	✓				
Date of last monitoring report: _____ Should new readings be taken and new report provided?					

N	Y	M	R	I
/	E	O	E	N
A	S	N.	P.	V.

of sand boils at or beyond toe?

	✓				
--	---	--	--	--	--

OUTLET WORKS CHECKLIST

DACH CHANNEL

None	✓						
or backcutting?	✓						
ing?	✓						
ed by vegetation?	✓						
ted with debris?	✓						

T STRUCTURE

None	✓						
e into structure?	✓						
or obstructions?							
rele, do surfaces show:	✓						
lling or Scaling?	✓						
cking?	✓						
sion?	✓						
posed reinforcement?							
al, do surfaces show:	✓						
rosion?	✓						
rotective coating deficient?	✓						
salignment or split seams?							
joints show:	✓						
splacement or offset?	✓						
ss of joint material?	✓						
akage?							
he trash racks:	✓						
roken or bent?.	✓						
orroded or rusted?	✓						
obstructed?							
erator, gates and valves:							
escribe:							
ate(s) last operated:	✓						
roken or bent?	✓						
Corroded or rusted?	✓						
Leaking?	✓						
Not seated properly?	✓						
Not operational?	✓						
Not periodically maintained?							

CONDUIT

BY: David Keadle, Thomas Whitmer

None	✓								
into conduit?	✓								
present?									
te, do surfaces show:	✓								
ing or scaling?	✓								
king?	✓								
on?	✓								
posed reinforcement?									
, do surfaces show:	✓								
rosion?	✓								
ective coating deficient?	✓								
alignment or split seams?									
joints show:	✓								
placement or offset?	✓								
s of joint material?	✓								
leakage?									

LLING BASIN / ENERGY DISSIPATOR

None									
surfaces show:	✓								
alling or Scaling?	✓								
acking?	✓								
rosion?	✓								
posed reinforcement?									
joints show:	✓								
isplacement or offset?	✓								
oss of joint material?	✓								
leakage?									
energy dissipaters show:	✓								
igns of deterioration?	✓								
Covered with debris?	✓								
igns of inadequacy?									

UTLET CHANNEL

scribe:	✓								
ding or backcutting?	✓								
ughing?	✓								
structions or restrictions?	✓								
orly ripped?									
ilwater elevation and flow condition:									

EMERGENCY SPILLWAY CHECKLIST

ENTRANCE CHANNEL

INSPECTED BY: David Keadle, Thomas Whitmer

INSPECTION DATE: May 10, 2006

Unlined spillway located at right abutment, saddle to adjacent wash immediately south of structure, not aligned w/ embankment.

g or backcutting?

ing?

ted by vegetation?

cted with debris?

n?

CONTROL SECTION Spillway crest is 25.5 feet above bottom point of reservoir.

be: Unlined spillway channel, cemented conglomerate.

crete, do surfaces show:

alling or Scaling?

acking?

osion?

posed reinforcement?

crete, do joints show:

placement or offset?

ss of joint material?

akage?

llway is unlined:

re slopes eroding? Normal erosion from precipitation

re slopes sloughing?

crest eroding? Normal erosion from precipitation

control structure (i.e. weir, sill, etc.) in poor condition?

DISCHARGE CHANNEL

cribe: Wash located south of structure

structions or restrictions? Natural undisturbed vegetation.

oncrete, do surfaces show:

alling or Scaling?

Cracking?

Erosion?

Exposed reinforcement?

oncrete, do joints show:

Displacement or offset?

Loss of joint material?

Leakage?

illway is unlined:

Are slopes eroding? Normal erosion from precipitation

Are slopes sloughing?

Poorly protected w/ vegetation/riprap? No riprap on structure

STILLING BASIN / ENERGY DISSIPATOR

scribe: None

N	Y	M	R	I
/	E	O	E	N
A	S	N.	P.	V.

Faces show:				
Chipping or Scaling?	✓			
Cracking?	✓			
Discoloration?	✓			
Exposed reinforcement?	✓			
Joints show:				
Alignment or offset?	✓			
Quality of joint material?	✓			
Leakage?	✓			
Energy dissipaters show:				
Signs of deterioration?	✓			
Covered with debris?	✓			
Signs of inadequacy?	✓			
TOE CHANNEL				
Chipping or backcutting?	✓			
Cracking?	✓			
Restrictions or obstructions?	✓			

RESERVOIR CHECKLIST

RESERVOIR Lawrence Engineering surveyed reservoir at 33 surface acres.				
Water marks? None observed		✓		
Slides into pool area? None observed		✓		
Sediment accumulation? Old reservoir sediment noted		✓		
Debris present?		✓		
Cavities, sinkholes or vortices? None observed		✓		
Bridges/saddles allowing overflow?		✓		
Structures below dam crest elevation? Well located near toe, Lower Crow Tank is immediately downstream.			✓	

ADDITIONAL COMMENTS AND RECOMMENDATIONS:

Lawrence Engineering surveyed and determined reservoir area to be 9.4 surface acres. The inside reservoir depth was confirmed by Department staff to be 25.5 feet. Reservoir capacity, using the 1/3 H x A, is 79.9 acre-feet.

Structure is dry at time inspection, no flow observed, grassy vegetation and moisture was noted at toe channel bottom. Owner has reported structure 'designed' to drain water filling.

Structure is emplaced on an unnamed wash, tributary to Mesa Draw, and has no associated water rights on record with the Department.

Location of diversion was GPS'd using a Trimble sub-meter differential GPS system for Department records.

Recommended size should be *Small*. The downstream hazard rating should be *Very Low* as there appears to be no dwelling structures immediately downstream. Lower Crow Tank is southeast of the structure on the same wash.

Structure falls under the ADWR Dam Safety jurisdiction based on statutory (hydraulic) height exceeding 25 feet and capacity being greater than 15 acre-feet. Based on this information this structure should be licensed to operate.

Notification of Inspection and Due Process Rights (Form 1009) was signed by the ranch manager prior to inspection and a copy was left with him - see reports.

Bar Boot Ranch, Crow Tank – Cochise County, AZ

Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 1
PHOTO DIRECTION: S
DESCRIPTION: Upstream slope from left side



PHOTO NUMBER: 2
PHOTO DIRECTION: S
DESCRIPTION: Crest of dam from left side

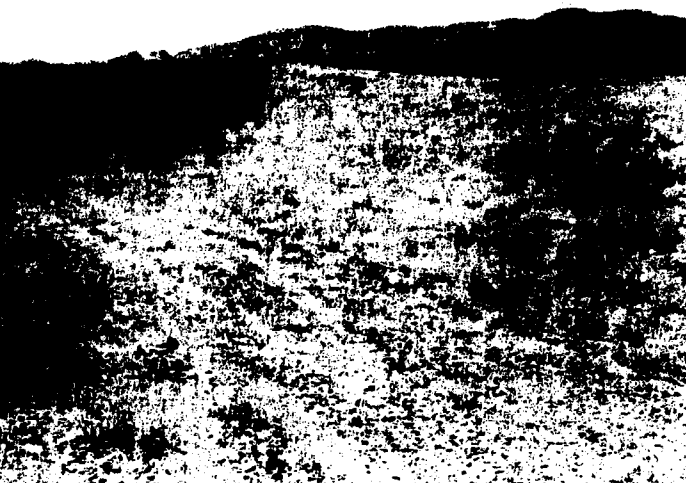


PHOTO NUMBER: 3
PHOTO DIRECTION: S
DESCRIPTION: Downstream slope from left side



PHOTO NUMBER: 4
PHOTO DIRECTION: NE
DESCRIPTION: Erosion noted at left abutment contact on upstream side

Bar Boot Ranch, Crow Tank – Cochise County, AZ

Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 5
PHOTO DIRECTION: S
DESCRIPTION: Spillway outlet channel located at south of reservoir. Wash is not aligned with dam.



PHOTO NUMBER: 6
PHOTO DIRECTION: E
DESCRIPTION: Unlined spillway at right edge of reservoir, dam right abutment is in background.



PHOTO NUMBER: 7
PHOTO DIRECTION: N
DESCRIPTION: Upstream slope from right side



PHOTO NUMBERS: 8
PHOTO DIRECTION: N
DESCRIPTION: Crest of dam from right side

Bar Boot Ranch, Crow Tank – Cochise County, AZ

Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 9
PHOTO DIRECTION: N
DESCRIPTION: Downstream slope from right side

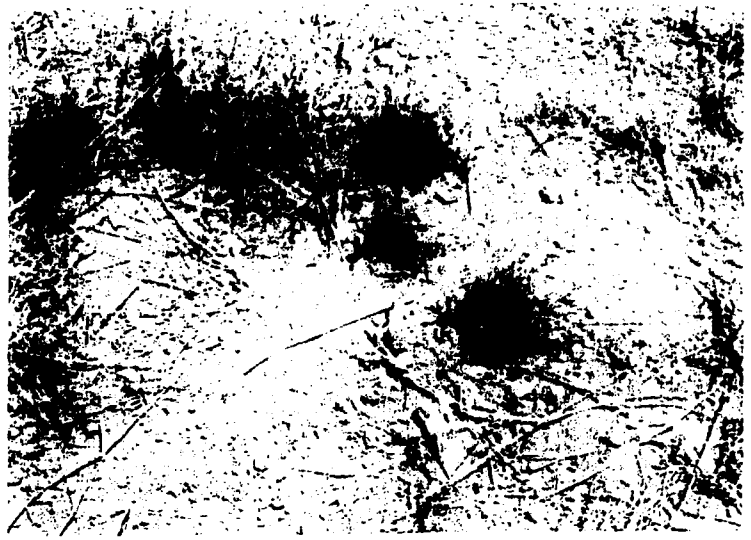


PHOTO NUMBER: 10
PHOTO DIRECTION: na
DESCRIPTION: Typical small rodent hole, < 5 in.



PHOTO NUMBER: 11
PHOTO DIRECTION: NW
DESCRIPTION: View upstream of reservoir area



PHOTO NUMBER: 12
PHOTO DIRECTION: SE
DESCRIPTION: View downstream from crest, Lower Crow Tank is ¼ mile downstream. Mesa Draw approx. 1.25 miles downstream.

Bar Boot Ranch, Crow Tank – Cochise County, AZ
Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 13
PHOTO DIRECTION: W
DESCRIPTION: Well located near toe of dam



PHOTO NUMBER: 14
PHOTO DIRECTION: SE
DESCRIPTION: Wash downstream of dam is grassy, with lush vegetation, moisture in soil.

**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING – DAM SAFETY SECTION
DAM SAFETY INSPECTION REPORT**

of the checklist should be completed. Repair is required when obvious problems are observed. Monitoring is recommended if there is a potential for a problem to the future. Investigation is necessary if the reason for the observed problem is not obvious.

2.08	DAM NAME: GATE TANK	TYPE: Earth	PURPOSE: Stockwatering	N O T A P P L I C A B L E	N O	Y E S	M O N I T O R	R E P A I R	I N V E S T I G A T E
CONTACT(S): JOE AUSTIN, Owner ; JIM TOUT, Ranch Manager			REPORT DATE: 5-15-06						
INSPECTED BY: David Keadle, Thomas Whitmer			INSPECTION DATE: 5-10-06						
RECOMMENDED BY: Not necessary for low hazard dams			DATE:						
DAM CREST ELEVATION: Unknown		DESIGN SPILLWAY CREST ELEVATION: Unknown							
TOTAL FREEBOARD (FT): Unknown		MEASURED TOTAL FREEBOARD (FT): 9.0							
STRUCTORY DAM HEIGHT (FT): 24.9		MAXIMUM EMBANKMENT HEIGHT (FT): 33.9							
CREST LENGTH (FT): 822	UPSTREAM SLOPE: 2:1	DOWNSTREAM SLOPE: 3:1							
CREST WIDTH (FT): 16	GPS	Lat.: 31°38'56.914"	WATER RIGHTS: NONE						
		Long.: 109°28'05.8832"							
RESERVOIR AREA (AC): 33 **	RSRVR. STORAGE (AC-FT): 137.5	MAX. STORAGE (AC-FT):							
DESIGN FLOOD / SAFE FLOOD-PASSING CAPACITY: Unknown									
RESERVOIR LEVEL DURING INSPECTION: DRY			PHOTOS: Yes	Page 1 of 6					

COMPLIANCE CHECKLIST

CONDITION SUMMARY / LICENSE / EAP / NEXT INSPECTION					
Recorded downstream hazard: _____ Should hazard be revised? Recommend Very Low Hazard.				✓	
High Hazard, estimate downstream persons-at-risk (PAR): _____ Is there a significant increase since the last inspection?	✓				
Recorded size: _____ Should size be revised? Recommend Small size		✓			
Any safety deficiencies? Describe: None observed, dam is operating without a license.		✓			
Statute or Rule violations? Describe and list required action: A.R.S. 45-1202.A. which states that it is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the Director. No water rights exist for this impoundment.			✓		✓
Storage level on License: _____ Should level be revised? Unregistered dam-license required.	✓				
Any License violations? Describe and list required action: Unregistered dam-license required.			✓		✓
Expiration of current License: _____ Should new License be issued? Unregistered dam-license required. Must follow procedure for obtaining a license.			✓		✓
Revision of last Emergency Action Plan revision: _____ Should EAP be revised?	✓				
Annual inspection frequency: _____ Should inspection frequency be revised?					✓
Recommended date for next inspection:					✓

MONITORING CHECKLIST

INSTRUMENTATION AND MONITORING					
Describe: No instrumentation observed at structure					
Any repair or replacement required? Describe:	✓				
Expiration of last monitoring report: _____ Should new readings be taken and new report provided?	✓				

N	Y	M	R	I
/	E	O	E	N
A	O	S	P.	V.

DAM EMBANKMENT CHECKLIST

DAM CREST *Dam crest elevation measured 33.9 ft from downstream toe.*

Settlements, slides, depressions? Normal erosion, rounded crest, uneven, sloping towards upstream side			✓	✓		
Alignment? Very slight observed			✓	✓		
Longitudinal/Transverse cracking?		✓				
Animal burrows? Small rodent holes prevalent			✓	✓		
Surface Vegetation? Small brush, grasses, and weeds		✓		✓		
Condition? Uneven crest due to cattle traffic.			✓	✓		

UPSTREAM SLOPE 3:1

Condition? Small rills up to 8 in. deep			✓	✓		
Adequate ground cover? Small grasses, weeds			✓			
Surface vegetation? No large rooted vegetation observed		✓				
Longitudinal/Transverse cracking? None observed		✓				
Adequate riprap? No riprap on structure			✓			
Surface deterioration?	✓					
Settlements, slides, depressions, bulges? None observed		✓				
Animal burrows? Several small observed			✓	✓		

DOWNSTREAM SLOPE 2:1

Condition? Small rills up to 12 in were observed			✓	✓		
Adequate ground cover? Small brush, grasses, weeds			✓	✓		
Surface vegetation? None observed		✓				
Longitudinal/Transverse cracking? None observed		✓				
Adequate riprap? No riprap on structure			✓			
Surface deterioration?	✓					
Settlements, slides, depressions, bulges? None observed		✓				
Soft spots or boggy areas? None noted, tank was dry at time of inspection		✓				
Settlement at or beyond toe?		✓				
Animal burrows? Several noted			✓	✓		

TOE BUTTMENT CONTACTS

Condition? Small gully on left upstream side from precipitation.			✓	✓		
Differential movement? None observed		✓				
Cracks? None observed		✓				
Settlements, slides, depressions, bulges? None observed		✓				
Seepage? Est. Left ___ gpm; Est. Right ___ gpm	✓					
Animal burrows? Several noted			✓	✓		

SEEPAGE CONTROL DESIGN FEATURE(S)

Describe: None						
Internal drains flowing? Est. Left ___ gpm; Est. Right ___ gpm	✓					
Seepage at or beyond toe? Estimated ___ gpm	✓					
Soils, does seepage contain fines?	✓					

N	Y	M	R	I
/	E	O	E	N
A	O	S	P.	V.

presence of sand boils at or beyond toe?

	✓				
--	---	--	--	--	--

OUTLET WORKS CHECKLIST

APPROACH CHANNEL

Describe: None							
Sliding or backcutting?	✓						
High water cutting?	✓						
Restricted by vegetation?	✓						
Obstructed with debris?	✓						
Washed in?	✓						

OUTLET STRUCTURE

Describe: None							
Spillage into structure?	✓						
Debris or obstructions?	✓						
Concrete, do surfaces show:							
Spalling or Scaling?	✓						
Cracking?	✓						
Erosion?	✓						
Exposed reinforcement?	✓						
Metal, do surfaces show:							
Corrosion?	✓						
Protective coating deficient?	✓						
Misalignment or split seams?	✓						
The joints show:							
Displacement or offset?	✓						
Loss of joint material?	✓						
Leakage?	✓						
Check the trash racks:							
Broken or bent?	✓						
Corroded or rusted?	✓						
Obstructed?	✓						
Operator, gates and valves:							
Describe:							
Date(s) last operated:							
Broken or bent?	✓						
Corroded or rusted?	✓						
Leaking?	✓						
Not seated properly?	✓						
Not operational?	✓						
Not periodically maintained?	✓						

CONDUIT

N	Y	M	R	I
/	E <td>O <td>E <td>N</td> </td></td>	O <td>E <td>N</td> </td>	E <td>N</td>	N
A	S <td>N <td>P <td>V</td> </td></td>	N <td>P <td>V</td> </td>	P <td>V</td>	V

Describe: None

Seepage into conduit?	✓						
Corrosion present?	✓						
Concrete, do surfaces show:							
Spalling or scaling?	✓						
Cracking?	✓						
Erosion?	✓						
Exposed reinforcement?	✓						
Steel, do surfaces show:							
Corrosion?	✓						
Protective coating deficient?	✓						
Disalignment or split seams?	✓						
Expansion joints show:							
Displacement or offset?	✓						
Loss of joint material?	✓						
Leakage?	✓						

SPILLING BASIN / ENERGY DISSIPATOR

Describe: None

Surfaces show:							
Spalling or Scaling?	✓						
Cracking?	✓						
Erosion?	✓						
Exposed reinforcement?	✓						
Joints show:							
Displacement or offset?	✓						
Loss of joint material?	✓						
Leakage?	✓						
Energy dissipaters show:							
Signs of deterioration?	✓						
Covered with debris?	✓						
Signs of inadequacy?	✓						

OUTLET CHANNEL

Describe:

Sliding or backcutting?	✓						
Scouring?	✓						
Obstructions or restrictions?	✓						
Unusually riprapped?	✓						
Water elevation and flow condition:							

EMERGENCY SPILLWAY CHECKLIST

ENTRANCE CHANNEL

N	Y	M	R	I
/	E	O	E	N
A	O	S	P.	V.

Describe: Unlined

Spalling or backcutting?

Cracking?

Exposed by vegetation?

Obstructed with debris?

Leakage?

CONTROL SECTION Spillway crest is 12.5 feet above bottom point of reservoir.

Describe: Unlined spillway channel

Concrete, do surfaces show:

Spalling or Scaling?

Cracking?

Erosion?

Exposed reinforcement?

Concrete, do joints show:

Displacement or offset?

Loss of joint material?

Leakage?

Spillway is unlined:

Are slopes eroding? Normal erosion from precipitation, spillway appears to not have flowed recently

Are slopes sloughing?

Spillway crest eroding? Slight erosion from precipitation

Control structure (i.e. weir, sill, etc.) in poor condition?

DISCHARGE CHANNEL

Describe: Unlined

Obstructions or restrictions? Some dead trees near bottom of channel should be removed.

Concrete, do surfaces show:

Spalling or Scaling?

Cracking?

Erosion?

Exposed reinforcement?

Concrete, do joints show:

Displacement or offset?

Loss of joint material?

Leakage?

Spillway is unlined:

Are slopes eroding? Normal erosion from precipitation, no large gullying observed.

Are slopes sloughing?

Structure poorly protected w/ vegetation/riprap? No riprap on structure

WEIR / ENERGY DISSIPATOR

Describe: None

INSPECTED BY: David Keadle, Thomas Whitmer

INSPECTION DATE: May 10, 2006

N	N	Y	M	R	I
/	O	E	O	E	N
A		S	N.	P.	V.

Surfaces show:					
Spalling or Scaling?	√				
Cracking?	√				
Erosion?	√				
Exposed reinforcement?	√				
Joints show:					
Displacement or offset?	√				
Loss of joint material?	√				
Leakage?	√				
Energy dissipaters show:					
Signs of deterioration?	√				
Covered with debris?	√				
Signs of inadequacy?	√				
OUTLET CHANNEL					
Sliding or backcutting?	√				
Scouring?	√				
Obstructions or restrictions?	√				

RESERVOIR CHECKLIST

RESERVOIR <i>Lawrence Engineering surveyed reservoir at 33 surface acres.</i>					
Water marks? Noted 6 feet below spillway crest as previously reported.					
Sliding/Slides into pool area? None observed					
Sediment accumulation? Old reservoir sediment noted					
Floating debris present?					
Cavitations, sinkholes or vortices? None observed					
Ridges/saddles allowing overflow?					
Structures below dam crest elevation? None observed					

ADDITIONAL COMMENTS AND RECOMMENDATIONS:

Lawrence Engineering surveyed and determined reservoir area to be 33 surface acres. The inside reservoir depth was confirmed by Department staff to be 12.5 feet. Reservoir capacity, using the 1/3 H x A, is 137.5 acre-feet.

Structure is emplaced on Mesa Draw. No associated water rights are on record with the Department.

Location of diversion was GPS'd using a Trimble sub-meter differential GPS system for Department records.

Structure size is recommended to be *Small*. The downstream hazard rating is recommended to be *Very Low*. No dwelling structures were observed immediately downstream for up to 1/2 a mile within the 100 year floodplain of Mesa Draw. An unpaved ranch access road is approx. 1/4 mile downstream.

Structure falls under the ADWR Dam Safety jurisdiction based on statutory (hydraulic) height exceeding 15 feet and capacity being greater than 50 acre-feet. Based on this structure should be licensed to operate.

Notification of Inspection and Due Process Rights (Form 1009) was signed by the ranch manager prior to inspection and a copy was left with him— see

Bar Boot Ranch, Gate Tank – Cochise County, AZ
Field Inspection Conducted on May 10, 2006

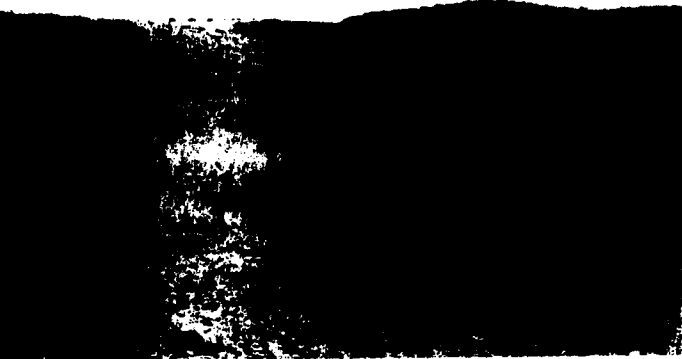


PHOTO NUMBER: 1
PHOTO DIRECTION: E
DESCRIPTION: Downstream slope from right side



PHOTO NUMBER: 2
PHOTO DIRECTION: N
DESCRIPTION: Toe of dam at channel bottom



PHOTO NUMBER: 3
PHOTO DIRECTION: W
DESCRIPTION: Downstream slope from left side



PHOTO NUMBER: 4
PHOTO DIRECTION: W
DESCRIPTION: Crest of dam from left side

Bar Boot Ranch, Gate Tank – Cochise County, AZ

Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 5
PHOTO DIRECTION: W
DESCRIPTION: Upstream slope from left side



PHOTO NUMBER: 6
PHOTO DIRECTION: E
DESCRIPTION: Crest of dam from right side



PHOTO NUMBER: 7
PHOTO DIRECTION: E
DESCRIPTION: Upstream slope from right side



PHOTO NUMBERS: 8
PHOTO DIRECTION: N
DESCRIPTION: View upstream of reservoir area from crest

Bar Boot Ranch, Gate Tank – Cochise County, AZ

Field Inspection Conducted on May 10, 2006



PHOTO NUMBER: 9
PHOTO DIRECTION: S
DESCRIPTION: View downstream from crest, Mesa Draw.



PHOTO NUMBER: 10
PHOTO DIRECTION: SW
DESCRIPTION: Approach channel to spillway

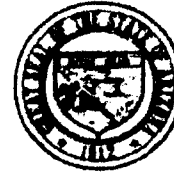


PHOTO NUMBER: 11
PHOTO DIRECTION: NE
DESCRIPTION: Unlined spillway at right abutment



PHOTO NUMBER: 12
PHOTO DIRECTION: SE
DESCRIPTION: Outlet channel

ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING
Dam Safety Section
3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8649
FAX 602-771-8686



Janet Napolitano
Governor

Herbert R. Goether
Director

February 16, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Josiah Austin
Bar Boot Ranch, LLC
12626 East Turkey Creek Road
Pearce, AZ 85625

RE: NOTICE OF VIOLATION

Dear Mr. Austin:

The Arizona Department of Water Resources (Department) has reason to believe Mr. Josiah Austin as the owner of Bar Boot Ranch, LLC, has violated several requirements of the Arizona Revised Statutes (A.R.S.) and the Arizona Administrative Code (A.A.C.). The Department discovered the violations alleged below during inspections completed on; November 4, 2004, May 10, 2005, and June 26 – 28, 2005.

I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATIONS

1. A.R.S. § 45-1216(A) "It unlawful for an owner... to construct, reconstruct, repair, enlarge, alter or remove a dam without an approval..." and (B) "a person who violates this article, except as otherwise provided, is guilty of a class 2 misdemeanor, and each day such violation continues constitutes a separate offense."
2. A.R.S. § 45-1222(A) and (C) a person in violation of Article 1 dealing with the supervision of dams, reservoirs, and projects "...may be assessed a civil penalty in an amount not exceeding one thousand (\$1000) dollars per day of violation."
3. A.A.C. R12-15-1207(A) "An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam..."
4. A.R.S. § 45-112(A)(7) "A person is guilty of a class 2 misdemeanor who: ...uses, stores or diverts water without or before the issuance of a permit to appropriate such waters."
5. A.R.S. § 45-105(B)(8) authorizes the Director to "investigate and take any appropriate action upon any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this Title or the rules adopted pursuant to this Title."

Based on Department inspections and aerial photography, it appears more than 360 earthen water-retention structures have been constructed on your property after January 2000. The best information available to the Department indicates the structures were built on or around January 4, 2001. None of these structures appear to have a water right or claim on file with the Department.

NOTICE OF VIOLATION

Mr. Josiah Austin

February 16, 2007

Page 2 of 2

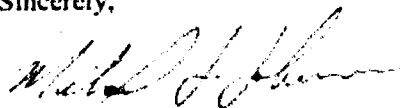
Four of the structures appear to be Jurisdictional Dams, as defined by A.R.S. § 45-1201, and appear to have been constructed without approval from the Department. These include:

- i. "Gate Tank" with measured height of 22.8-ft and estimated storage capacity of 132 ac-ft.
- ii. "Crow Tank" with measured height of 38.5-ft and estimated storage capacity of 63 ac-ft.
- iii. Unnamed #1 with measured height of 22.4-ft and estimated storage capacity of 54 ac-ft.
- iv. Unnamed #2 with measured height of 30.8-ft and estimated storage capacity of 118 ac-ft.

II. OFFER TO MEET

The Department is willing to meet with you regarding this Notice prior to initiating an administrative hearing and/or civil action for the enforcement of the statutes and rules referenced above, including seeking an order requiring your compliance with the statutes and rules and/or the assessment of substantial civil penalties. If you would like to meet with the Department regarding this Notice prior to the initiation of such proceedings, you must contact me within 30 days of the date of this letter to schedule a meeting. To obtain additional information or to schedule a meeting, please contact me at (602) 771-8659.

Sincerely,



Michael Johnson, Ph.D., P.E.
Section Manager

cc: Ms. Liza Logan – Water Management Support Section, Arizona Department of Water Resources
Ms. Alisa Schiebler – Deputy Counsel, Arizona Department of Water Resources



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
SAN BERNARDINO NATIONAL WILDLIFE REFUGE COMPLEX
P. O. BOX 3509 DOUGLAS, ARIZONA 85608-3509



Joe Austin
12626 E. Turkey Creek Road
Pearce, AZ 85625-6166

February 28, 2007

Dear Mr. Austin;

Thank you for your continuing partnership with the U.S. Fish & Wildlife Service in habitat restoration within the Leslie Creek watershed. As you know, the 13,713-acre Bar-Boot Ranch and the 11,585-acre 99-Bar Ranch compose the primary, privately owned lands in the watershed upstream from Leslie Canyon National Wildlife Refuge. This refuge was established in 1988 to protect federally-listed endangered native fish. Fish recovery actions include stabilizing and maintaining existing populations, establishing self sustaining populations, and restoring wetland habitat so that the fish will be able to thrive once again in the United States.

The cooperative efforts between the Service and environmentally sensitive landowners such as you have provided tremendous opportunities to secure habitat and water sources, conduct additional scientific research, monitor environmental conditions, and ultimately introduce and maintain self-sustaining fish and wildlife populations and habitats. Your work in particular has stalled damaging erosion and enhanced ground water recharge. The existing conservation easements which the Service holds on both the Bar-Boot Ranch and on the 99-Bar Ranch have provided economical and effective opportunities for wetland restoration and riparian establishment. The Service supports the various projects completed during the past to enhance groundwater recharge on both the Bar-Boot Ranch and on the 99-Bar Ranch. We feel that such work has provided increased flow in Leslie Creek for longer periods of time each year. Through your work, the land and its associated fish and wildlife are recovering.

I appreciate the regular access you have provided so that I can check monitoring wells each month throughout the watershed to evaluate the effectiveness of the earthen erosion control plugs that have been constructed on both the Bar-Boot Ranch and on the 99-Bar Ranch. While the plugs on both ranches may serve to impede some surface flow during heavy rain events, it appears they are working exactly as planned in helping recharge the aquifer while spreading out and attenuating surface flows throughout the watershed. The Service graphed results from the monitoring well data gathered during 2006 (attached as Figure 1). This data shows that the earthen erosion control plugs installed on both ranches are effective at slowing water and allowing greater infiltration in the watershed. Through the monitoring efforts, we have learned that winter runoff seems to play the major role in keeping Leslie Creek flowing perennially on the refuge. But the data also shows that instead of losing water runoff (and topsoil) through flash flood events,

precipitation is resulting in immediate measurable groundwater recharge throughout the watershed.

Clearly, runoff is slowed by the erosion control plugs constructed on the Bar-Boot Ranch and on the 99-Bar Ranch upstream from the refuge and this action is enhancing groundwater recharge which provides greater year-round flow in Leslie Creek. This is very evident on Leslie Canyon NWR and increasingly evident on the lower portion of the 99-Bar Ranch (See the refuge groundwater levels attached as Figure 2). The water levels on the refuge were higher during the past several months than they have ever been since monitoring began. This is also occurring during one of the driest periods we have ever experienced.

The positive impacts to federally-listed threatened and endangered plants, fish, and wildlife is also evident. With increased wetland restoration throughout the watershed, mobile species such as the federally-listed threatened Chiricahua leopard frog will be expected to reestablish viable populations on the Bar-Boot Ranch and the 99-Bar Ranch. This has likely already happened, and I will seek permission to survey for leopard frogs on both properties this spring. While adequate perennial wetland habitat is present on both properties, fish populations cannot currently move upstream onto private land due to the effective fish barrier at the upstream end of the refuge. The Service is working closely with Arizona Game and Fish Department and with our Ecological Services Tucson Field Office to complete the Safe Harbor Agreement for both the Bar-Boot Ranch and the 99-Bar Ranch. This agreement will protect the private landowners from any negative impacts potentially resulting from having federally-listed species present on your properties due to the wetland restoration you have both participated in creating. I will continue to keep you informed as the Safe Harbor Agreement receives final approval.

Again, I appreciate the cooperative conservation work that is occurring between the private landowners in the Leslie Creek watershed and the U.S. Fish & Wildlife Service. Recovery of federally-listed species cannot occur without this partnership. If you have any questions about the information I have provided, please contact me at the above address, or call me at (520) 364-2104x101.

Sincerely,



William R. Radke
Refuge Manager

Leslie Basin Ground Water Wells Depth to Water and USGS Gage Discharge (Cropped)

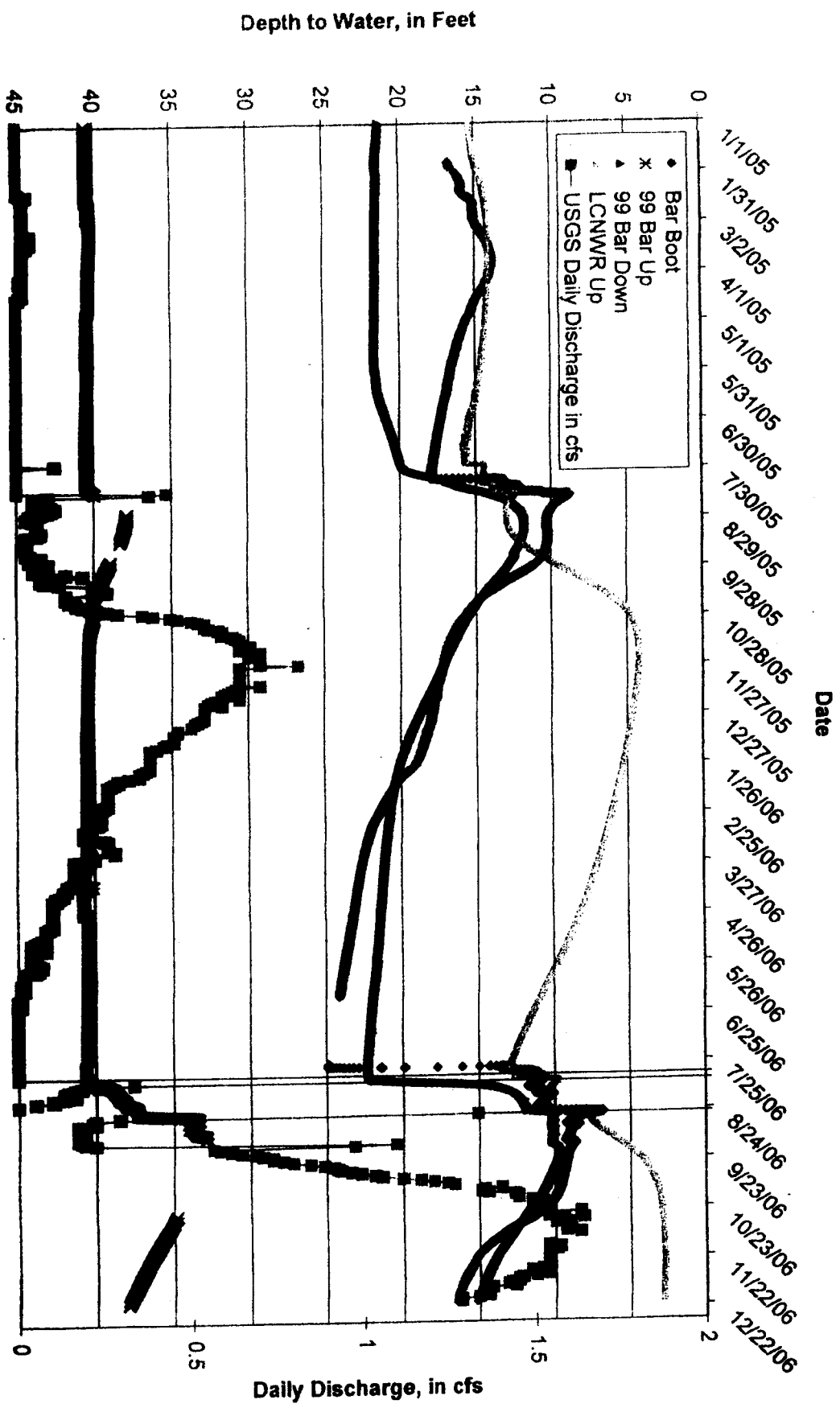


Figure 2. Leslie Canyon National Wildlife Refuge Groundwater Levels (in feet) 1998 - 2006 Measured from Top of Casing. (ND = no data).

<u>Month</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Jan	7.44	8.68	5.74	4.48	6.85	6.95	9.72	15.03	5.23
Feb	7.25	9.28	5.60	4.40	7.33	6.68	9.52	14.27	6.04
Mar	7.02	9.71	5.31	4.29	7.93	6.66	9.60	14.12	7.07
Apr	ND	10.10	5.44	4.31	8.74	6.93	9.90	14.26	8.12
May	7.75	10.60	5.96	4.55	9.46	7.96	10.73	14.59	9.60
Jun	ND	11.40	6.78	4.97	10.26	9.08	11.90	15.11	10.76
Jul	8.92	ND	7.00	5.11	11.32	9.86	12.82	16.69	12.83
Aug	ND	7.90	7.74	5.52	9.40	10.04	12.96	13.10	10.43
Sep	ND	8.12	8.25	5.91	9.69	10.70	14.36	10.58	4.32
Oct	8.49	7.35	5.90	6.12	9.19	11.08	15.44	4.91	2.90
Nov	8.44	6.48	5.29	6.21	8.30	10.76	15.55	4.26	2.78
Dec	8.37	5.99	4.89	6.37	7.64	10.23	15.61	4.45	2.85

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Admitted in Arizona
rmaguire@mpwaterlaw.com

Michael J. Pearce
Admitted in Arizona & California
mpearce@mpwaterlaw.com

March 14, 2007

HAND DELIVERED

Michael Johnson, Ph.D., P.E.
Section Manager, Dam Safety Section
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Notice of Violation for Bar Boot Ranch, LLC Dated February 16, 2007

Dear Mr. Johnson:

This office represents Mr. Josiah Austin and Bar Boot Ranch, LLC in the matter of those certain investigations performed by the Arizona Department of Water Resources on November 4, 2004, May 10, 2005 and June 26-28, 2005. We are in receipt of your letter and Notice of Violation dated February 16, 2007, and we are writing this letter in response to your invitation to meet with the Department before any further action is taken.

Because Mr. Austin's ranch is in the southeastern portion of Arizona and he is frequently out of state when not at the ranch, it is somewhat difficult for him to schedule time to meet in Phoenix. Nevertheless, he has indicated that he is in Arizona and able to travel to Phoenix in either the first or third week in April, 2007. As a suggestion, April 5, 17 or 19 may work, depending on your calendar. I will follow up by telephone to see if these dates are acceptable, and make more certain arrangements.

As you are undoubtedly aware, we take issue with the allegations of violations set forth in your letter. The earthen detention structures that Department staff observed upon inspection of the Bar Boot Ranch are just that—earthen detention structures. They are not “dams” within the technical meaning of the word as you have indicated in your letter, as they were not constructed with the idea that they would store water for later release or even impound water, as is the usual reason for constructing a dam. Rather, these detention structures are only intended to slow the

MAGUIRE & PEARCE

Michael Johnson, Ph.D., P.E.

March 14, 2007

Page 2

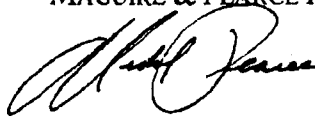
otherwise flash flows of water in the natural watercourse. They serve a valuable purpose to the health of the ecosystem located in this watershed and, as such, serve a vital public purpose that goes far beyond any remote possibility of harm, danger or depletion of natural flow that may accrue by reason of these small structures, especially located in such a rural area.

When we meet, we would like to take the opportunity to further demonstrate our position on this matter and present you with information that we believe will change your mind on the subject. We would also like to invite Ms. Sandy Fabritz-Whitney to that meeting, as she is familiar with the situation on Bar Boot Ranch and will undoubtedly be involved in the decision making process in this matter. I extend that invitation to Ms. Whitney by copy of this letter, although I am aware that she is out of town this week.

Despite the fact that we disagree with the conclusions drawn in your letter, we do appreciate your courtesy in extending this invitation to meet and discuss this further. We look forward to that discussion and, hopefully, a mutually agreeable solution to the concerns expressed in your letter.

Sincerely,

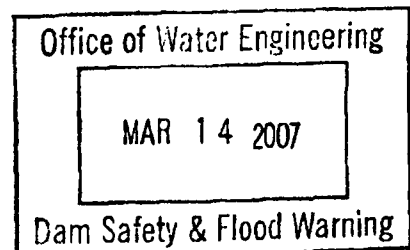
MAGUIRE & PEARCE PLLC



Michael J. Pearce

MJP

C: Ms. Sandy Fabritz-Whitney
Ms. Alisa Schiebler
Mr. Josiah Austin ✓



ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING
Dam Safety Section
3550 North Central Avenue, Phoenix, Arizona 85012
Telephone (602) 771-8649
Fax (602) 771-8686



JANET NAPOLITANO
GOVERNOR

HERB GUENTHER
DIRECTOR

RECEIVED MAY 21 2007

May 17, 2007

Maguire & Pearce
Attn: Michael J. Pearce
2999 North 44th Street
Phoenix, Arizona 85018

RE: Meeting on May 15, 2007

Dear Mr. Pearce:

On May 15, 2007, the Department met with you and your client, Mr. Josiah Austin, to discuss the Notice of Violation sent to Mr. Austin on February 16, 2007. In this meeting, we discussed what the Department believes to be four earthen dams that have been constructed without the proper legal authority on the Bar Boot Ranch, and the illegal impoundment of surface water by those and numerous other structures. As we discussed there are several options you may pursue to bring these violations into compliance with Arizona rules and statues. At the end of the meeting, you requested time to confer with your client to discuss those options and to develop a plan for addressing the issues. The Department requests that you contact us to set a meeting within 30 days from the date of this letter.

At your request, I am enclosing a list of engineering consultants who have indicated interest in dam related projects. In particular, I have marked three consultants that have recently worked on similar projects.

If you have any additional questions, please feel free to call me at (602) 771-8659.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Johnson".

Michael Johnson, Ph.D., P.E.
Section Manager

Enclosure

CC: Mr. Josiah Austin
Mr. Scott Deeny, Deputy Counsel, ADWR
Ms. Alisa Schiebler, Deputy Counsel, ADWR
Mrs. Sandy Fabritz-Whitney, ADWR
Mr. Darrell Jordan, ADWR
Ms. Elizabeth Logan, ADWR

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Michael J. Pearce
Admitted in Arizona & California
mpearce@mpwaterlaw.com

June 20, 2007

Michael Johnson, Ph.D., P.E.
Section Manager, Dam Safety Section
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Bar Boot Ranch

Dear Mr. Johnson:

This letter is written in response to your letter on behalf of the Arizona Department of Water Resources (ADWR) dated May 17, 2007 (received here on May 21, 2007) concerning the alleged violations of Arizona water law on the Bar Boot Ranch in Cochise County, Arizona. That letter was a result of a meeting that occurred at ADWR's offices on May 15, 2007 and, as your letter correctly states, we did request an opportunity to confer with outside experts on this issue and develop a course of action that hopefully will result in a clarification of our legal position with respect to ADWR, and a resolution of any outstanding issues.

There are two issues, as we understand it, of concern to ADWR. The first is the existence of four structures located on the Bar Boot Ranch property that are believed to be "jurisdictional dams" constructed or maintained without proper authority. The second issue concerns the detention of water behind these impoundments and a series of smaller structures located on the Bar Boot Ranch for the purpose of slowing stream flow and enhancing the base flow component of the natural stream both on and below the ranch. Both of these issues will be addressed here.

June 20, 2007

Page 2

Dam Safety Considerations

Arizona law governs the construction and maintenance of dams for purposes of insuring engineering integrity and safety. The term "dam" is defined in A.R.S. § 45-1201 by terms of height and storage capacity, but also includes exceptions, one of which is a dam owned by the United States and under the control of an agency that maintains a federal dam safety program. We understand from our conversation with you on May 15, 2007 that the United States Bureau of Land Management (BLM) is such an agency. This is of interest of Bar Boot Ranch, as it has considered deeding these particular structures to the BLM for their care and maintenance. That would seem to be one way to resolve the respective issues between ADWR and Bar Boot Ranch, but it also appears that there would be no change in the construction or maintenance of these remote, low hazard facilities. Thus, it seems to be a legal solution without any physical change and before adopting that strategy, we thought it advisable to investigate physical solutions that might also address ADWR's concerns.

The alternative (physical) solutions suggested in our May 15, 2007 meeting involved reconfiguring these structures to either (1) reduced height or capacity below the jurisdictional limits of ADWR's dam safety program; or (2) installing new outlet works that would allow additional gradual release of water from behind the structure. As a third alternative, it was also suggested that with appropriate engineering, these structures might be able to pass ADWR certification and become permitted dams. All of these suggestions involve engineering expertise beyond our internal abilities, and we therefore requested the opportunity to engage professional help in this regard. To that end, your letter also included a list of qualified engineers that might be able to assist us. That list was very helpful, and we appreciate it.

After discussing the matter with a few engineers, we eventually contacted Mr. Brett Howey of AMEC. Mr. Howey seemed well versed in the subject matter and was agreeable to assist us in the analysis, but was concerned that he would not be able to make a site visit to the ranch (it is in a very remote location) until August of this year. Although this was not as soon as we had hoped, we asked Mr. Howey to contact you and see if this timing was acceptable. It is my understanding that Mr. Howey did contact you, and believed that the timing was acceptable. I have tried to confirm that with you, but I understand that you are on vacation and not available at ADWR. If there is a concern with that timing, please let me know, although I doubt that we will be able to arrange any qualified civil engineering consultant in less time.

In any event, Mr. Howey is also away from his office for a brief period (due to a new baby in his family). When he returns, it is our intention (already communicated to Mr. Howey), to engage his professional services to conduct the site visit to the ranch and provide engineering analysis and opinion on the options available to Bar Boot. Specifically, we will ask for a determination on the most efficient and inexpensive means to bring these dams into a state of compliance approved by ADWR, whether that be by restructuring the height or capacity,

June 20, 2007

Page 3

installing outlet works, having the dam specifications reviewed and approved by ADWR, or transferring the dams to BLM for their operation and maintenance. We are hopeful that a clear course of action will emerge from this analysis and, with ADWR's approval, that we might implement that course of action to ADWR's satisfaction.

Water Rights Considerations

As we discussed in our May 15, 2007 meeting, the detention of water in a natural channel, without corresponding diversion or impoundment/retention, is not an activity requiring a water right or permit. See Letter from Janet L. Ronald dated October 1, 2004 (copy enclosed). We are of the firm opinion that the structures on the Bar Boot Ranch are only intended to detain water, and not retain it. To the extent that any water might be retained, it serves no beneficial purpose to the ranch itself, and would be contrary to the goal of allowing release of the water at a steady, although greatly reduced rate of flow to enhance the base flow component of the natural stream both on and below the ranch. We expressed this intention and opinion to you in that meeting, although it was not clear that the ADWR representatives were prepared to accept that explanation.

Indeed, your letter refers to the "illegal impoundment of surface water" on the ranch, a rather serious allegation, particularly in light of the letter from Mr. Bill Radke of the United States Fish and Wildlife Service dated February 27, 2007, a copy of which was provided to you at the May 15, 2007 meeting. As you know, Mr. Radke states in his letter that:

Clearly, runoff is slowed by the erosion control plugs constructed on the Bar-Boot Ranch and on the 99-Bar Ranch upstream from the refuge and this action is enhancing groundwater recharge which provides greater year-round flow in Leslie Creek. This is very evident on Leslie Canyon NWR and increasingly evident on the lower portion of the 99-Bar Ranch (See the refuge groundwater levels attached as Figure 2). ***The water levels on the refuge were higher during the past several months than they have ever been since monitoring began. This is also occurring during one of the driest periods we have ever experienced.***

(emphasis added). If Mr. Radke's observations are accurate, and we have no information upon which to conclude that they are not, it would seem wholly inconsistent for ADWR to conclude that we are *impounding* water on the Bar Boot Ranch in contravention of Arizona's surface water laws.

To amplify this point, we are also considering engaging expert assistance from the United States Geological Survey. We have invited a representative to also pay a visit to the Bar

June 20, 2007

Page 4

Boot Ranch and offer expert opinion on the nature of the detention structures. We are confident that this analysis will also demonstrate that the structures are constructed in a manner designed only to detain flow and not retain it for any other purpose other than downstream enhancement. With or without this additional support, we are prepared to contest ADWR's conclusion that we are illegally impounding water.

Finally, we call your attention to the fact that the work on Bar Boot Ranch is undertaken with the motivation to enhance the ambient ecosystems, not only on the ranch itself but also downstream. We believe that this motivation distinguishes this activity from other actions that might be considered a use of the States' natural resources in a manner inconsistent with the greater public good. As such, we believe that the activities on Bar Boot Ranch are consistent with the environmental protection objectives frequently espoused by Governor Napolitano, and are consistent with the spirit of Arizona law on the use of the small remaining quantities of *unappropriated* surface water left in this State. We urge you to consider this fact in perspective as you evaluate the allegations made against Bar Boot Ranch and the consequences to the ecosystem in this area if you force the reversal of years of work to develop this beneficial program.

Future Actions

As we discussed in our May 15, 2007 meeting, it seems to us that the biggest concern to ADWR is the larger structures determined by ADWR to be jurisdictional dams. We are prepared to work with ADWR to find a way to cure any legal defects in these structures, and we have taken positive steps in engaging the necessary engineering expertise to develop that strategy. We request that we be allowed to continue this effort in an attempt to find a mutually acceptable solution. We anticipate that we should be able to present such a solution to ADWR by September, 2007 for your review and consideration. If acceptable, we will begin prompt implementation.

If we can resolve the dam safety issues respecting these structures in a manner that relieves ADWR's concerns that these structures are impounding surface water, we are hopeful that ADWR will likewise see that the remaining structures are also merely detaining water. We are prepared to work with you to develop whatever record is appropriate to support ADWR's determination in that regard.

MAGUIRE & PEARCE

June 20, 2007

Page 5

If the actions outlined in this letter are satisfactory, we would appreciate hearing from you to that effect. Also, if you have suggestions on how we might best facilitate a solution to this dispute, we would be pleased to consider them. Finally, if you disagree that this letter and our actions to date represent a sincere effort to find a workable solution, we would appreciate being apprised of that fact, so that we might plan our actions accordingly.

Sincerely,

MAGUIRE & PEARCE PLLC



Michael J. Pearce

MJP
encl.

c: Mr. Scott Deeny, ADWR Legal Division Via Facsimile (602-771-8683)
Mr. Josiah Austin

**ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING
Dam Safety Section**

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602 771-8649
Fax 602 771-8686



Janet Napolitano
Governor

Herbert R. Guenther
Director

July 7, 2007

Maquire & Pearce
Attn: Michael J. Pearce
2999 North 44th Street
Phoenix, Arizona 85018

**RE: Bar Boot Ranch Notice of Violation
M. Pearce Response dated June 20, 2007**

RECEIVED JUL 9 2007

Dear Mr. Pearce:

The Arizona Department of Water Resources ("Department") is in receipt of your response dated June 20, 2007 regarding the above referenced matter. This letter addresses your client's proposed course of action regarding the four jurisdictional dams, located on Bar Boot Ranch, which have been in violation of Arizona rules and statutes for over four years. Your client's position regarding the non-jurisdictional surface water impoundments will be addressed by the Department at a later date.

Based upon your June 20 letter, it is the Department's understanding that your client is considering four alternatives for bringing these jurisdictional dams into compliance with Arizona rules and statutes:

1. Transfer ownership or operation of the four jurisdictional dams to the U.S. Department of Interior Bureau of Land Management. *Please be aware that while the selection of this alternative may remove the dams from jurisdictional status, it would still require the acquisition of surface water permits.*
2. Modify the four jurisdictional dams by reducing the height and/or capacity below jurisdictional limits. *Selection of this alternative would require your client to follow the dam safety application process (AAC R12-15-1210) and meet all requirements for removal of low hazard dams. Additionally, a surface water permit would be required to the extent that the dams continue to impound surface water (see #3 below).*
3. Modify the four jurisdictional dams by installation of outlet works. *Selection of this alternative would require your client to follow the dam safety application process (AAC R12-15-1210) and meet all requirements for alteration of low hazard dams. The Department defines a detention (or single-purpose flood control) dam as a structure that has outlet features at grade so that water is released immediately, albeit at a slower rate. Modification of the jurisdictional dams in such a manner would remove the requirement*

that a surface water permit be obtained. However, such modification in itself would not bring the dams into compliance to the extent that they continued to remain jurisdictional pursuant to A.R.S. § 45-1201(1).

4. Modify the four jurisdictional dams to meet the Department's permitting requirements for low downstream hazard potential dams. *Selection of this alternative would require your client to follow the dam safety application process and meet all requirements for design and construction of low hazard dams, including either the acquisition of a surface water right or the installation of adequately-sized outlet works at grade for each of the four jurisdictional dams (see #3 above).*

The Department recognizes that your client requires some additional time to perform the engineering investigations that will assist your client in formulating a preferred course of action. Taking this into consideration, the Department has set a **deadline of October 1st, 2007 for submittal of a plan of action to bring these jurisdictional dams into compliance with Arizona rules and statutes.** At a minimum the proposed Plan of Action must include:

1. A detailed description of the proposed alternative for bringing these jurisdictional dams into compliance, including the acquisition of surface water rights (if necessary, as outlined above);
2. A detailed schedule for completing the work; and
3. A detailed cost estimate for completing the work.

The Department will review the proposed Plan of Action upon its receipt. If the Department finds the plan acceptable, the Department will consider entering into a stipulation and consent order wherein the Department will forego compliance action in exchange for your client's agreement to complete the Plan of Action, including the acquisition of surface water rights if required, and payment of civil penalties for violations of A.R.S. § 45-1216. The amount of penalties will be decided in accordance with A.R.S. § 45-1222(C), and may be partially offset by the costs incurred in bringing these jurisdictional dams into compliance with Arizona rules and statutes.

If you have any additional questions, please feel free to call me at (602) 771-8659.

Sincerely,



Michael Johnson, Ph.D., P.E.
Section Manager

CC: Mr. Josiah Austin
Mr. Scott Deeny, Deputy Counsel, ADWR
Mrs. Sandy Fabritz-Whitney, ADWR
Mr. Darrell Jordan, ADWR
Ms. Elizabeth Logan, ADWR

MAGUIRE & PEARCE

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**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

September 25, 2007

Michael Johnson, Ph.D., P.E.
Section Manager, Dam Safety Section
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Bar Boot Ranch

Dear Dr. Johnson:

This letter is written in response to your letter on behalf of the Arizona Department of Water Resources (ADWR or Department) dated July 7, 2007 concerning the alleged violations of Arizona water law on the Bar Boot Ranch in Cochise County, Arizona. That letter was in response to a letter dated June 20, 2007 from this office, outlining a proposed course of action regarding four structures alleged by ADWR to be jurisdictional dams within the meaning of A.R.S. § 45-1201 *et seq.* This letter is intended to serve both as an update on that proposed course of action, and as a response to issues raised in your July 7, 2007 letter, some of which are new to us.

We are aware of the Department's contention that the structures identified by you (and referred to colloquially as "Gate" "Crow" "Upper Chalk" and "Lower Chalk") are first "dams" within the meaning of Arizona law, and second "jurisdictional dams" as defined in A.R.S. § 45-1201 by terms of height and storage capacity. We have not agreed with this interpretation, but did agree to pursue a course of action that would mitigate your concerns regarding the safety of these structures. We hope that there is no misunderstanding that we have somehow acquiesced

September 25, 2007

Page 2

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

in your interpretation of the laws affecting the existence of these structures. Clarification on this point will be helpful, as we are not inclined to pursue a course of action that will further such a misunderstanding or imply that we have agreed to "bring these jurisdictional dams into compliance with Arizona rules and statutes" as suggested in your July 20, 2007 letter at ¶ 1.

We have, however, engaged the professional engineering services of Mr. Brett Howey of AMEC Earth and Environmental to visually inspect the structures, determine their relative safety, and make recommendations on how the structures might be modified (or not) to resolve the jurisdictional dam dispute initiated by ADWR in this matter. Mr. Howey has made his site visit, and has issued preliminary conclusions from which we can make specific proposals on a proposed course of action. Before addressing that proposed action, however, we feel compelled to address some of the underlying issues in this matter.

Statutory Definition of "Dam"

These structures were constructed with the intention to reduce downstream erosion by slowing the flow of water in high flow events and dispersing that water in the lower stream channel over a more extended period of time to enhance the amount of water in the alluvial stream aquifer, and thereby enhance base flow discharge in the lower watershed. They were never intended to impound water for diversion or direct use, which is the typical function of a dam as defined by the State of Arizona. As such, these structures do not meet the statutory definition of "dam" set forth in A.R.S. § 45-1201(1) as an "artificial barrier including appurtenant works *for the impounding or diversion of water*" (emphasis added).

We have maintained from the outset of this matter that this definition ("*for the impounding...of water*") requires the intent to impound, and that intent is lacking in this instance. Your letter of July 7, 2007 does not address this point. We believe that this is a fundamental error in the approach that ADWR is taking in this matter, and we are prepared to challenge the Department's conclusion in this regard if satisfactory arrangements cannot be made to resolve this dispute informally.

Very Low Hazard Dams

At the meeting that occurred in this matter at ADWR on May 15, 2007, we were informed that the Department had "upgraded" these particular structures from "very low hazard" to "low hazard" dams. Apparently, this action was taken without any notice to us, and without any opportunity to comment on the rationale for such a change. Mr. Howey's review of the ADWR file in this matter does not disclose any objective evidence upon which the decision was made, only that it was made.

September 25, 2007

Page 3

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

To our knowledge, nothing has changed in this watershed between the time that the structures were considered very low hazard and now, and we are concerned that this “upgrading” was done solely to enhance the Department’s enforcement position in this matter. Due to this concern, we have prepared a public records request, pursuant to A.R.S. § 39-121, asking for the factual basis for this particular change, and for records showing similar changes in the status of dams so that we might compare the changes in circumstances that allegedly justify this action. This request is being filed with ADWR concurrently with this letter.

The “upgrading” of these structures from very low hazard (which we believe they clearly are) to low hazard makes the level of compliance suggested by ADWR considerably more burdensome and expensive. Unless and until we are convinced that there is an objective factual basis for this change, we are going to proceed on the assumption that these structures are in fact very low hazard.

Definition of “Detention” Structure and Requirement of Outlet Works

Your letter of July 7, 2007 states that the “Department defines a detention (or single purpose flood control) dam as a structure that has outlet features at grade so that water is released immediately, albeit at a slower rate.” We have reviewed the Arizona statutes relating to the Supervision of Dams, and the ADWR rules on this subject, but we do not find such a definition. Nor are we aware of a substantive policy statement adopted by ADWR containing this definition. Rather, we can only assume that the Department has attempted to define a detention structure solely for the purpose of this case, and solely for the purpose of requiring outlet works.

In this regard, the proposed definition is inconsistent with existing Department rules relating to outlet structures. While you suggest that a detention dam must have outlet features at grade, you make no attempt to reconcile this requirement with A.A.C. R12-15-1216(A)(3), which appears to require outlet works only for low, significant or high hazard potential dams, but not for very low hazard dams. For a very low hazard detention structure, we believe that the release of water through the relatively permeable geology surrounding the structure is a sufficient “outlet feature” and we query whether the Department can point to any other definition that would preclude the use of such a feature consistent with existing regulations.

Also, you suggest that a detention structure must have such outlet features so that “water is released immediately, albeit at a slower rate.” It would seem impossible to release water “immediately” from any detention structure—the concepts of detention and immediate release being incompatible—and likewise impossible to release water immediately, but at a slower rate.

September 25, 2007

Page 4

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

If water is going to be released (or in our situation, is merely seeping through) at a slower rate, it is not being released immediately.

Obviously, the time differential is the critical element here, yet your definition does not attempt to set forth any objective guidance on the relative time of detention versus impoundment. This is a critical definition in this matter, as it determines whether these structures are “for the impounding or diversion of water.” In other words, it determines whether these structures are dams.

Because your proposed definition of a detention structure is impossible of objective compliance, it cannot withstand scrutiny either on its merits, or in the context of A.R.S. 41-1001.01(A)(9) and related laws. Therefore, we ask that you reconsider your proposed definition of detention structures and undertake to craft any such definition in the manner provided by Arizona administrative procedures.

Dam Safety Structural Analysis

ADWR has expressed concerns that these structures pose a hazard to life and property in the downstream watershed. Bar Boot Ranch occupies most of the downstream watershed, up to the next adjoining ranch, the 99 Bar Ranch. The 99 Bar Ranch is subject to a conservation easement in favor of the United States Fish and Wildlife Service and, as such, it is not populated and to our knowledge will not be populated in the future. The entire area is extremely remote and basically wilderness.

Mr. Howey concludes, based upon his visual inspection of the potential downstream dam failure inundation area, that failure or improper operation of these structures would unlikely result in any loss of life, produce no lifeline losses, and would have very low economic and intangible losses. Furthermore, although a dam break study was not completed, he believes that breach inundation would be maintained within the existing floodplain. These are the definitions of a very low hazard structure, A.A.C. R12-15-1206(B)(2)(a), and it is difficult to imagine a location in Arizona where the mere detention of water behind these types of structures would pose less of a hazard than on Bar Boot Ranch.

Under these circumstances, we have asked Mr. Howey how we might prove to ADWR that these structures are fundamentally sound, and do not pose a risk of catastrophic failure. He suggests that the typical registered land surveying, geotechnical and hydrological analyses required to make the requisite demonstration to ADWR for more hazardous structures could be as much as follows:

September 25, 2007

Page 5

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

Structure	Estimated Structural Analysis Cost
Upper Chalk	\$60,250.00
Lower Chalk	\$56,000.00
Gate	\$64,000.00
Crow	<u>\$60,250.00</u>
Total	\$240,500.00

Reviewing these costs, we hope that you can appreciate the level of our concern over the need to undertake such work in this very low hazard condition. We do believe, however, that such costs could be mitigated somewhat, as they are based on an individual or "per structure" basis and the hiring of Phoenix engineers with attendant travel expenses. It would be our intention to bundle the engineering investigations and assessments together to gain economy of scale, and to source local contractors that could do the work for less, but we do not anticipate that the costs would be dramatically reduced.

We understand that, with such a demonstration, we would be able to pursue permits for the operation and maintenance of these structures. We also believe that, upon such engineering analysis, the detention structures will be determined to be fundamentally sound. Therefore, if such actions would in fact resolve ADWR's concerns, we would be willing to undertake the analyses and seek permits for the structures.

Appropriative Surface Water Rights

In the course of this investigation by ADWR, the Department has often asserted that the structures deemed to be jurisdictional dams are also "using" water within the meaning of A.R.S. § 45-141 and related laws. We have consistently tried to convince ADWR that the intention here is not to store, divert, use or otherwise consume the water detained behind these structures, other than to enhance the vitality of the downstream watershed by slowing the flow of the large volume storm events so that the water will percolate into the stream side aquifers. In our letter of June 20, 2007, we specifically asked that you consider whether this was an appropriate activity conducted with the use of *unappropriated* water. You did not respond to that request in your July 7, 2007 letter, but continue to speak in terms of appropriative surface water rights.

While we continue to disagree with this conclusion, it seems that the Department is encouraging the owners of Bar Boot Ranch to apply for appropriative rights for these purposes. We are unsure of the consequences of such action, particularly because we understand that other applications have already been filed downstream. If an application for an appropriative right is a means by which we might meet the Department's concerns on this issue and, if the application

September 25, 2007

Page 6

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

for, and eventual issuance of, a permit to appropriate will not place us in immediate jeopardy of a downstream call, we are willing to submit such an application. It would be helpful to understand the relationship between such an application and the existing surface water rights, claims or applications downstream, and we have accordingly included a request for such information in our public records request being filed concurrently with this letter, as noted above. We would propose to meet with the Department and discuss this possibility, and the ramifications thereof, if you are willing to do so.

Proposed Time Frame for Action

Your July 7, 2007 letter requests a specific time line for undertaking a course of action to address ADWR's concerns in this matter. While we are committed to moving forward with the hiring of consultants to conduct the necessary engineering analyses of the four structures, and believe that such analyses can be undertaken and completed within this calendar year, it is difficult to engage such expensive work without knowing whether such a course of action would be acceptable to ADWR. Indeed, it would be unwise to spend \$200,000.00 for engineering studies, only to find that ADWR has no intention of permitting these structures in a manner that resolves this dispute.

In this regard, your letter also mentions a proposed stipulation and consent order, whereby the Department would commit to a specific course of action, in exchange for our commitment to proceed. Unfortunately, your letter also raises, for the first time in these discussions, the imposition of civil penalties upon Bar Boot Ranch. Given the wide gap between the parties on the facts concerning these alleged violations, it seems counterproductive to interject this possibility into your response at this late date, without any indication as to how, or on what basis, such decisions will be made. We are not prepared to move forward on the basis that the Department will decide, at some unspecified future time, to "partially offset" these penalties. If we are to agree to a course of action on the engineering vitality of these structures, this issue will have to be resolved first.

Conclusion

This matter involves very small quantities of water in a very remote location where all objective evidence points to the beneficial impact of these activities on the downstream watershed and downstream water right holders such as the United States Fish and Wildlife Service. The local representatives of the United States Fish and Wildlife Service has frequently expressed appreciation for the watershed enhancement efforts being conducted on Bar Boot Ranch, and we remain at a loss why the Arizona Department of Water Resources, the state

September 25, 2007

Page 7

**Confidential Settlement Negotiation Correspondence
Subject to Rule 408, Arizona Rules of Evidence**

agency created with the specific intent to protect the state's groundwater aquifers, is so intent on impacting this beneficial groundwater enhancement program.

Nevertheless, we remain committed to attempt to resolve the matter informally, and we will commit to the specific engineering analyses necessary to demonstrate that these structures are adequately safe for very low hazard conditions, and pursue operating permits for these structures. If you are prepared to meet us halfway in this endeavor, I am sure that we can arrive at suitable terms and begin the necessary work in the immediate future. We will further commit to additional investigation on the filing of applications to appropriate surface water, and to work with ADWR to see if that course of action can resolve the appropriation issues in a manner satisfactory to all in the watershed. We hope that you will work with us in this regard, as well.

Sincerely,

MAGUIRE & PEARCE PLLC



Michael J. Pearce

MJP
encl.

c: Mr. Scott Deeny, ADWR Legal Division **Via Facsimile (602-771-8683)**
Mr. Josiah Austin

MAGUIRE & PEARCE

ATTORNEYS AT LAW
A PROFESSIONAL LIMITED LIABILITY COMPANY

Rita P. Maguire
Admitted in Arizona
rmaguire@mpwaterlaw.com

2999 North 44th Street
Suite 630
Phoenix, Arizona 85018
Phone: (602) 277-2195
Fax: (602) 277-2199

Michael J. Pearce
Admitted in Arizona & California
mpearce@mpwaterlaw.com

September 25, 2007

Ms. Kathleen Donoghue
Docket Supervisor
Arizona Department of Water Resources
Legal Division
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Public Records Request

Dear Ms. Donoghue:

This letter is written to make a public records request to the Arizona Department of Water Resources (ADWR) pursuant to A.R.S. § 39-121 for the following categories of information:

1. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to the determination by ADWR to change the status of certain structures located on the Bar Boot Ranch in Cochise County, Arizona from very low hazard potential to low hazard potential.
2. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to the change of any other structure construed by ADWR to be a "dam" within the meaning of A.R.S. § 45-1201 from very low hazard to low hazard or, conversely, from low hazard to very low hazard potential within the last ten years, whether such structures were registered or unregistered.

September 25, 2007

Page 2

3. ADWR Records of surface water rights in the following areas (a Search Request Form is also attached): Twp. 19S, Range 28E; Twp. 20S, Range 28E; Twp. 21S, Range 28E; and Twp. 21S, Range 27E.
4. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to any communication between ADWR and the 99 Bar Ranch or its owner, Mr. Peter Bennett, or any employee, representative, consultant, attorney or agent of 99 Bar Ranch or its owner, Mr. Peter Bennett.
5. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to any communication between ADWR and the United States Fish and Wildlife Service, including its local representative Mr. William Radke, concerning the watershed and watershed management issues above the Leslie Canyon National Wildlife Refuge, or any endangered or threatened species found within the Leslie Creek area.
6. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to any enforcement actions taken by ADWR (whether administrative or judicial) relating to very low hazard or low hazard dams within the last five years, whether or not finally resolved, settled, dismissed or otherwise resolved. This request also includes any information available within ADWR concerning any "unregistered dam" program.
7. All records, data, information, photographs, maps, internal memoranda or correspondence, external memoranda or correspondence, notes, field notes, e-mail, electronic images or communications, and all other information relating to any enforcement actions taken by ADWR (whether administrative or judicial) relating to the alleged improper or illegal use or impoundment of surface water within the last 10 years.

We recognize that the foregoing information may take a while to assemble, and we are willing to work with ADWR staff to assemble the materials in phases or in parts. We are concerned, however, that ADWR has issued a Notice of Violation dated February 16, 2007 alleging violations of Arizona water law on the Bar Boot Ranch in Cochise County, Arizona, and we believe that the information requested above bears directly on this Notice of Violation. Therefore, we request that arrangements be made to allow us to view the requested information, and obtain copies as needed, before any further action is taken on the February 16, 2007 Notice of Violation.

September 25, 2007
Page 3

Thank you for your attention to this matter. Please call me if we can assist in facilitating the review of the information requested.

Sincerely,

MAGUIRE & PEARCE PLLC

A handwritten signature in black ink, appearing to read "Michael J. Pearce". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Pearce

MJP
encl.

c: Ms. Sandy Fabritz-Whitney
Mr. Scott Deeny ADWR Legal Division Via Facsimile (602-771-8683)
Mr. Josiah Austin

**INFORMATION MANAGEMENT UNIT
DATABASE SEARCH REQUEST**

Arizona Dept of Water Resources
Information Management Unit
3550 N. Central Avenue
Phoenix AZ 85012
Phone: 602-771-8627
Fax: 602-771-8690

Today's Date September 24, 2007

Firm or Agency Maguire & Pearce, PLLC

Mailing Address 2999 N. 44th St. Suite 630, Phoenix AZ 85018

Contact Person Mike Pearce Phone No. (602) 277-2195

Actual costs will be determined after the report is completed. We will call you with the cost, and to make arrangements for payment. Report will be furnished after payment is received. Payment can be made by cash, check, or Visa or MasterCard.

.....

PLEASE CIRCLE THE WATER RIGHT CATEGORIES YOU ARE REQUESTING:

Surface Water Registry Of Groundwater Rights Wells 55 Adjudication Claims

Searches are done using the Arizona land legal description. If you only have an address or parcel number, contact your county assessor's office to get the legal description for the property.

Search in the following location(s):

Townships	Ranges	Sections
19 South	28 East	All
20 South	28 East	All
21 South	28 East	All
21 South	27 East	All

Name searches can be done, but the results may be incomplete and we cannot verify that all rights were discovered.

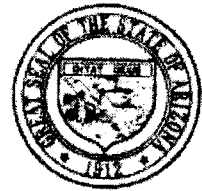
Name of registered owner _____

TECHNICIAN _____

DATE _____

ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER ENGINEERING
Dam Safety Section

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8649
FAX 602-771-8686



Janet Napolitano
Governor

Herbert R. Guenther
Director

October 11, 2007

CERTIFIED MAIL 7001 1940 0000 1286 8319
RETURN RECEIPT REQUESTED

Mr. Josiah Austin
Bar Boot Ranch, LLC
12626 East Turkey Creek Road
Pearce, AZ 85625

RE: NOTICE OF VIOLATION

Dear Mr. Austin:

The Arizona Department of Water Resources (Department) is in receipt of your attorney's letter dated September 25, 2007.

Non-Jurisdictional Impoundment Structures

This letter does not address any non-jurisdictional impoundment structure that retains surface water located on Bar Boot Ranch. As stated in the Department's July 25, 2007 letter, those impoundments will be addressed by the Department after it adopts surface water rules. Please be aware, however, that to the extent that any of these non-jurisdictional impoundment structures retain surface water they are considered illegal diversions, and must either be removed or fitted with an outlet pipe at grade so that water is released immediately.

Four Jurisdictional Dams

As described in the Notice of Violation dated February 16, 2007, you are in violation of Arizona Revised Statutes (A.R.S.) and Arizona Administrative Code (A.A.C.) pertaining to the supervision of dams and reservoirs. The four dams identified on your property satisfy the height and storage capacity requirements of A.R.S. § 45-1201 and do not satisfy any of the five listed criteria for exempt structures. This letter describes the steps necessary for you to bring these dams into compliance with Arizona dam safety statutes and rules. This letter also notices you of the Department's decision on assessment of civil penalties for many years of violation of state law.

Mr. Pearce's September 25, 2007 letter requested clarification regarding the hazard potential classifications for the four dams. To date, the Department has made initial assessments of "Low" hazard potential for each of the four dams using the best information available to us. When permitting the dams, it is your responsibility to include the necessary supporting documentation for demonstrating the appropriate hazard potential classification as being either "Low" hazard (in accordance with A.A.C. R12-



NOTICE OF VIOLATION

Mr. Josiah Austin

October 11, 2007

Page 2 of 3

15-1210(A)(5)) or "Very Low" (in accordance with A.A.C. R12-15-1211(A)(6)). Final determinations of hazard potentials will be made during the permitting process. If you do not agree with one or more of the determinations, once made, you will have the right to appeal.

I. COMPLIANCE SCHEDULE

You must notify the Department by November 15, 2007 of your intent to submit Dam Safety permit applications for each of the four jurisdictional dams. If you fail to notify the Department of your intent by November 15, the Department will seek injunctive relief and civil penalties pursuant to A.R.S. § 45-1221 and 1222.

The permit applications for each of the four dams must fulfill the requirements of A.A.C. R12-15-1207 and may be for either of two purposes:

A. Application to Construct and Operate a Jurisdictional Dam in accordance with either A.A.C. R12-15-1210 or A.A.C. R12-15-1211 for "Low" or "Very Low" hazard dams, respectively.

Dam Safety permit applications require proof of a surface water permit for construction of retention dams. Because you do not have such a permit, construction plans and specifications for installation of an outlet pipe at grade must be included in the dam safety application package for each dam permitted in this manner. This option was presented to you as "Alternative 4" in our letter dated July 7, 2007.

B. Application to Breach or Remove from Jurisdiction a Jurisdictional Dam in accordance with either A.A.C. R12-15-1210 or A.A.C. R12-15-1211.

Submittal and approval of this application does not relieve you of the requirement for a surface water permit to the extent that the structure continues to impound surface water. However, these requirements are separate from the dam safety application requirements. Inclusion of proof of a surface water permit is not required in the dam safety application package for each dam permitted in this manner. This option was presented to you as "Alternative 3" in our letter dated July 7, 2007.

Dam Safety permit applications for each of the four jurisdictional dams must be submitted no later than January 15, 2008.

II. CIVIL PENALTIES

A.R.S. § 45-1222(A) states that a person in violation of Article 1 dealing with the supervision of dams, reservoirs, and projects "...may be assessed a civil penalty in an amount not exceeding one thousand (\$1000) dollars per day of violation." To the best of our knowledge, you have been committing four separate violations each day since January of 2001. **At this time, the Department is willing to reduce the civil penalties to a value of \$600,000.** The Department is willing to meet with you to discuss the amount of civil penalties. As stated in our letter of July 7, 2007, these penalties may be partially offset by costs incurred in bringing the four dams into compliance with Arizona dam safety statutes and rules.



NOTICE OF VIOLATION

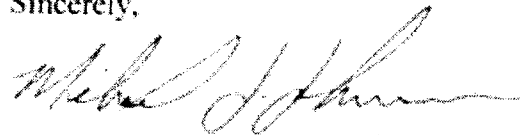
Mr. Josiah Austin

October 11, 2007

Page 3 of 3

To obtain additional information or to schedule a meeting, please contact me at (602) 771-8659.

Sincerely,



Michael Johnson, PhD PE

Section Manager

Cc: Michael Pearce – Maquire & Pearce PLLC
Mr. Scott Deeny – Deputy Counsel, ADWR
Mrs. Sandy Fabritz-Whitney – A/D Water Management, ADWR
Mr. J. Darrell Jordan – Manager Water Engineering, ADWR



ARIZONA DEPARTMENT OF WATER RESOURCES
Legal Division
3550 North Central Avenue, Phoenix, Arizona 85012
Telephone 602 771-8472
Fax 602 771-8683



Janet Napolitano
Governor

Herbert R. Guenther
Director

October 23, 2007

Maguire & Pearce, PLLC
Attn: Michael J. Pearce
2999 North 44th Street, Suite 630
Phoenix, Arizona 85018

RE: Public Records Request Dated September 25, 2007

Dear Mr. Pearce:

This letter responds to your public records request made on September 25, 2007 pursuant to A.R.S. § 39-121. The Arizona Department of Water Resources (Department) has collected the documentation responsive to your request, and will make it available to you for viewing at your convenience. The Department has the following comments regarding certain categories of documents that you have requested:

Category 1 - As set forth in Michael Johnson's letter of October 11, 2007 to Mr. Josiah Austin, the Department has not made a final determination regarding the hazard potential classification of each of the four jurisdictional dams located on Bar Boot Ranch. It is the applicant's burden to demonstrate the hazard potential classification of the proposed jurisdictional dam as part of the permitting process. See A.A.C. R12-15-1206(B)(3). Final determinations regarding the hazard potential of jurisdictional dams are made by the Department at that time. As of this date, no applications to permit the jurisdictional dams located on Bar Boot Ranch have been filed with the Department, and therefore no final decision regarding the hazard potential classification of those dams have been made. As a consequence, the Department has no documentation responsive to this request.

Category 3 - The Department has identified 132 surface water rights and claims in the areas listed in your database search request dated September 24, 2007. Rather than pulling each file related to these surface water rights and claims (many of the files are archived off site), the Department has created the enclosed spreadsheet that identifies among other things the right owner, address, registration number, status, permit or certificate number, priority date and quantity. The Department will retrieve any file related to a specific water right or claim upon your request.

Category 5 - The Department has no documents responsive to this request.

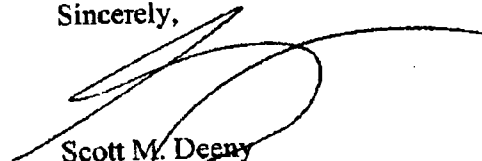
Maguire & Pearce, PLLC
October 23, 2007
Page 2

Category 6 - The Department has not taken enforcement action against owners of very low or low hazard dams within the last five years, and consequently has no documents that are responsive to this request. However, documentation concerning the Department's Unregistered Dam Program will be made available for your review.

Category 7 - The Department has not taken enforcement action related to the alleged improper or illegal use or impoundment of surface water within the last ten years, and consequently has no documents that are responsive to this request.

Please contact me at 602-771-8482 or Kathy Donoghue at 602-771-8476 to set up a time to review the requested documents.

Sincerely,



Scott M. Deeny
Deputy Counsel

SMD/gsw

Enclosure

cc: Sandra Fabritz-Whitney
Liza Logan
Michael Johnson
✓ Josiah Austin



Printed on recycled paper. Each ton of recycled paper saves 7,000 gallons of water.