

1 GEORGE A. SCHADE, JR.
Special Master
2 Maricopa County Superior Court
Central Court Building, Suite 5B
3 201 West Jefferson
Phoenix, Arizona 85003-2205
4 Telephone (602) 372-4115
State Bar No. 003289
5

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA
7

8 IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
9 GILA RIVER SYSTEM AND SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
(Consolidated)

10 In re Powers Garden Administrative Site
11

CIVIL NO. W1-11-3423

12 REPORT OF THE SPECIAL MASTER
13 CONCERNING FEDERAL RESERVED
14 WATER RIGHTS OF THE UNITED STATES
OF AMERICA IN THE SAN PEDRO RIVER
WATERSHED

15 **CONTESTED CASE NAME:** *In re Powers Garden Administrative Site.*

16 **HSR INVOLVED:** San Pedro River Watershed Hydrographic Survey Report.

17 **DESCRIPTIVE SUMMARY:** The Special Master files a report on federal reserved water rights of
18 the United States for the Powers Garden Administrative Site managed by the United States
Department of Agriculture, Forest Service. The objections to the federal claims were resolved by
19 stipulation. The Special Master moves the Court to adopt the report and enter a decree adjudicating
these water rights. Objections to this report and the proposed decree must be filed with the Clerk of
the Maricopa County Superior Court on or before **Tuesday, November 12, 2013**. Consideration of
the report and objections will be taken up as ordered by the Court.

20 **NUMBER OF PAGES:** 13 pages; Appendix A - 2 pages; proposed Order and Decree - 2 pages;
21 total 17 pages.

22 **DATE OF FILING:** September 11, 2013.

23 **I. INTRODUCTION**

24 This report covers the water right claims of the United States to Powers Garden Spring

1 located in the San Pedro River Watershed on federal lands used as an administrative site by the
2 United States Department of Agriculture, Forest Service.¹ This contested case, organized during the
3 normal course of the adjudication of the San Pedro River Watershed, addresses the objections filed to
4 the federal claims for reserved water rights to Powers Garden Spring. The United States claims
5 reserved water rights to the spring pursuant to Proclamation No. 1089, 36 Stat. 2748, issued by
6 President William Howard Taft on September 26, 1910.

7 The Arizona Department of Water Rights (“ADWR”) reported on the claims in the Final
8 Hydrographic Survey Report for the San Pedro River Watershed (1991) (“San Pedro HSR”). Several
9 claimants, including the United States, filed objections to portions of the reported findings. The
10 United States and the objectors entered into a stipulated agreement which includes two proposed
11 abstracts of water rights for Powers Garden Spring. One party withdrew his objections.

12 A.R.S. § 45-257(A)(2) states that “[t]he master shall ... [f]or all determinations,
13 recommendations, ... prepare and file with the court a report in accordance with rule 53(g) of the
14 Arizona rules of civil procedure, which shall contain those determinations, recommendations, ”
15 ADWR reviewed the proposed abstracts of water rights for accuracy and completeness of factual
16 information and noted several exceptions and recommended one clarification.

17 The Special Master accepted the stipulated agreement and proposed abstracts of water rights
18 as set forth in this report. He recommends that the Court approve, adjudicate, and decree the federal
19 reserved water rights of the United States to Powers Garden Spring set forth in this report.

20 **II. CHRONOLOGY OF PROCEEDINGS**

21 This case was initiated on November 30, 2007, to resolve the objections to the claims of the
22

23 ¹ All pleadings are available at the office of the Clerk of the Maricopa County Superior Court, 601 West
24 Jackson Street, Phoenix, AZ 85003. Copies of orders are available on the website
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/Index.asp> on the page
entitled *Gila River Adjudication* under heading In re Powers Garden Administrative Site, No. W1-11-3423.

1 United States for water rights to Powers Garden Spring located in the Powers Garden Administrative
2 Site. An administrative site is a facility or improvement that was acquired or is used for purposes of
3 administration of the National Forest System.² The Powers Garden Administrative Site is located
4 approximately twenty miles south of Klondyke, Arizona, within the boundaries of the Coronado
5 National Forest and the Galiuro Wilderness Area. The United States acting through the Forest
6 Service manages the site and filed the claims for water rights in the Gila River Adjudication.

7 The claims are contained in Statements of Claimant Nos. 39-08034 and 39-08321, filed on
8 December 29, 1981. ADWR investigated these claims in the course of its adjudications work. Its
9 findings were reported in Watershed File Report (“WFR”) 115-09-001 of the San Pedro HSR.

10 The United States Forest Service, Coronado National Forest; Salt River Project (“SRP”); and
11 jointly the Gila River Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, and
12 Yavapai-Apache Indian Community, Camp Verde Reservation (now the Yavapai-Apache Nation)
13 filed objections to portions of the findings reported in WFR 115-09-001.

14 The United States indicated that Mr. Anthony J. Lunt is the only lessee, permittee, or allottee
15 associated with the Powers Garden Administrative Site. Although Mr. Lunt did not formally file an
16 objection to the claimed federal water rights to Powers Garden Spring, the Special Master requested
17 that Mr. Lunt be informed of and involved in the settlement efforts.

18 In 2007, 2008, and 2009, the United States and the objectors undertook negotiations to
19 resolve the disputed issues. The United States regularly filed status reports. On April 29, 2008, at the
20 Special Master’s direction, the United States amended both statements of claimant. Statement of
21 Claimant No. 39-08034 was previously amended on April 27, 1989.

22 On November 12, 2009, pursuant to the request of the United States, the Special Master set

23 _____
24 ² Following the oral argument held on November 2, 2010, SRP submitted copies of several federal documents that define and explain the use of administrative sites in national forests.

1 for briefing the following issue:

2 “Is the United States entitled to a federal reserved water right that includes the use of
3 water for irrigation and stockwatering purposes at the Powers Garden Administrative
Site in the Coronado National Forest?”³

4 The United States, SRP, San Carlos and Tonto Apache Tribes, and the Yavapai-Apache
5 Nation filed disclosure statements. The United States filed a Motion for Partial Summary Judgment,
6 and SRP filed a Motion for Summary Judgment. The movants filed responses and replies.

7 The Special Master heard oral argument on both motions on November 2, 2010. Following
8 argument, pursuant to the Special Master’s request, the United States and SRP submitted additional
9 documentary information.

10 On November 23, 2010, the Special Master issued a ruling.⁴ The order contains some of the
11 relevant history and background of the Powers Garden Administrative Site, including water uses.

12 Thereafter, settlement negotiations resumed. The United States and SRP filed status reports.
13 On January 9, 2013, a conference was held. On January 14, 2013, the Special Master issued an order
14 setting a schedule for the submission of a settlement agreement and its review by ADWR.⁵ The
15 review followed the procedure adopted in another contested case.⁶ The Special Master directed
16 ADWR to “review the stipulation and proposed abstracts of water rights in accordance with the
17 following two directives and file its recommendations:

18 A. A comprehensive technical report is not contemplated but rather a review and
19 recommendations regarding the settlement agreement.

20 B. ADWR’s review shall be limited to the accuracy and completeness of the factual

21 ³ Special Master’s Order Designating an Issue for Briefing at 1, ¶ 1 (Nov. 12, 2009). The text is available at
<http://tinyurl.com/k94h7vw>.

22 ⁴ Special Master’s Order Determining the Issue of Irrigation and Stockwatering Uses (Nov. 23, 2010). The
text is available at <http://tinyurl.com/q7az45z>.

23 ⁵ Special Master’s Order (Jan. 14, 2013). The text is available at <http://tinyurl.com/ptful4c>.

24 ⁶ The procedure was used in the case *In re PWR 107 Claims, Contested Case No. W1-11-1174*. *See* Orders
dated July 19, 2006, and Sept. 30, 2004; the texts are available at <http://tinyurl.com/p5xs428> and
<http://tinyurl.com/mqujunz>, respectively.

1 information contained in the proposed stipulation and abstracts of water rights. During
2 the course of ADWR's review, if it would facilitate and expedite, but not delay, the
3 process, ADWR and the settling parties may discuss the stipulation and abstracts and
4 make factual corrections.⁷

5 On May 14, 2013, the United States filed a Stipulation Resolving Objections which included
6 two proposed abstracts of water rights for Statements of Claimant Nos. 39-08034 and 39-08321. The
7 United States and all the remaining objectors executed the stipulation. The United States submitted
8 written evidence showing that Mr. Lunt withdrew his objections to these federal claims. Mr. Lunt's
9 message to counsel for the United States dated January 21, 2009, (a copy is attached to the
10 stipulation) states in pertinent part as follows:

11 "I withdraw my objections to Claims Nos. 39-08034 and 39-08321. This withdrawal
12 is limited solely to such Claims and no others on my leased land from the United
13 States, and this shall not constitute a precedent of any kind."

14 ADWR filed its Report Concerning Proposed Stipulation and Water Rights Abstracts
15 ("ADWR Review") on July 15, 2013. The Special Master had previously allowed non-settling
16 objectors, if any, and parties thirty-two days to file comments to the stipulation, proposed abstracts of
17 water rights, and ADWR's recommendations. No comments or objections were submitted.

18 **III. STIPULATIONS AND PROPOSED ABSTRACTS OF WATER RIGHTS**

19 The stipulation and proposed abstracts of water rights are described in ADWR's report. The
20 report summarizes the following attributes of the water rights listed in each abstract: claimant/owner
21 of the water right, type(s) of use, basis of claim (priority date), source of water (name), point of
22 diversion (legal description), place(s) of use (legal description), quantity of water, and where
23 appropriate provides additional information. Based on its review, with certain exceptions and one
24 clarification, ADWR found that the proposed abstracts of water rights are accurate and complete.

⁷ Order, n.5 *supra*, at 3.

1 A. Exception Concerning Legal Description of Several Places of Use

2 ADWR reports that the legal description of the places of use is within Section 13 (not 3 as
3 shown on one abstract for several places of use), Township 9 South, Range 19 East, Gila and Salt
4 River Base and Meridian (G&SRB&M). In an electronic mail message sent to the Special Master on
5 August 29, 2013, the United States indicated that it does not disagree with this legal description of
6 the section for the places of use associated with both abstracts of water rights. The message states in
7 pertinent part:

8 ADWR points out a clerical error in the abstracts for the two Powers Garden water
9 rights claims. Specifically, a digit (“1”) was inadvertently dropped from the “section”
10 description of some of the locations. All POU’s [places of use] and PODs [points of
11 diversion] are in section 13; there is none in section 3. Further, for claim number 39-
08321, ADWR notes that the informal name given the water right (Cow Camp Tank)
is not the source of the water and recommends changing the source description to
“Powers Garden Spring.” We have no objection to either of these changes.

12 The Special Master has reviewed all the information submitted and finds that all the places of
13 use are located within Section 13, Township 9 South, Range 19 East, G&SRB&M. The abstracts set
14 forth in Appendix A incorporate this correction.

15 B. Exception Concerning Listing of Timber and Securing Favorable Water Flows as
16 Claimed Water Uses

17 ADWR notes that both abstracts include timber and securing favorable water flows as uses,
18 but these uses are not listed in the statements of claimant. The Special Master believes ADWR is
19 suggesting that these uses cannot be adjudicated because they are not included in the federal claims.

20 The claims involved in the settlement agreement are for federal reserved water rights for a
21 national forest. Concerning the purposes of reserved water rights for a national forest, the United
22 States Supreme Court has held that the:

23 Congress intended that water would be reserved only where necessary to preserve the
24 timber or to secure favorable water flows for private and public uses under state law.
This intent is revealed in the purposes for which the national forest system was

1 created and Congress' principled deference to state water law in the Organic
Administration Act of 1897 and other legislation.⁸

2 The pleadings, orders, and documents in this contested case clearly show we are dealing with
3 federal reserved water rights for a national forest, namely, the Coronado National Forest. The San
4 Pedro HSR reported that "[t]he Coronado National Forest has filed two statements of claimant (39-
5 8034 and 39-8321) for a 'reserved' right ... [f]or the Powers Garden Administrative Site."⁹ The
6 abstracts show the purposes of reserved water rights for a national forest. The statements of claimant
7 may not list timber and securing favorable water flows as water uses, but according to the law of
8 federal reserved water rights these are the purposes of such rights for a national forest. The Special
9 Master finds that there is sufficient evidence in the record of this case showing that federal reserved
10 water rights for a national forest are the subject of the stipulation and abstracts.

11 Furthermore, because a statement of claimant may be amended, as a matter of right, until
12 such time as the Special Master has completed hearings for a federal reservation, this omission can
13 be corrected at a future time.¹⁰

14 The Special Master finds that not including timber and securing favorable water flows in the
15 statements of claimant is insufficient to be a basis for not approving the stipulation and proposed
16 abstracts of water rights.

17 C. Exception Concerning the Use of "Securing Favorable Water Flows"

18 ADWR states that "it is not clear to ADWR what is meant by 'securing favorable water
19 flows.'"¹¹ ADWR does not indicate why it deems it necessary for the Special Master to resolve this
20 legal issue. While it may appear that ADWR is asking for a legal opinion concerning the purposes of
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22 ⁸ *United States v. New Mexico*, 438 U.S. 696, 718 (1978); see also Order, n.4 *supra*, at 4 (partially citing this
23 holding).

⁹ San Pedro HSR, vol. 1 at 380.

¹⁰ See A.R.S. § 45-254(E.2). Thereafter, an amendment requires the Court's permission. *Id.* at E.3.

¹¹ ADWR Review at 7 (July 15, 2013).

1 federal reserved water rights for national forests, the Special Master sees ADWR acting as “an
2 identifier of issues,” a role that “fall[s] far short of participation in the actual adjudicatory process -
3 the resolution of contested issues of fact or law.”¹²

4 It is not necessary to resolve this issue at this time in this case because the answer is not
5 integrally required for the approval of the settlement agreement and proposed abstracts of water
6 rights.

7 The United States Supreme Court has held that:

8 The legislative debates surrounding the Organic Administration Act of 1897 and its
9 predecessor bills demonstrate that Congress intended national forests to be reserved
10 for only two purposes - “[t]o conserve the water flows, and to furnish a continuous
11 supply of timber for the people” (footnote and citations omitted)....

12 Congress intended that water would be reserved only where necessary to preserve the
13 timber or to secure favorable water flows for private and public uses under state law.¹³

14 The Special Master cited this holding in the November 23, 2010, order. The first conclusion
15 of law in the order stated as follows:

16 “The purposes for which the Congress intended that water would be reserved on lands
17 of the public domain withdrawn and reserved for national forests are to preserve the
18 timber and secure favorable water flows for private and public uses under state law.”¹⁴

19 The Special Master found “that the reserved water rights of the Powers Garden
20 Administrative Site must be limited to the primary purposes of preserving timber and securing
21 favorable water flows, but a portion of those water rights can be allocated for domestic, irrigation,
22 stockwatering, and firefighting uses as long as the water is used only by Forest Service employees,
23 volunteers, and independent contractors, and the water uses are directly related to and consistent with
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¹² *United States v. Superior Court*, 144 Ariz. 265, 281, 697 P.2d 658, 674 (1985); *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 72, 977 P.2d 790, 794 (1999).

¹³ 438 U.S. at 707 and 718; *see also* Order, n.4 *supra*, at 3-4 (partially citing this holding).

¹⁴ Order, n.4 *supra*, at 4.

1 the primary purposes of national forests.¹⁵

2 And the order determined that:

3 The reserved water rights of the Powers Garden Administrative Site must serve the
4 primary purposes of preserving timber and securing favorable water flows, but a
5 portion of those water rights can be allocated for domestic, irrigation, stockwatering,
6 and firefighting uses as long as the water is used only by Forest Service employees,
7 volunteers, and independent contractors, and the water uses are directly related to and
8 consistent with the primary purposes of national forests.¹⁶

9 It can only be concluded that the settling parties correctly incorporated in the abstracts the
10 language of the primary purposes of reserved water rights for national forests. Future decisions and
11 opinions that consider this issue will add to the body of law of reserved water rights and provide
12 guidance to this adjudication. The Special Master cannot find that this exception is a sufficient basis
13 not to approve the stipulation and abstracts of water rights.

14 D. Clarification Concerning the Stockpond Named "Cow Camp Tank"

15 ADWR recommends that the abstract of water right for Statement of Claimant No. 39-08321
16 be clarified to state that the name of the stockpond that stores water from Powers Garden Spring is
17 Cow Camp Tank, and the water source is Powers Garden Spring. The United States does not disagree
18 with this clarification as stated in its message of August 29, 2013. The Special Master has
19 incorporated this clarification in the abstract of water rights for Statement of Claimant No. 39-08321
20 set forth in this report. It is noted that the San Pedro HSR reported that Cow Camp Tank was claimed
21 to have been built in 1959.¹⁷

22 E. Certificate of Water Right No. 1248

23 ADWR reports that the United States Forest Service holds Certificate of Water Right No.
24 1248 to water from Powers Garden Spring, for domestic, irrigation, and stockwatering uses, with a

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 8.

1 date of priority of January 5, 1940. The vested quantities of water are 73,000 gallons per annum for
2 domestic uses, 17.5 acre feet per annum for the irrigation of seven acres of land, and 18,250 gallons
3 per annum for stockwatering.¹⁸

4 The stipulation does not mention or involve this state law based water right. Accordingly, no
5 findings or determinations concerning this water right are made in this report.

6 **IV. SPECIAL PROCEDURAL ORDER PROVIDING FOR THE APPROVAL OF 7 FEDERAL WATER RIGHTS SETTLEMENTS, INCLUDING THOSE OF INDIAN TRIBES**

8 Special proceedings to consider the stipulation and proposed abstracts are not warranted
9 under the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal
10 Water Rights Settlements, Including Those of Indian Tribes¹⁹ for the reasons that the settlement of
11 these claims was reached in the normal course of the adjudication of the San Pedro River Watershed,
12 and there are no special circumstances preventing the Court from considering the settlement
13 agreement in the normal course of the adjudication.

14 These claims were settled following the preparation of the San Pedro HSR, filing of
15 objections to the HSR, organization of a contested case, and completion of negotiations. Special
16 proceedings are warranted when "[t]here are special circumstances preventing the consideration of
17 the settlement agreement in the normal course of the adjudication."²⁰ There has been no showing of
18 special circumstances that would prevent the Court from considering this agreement in the normal
19 course of the adjudication.

20 **V. RECOMMENDATIONS**

21 The settlement agreement was executed following lengthy negotiations engaged in good faith

22 ¹⁷ San Pedro HSR, WFR 115-09-001, vol. 6, table 4, page 63(2).

23 ¹⁸ ADWR Review at 5 and Table 1. A copy of the certificate is shown on Exhibit 5 of the U.S. Motion for
Partial Summary Judgment filed on July 2, 2010.

24 ¹⁹ Special Procedural Order (May 16, 1991). The text is available at <http://tinyurl.com/ow8nprt>.

²⁰ *Id.* at ¶ A(5).

1 and with diligence for the purpose of resolving legal disputes. The Special Master does not find any
2 reasons why the settlement agreement and proposed abstracts of water rights set forth in this report
3 should not be approved. The abstracts contain the corrections and clarification noted in this report.

4 The Special Master recommends that the Court:

5 1. Find that notice of this report was given as required by law and prior orders of this
6 Court, and the time allowed for claimants to file objections to the report was as required by law.

7 2. Approve the stipulated agreement of the parties and the two abstracts of water rights
8 set forth in this report.

9 3. Adjudicate and decree the federal reserved water rights of the United States described
10 in the two abstracts of water rights set forth in this report.

11 4. Order that the approved abstracts of water rights be incorporated in the tabulations or
12 lists of all water rights and their relative priorities on the Gila River System and Source in the form
13 that the Court shall determine to be appropriate.

14 **VI. AVAILABILITY OF THE REPORT**

15 This report will be filed with the Clerk of the Maricopa County Superior Court; contact
16 Deputy Clerk Kenneth Shipley (602-506-3369) to review the complete file and purchase copies of
17 documents. A copy of the report will be distributed to all the parties in this case and the persons who
18 appear on the Gila River Adjudication Court Approved Mailing List. An electronic copy of the report
19 will be available on the Special Master's website at
20 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/gila.asp> on the
21 page entitled *Gila River Adjudication* under the heading In re Powers Garden Administrative Site,
22 Contested Case No. W1-11-3423.

1 **VII. TIME TO FILE OBJECTIONS TO THE REPORT**

2 A.R.S. § 45-257(A)(2) states in pertinent part that when the Special Master submits a report
3 to the Court pursuant to Arizona Rule of Civil Procedure Rule 53(g) “[e]ach claimant may file
4 written objections with the court to any rule 53(g) report within ... sixty days after the report is filed
5 with the court.... If the report covers an entire ... federal reservation, each claimant may file with the
6 court written objections to the report within one hundred eighty days of the date on which the report
7 was filed with the court.”

8 The stipulated agreement and proposed abstracts of water rights do not cover an entire federal
9 reservation but pertain to a portion of the water rights claimed for the Coronado National Forest
10 within the San Pedro River Watershed. Hence, the 180-day period specified by A.R.S. § 45-
11 257(A)(2) for filing objections is not applicable. The period for filing objections to this report is sixty
12 days. In the order dated January 14, 2013, the Special Master informed the parties that claimants
13 would be given sixty days to file objections to this report.

14 **VIII. MOTION FOR ADOPTION OF THE REPORT**

15 The Special Master recommends that the Court approve the stipulation and proposed abstracts
16 of water rights for Powers Garden Spring set forth in this report. The Special Master moves the Court
17 under A.R.S. § 45-257 and Rule 53(h) to adopt the recommendations contained in this report and
18 adjudicate the water rights in a decree in the San Pedro River Watershed. A proposed Order and
19 Decree of Stipulated Federal Reserved Water Rights of the United States of America in the San
20 Pedro River Watershed is lodged with this report.

21 **IX. NOTICE OF SUBSEQUENT PROCEEDINGS**

22 Any claimant in the Gila River Adjudication may file a written objection to this report and
23 proposed decree on or before **Tuesday, November 12, 2013**. All objections must be filed with the
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1 Clerk of the Maricopa County Superior Court, Attn: Water Case, 601 West Jackson Street, Phoenix,
2 Arizona 85003.

3 A copy of all papers filed with objections shall be served on all persons who appear on the
4 Court approved mailing list dated July 1, 2013, for the contested case In re Powers Garden
5 Administrative Site, No. W1-11-3423. The list is available on the Special Master's website at
6 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/gila.asp>.

7 The Special Master's motion to approve the report and any objections to the report and the
8 proposed decree will be taken up as ordered by the Court. Rule 53(h)(5) states that the Court "may
9 adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with
10 instructions."

11 Submitted this 11th day of September, 2013.

12
13 /s/ George A. Schade, Jr.
14 GEORGE A. SCHADE, JR.
Special Master

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16 On September 11, 2013, the report was
17 delivered to the Clerk of the Maricopa
18 County Superior Court for filing and
19 distributing a copy to the persons who
20 appear on the Court approved mailing lists
21 dated July 1, 2013, for the Gila River
22 Adjudication, W-1, W-2, W-3, and W-4
(Consolidated), and In re Powers Garden
Administrative Site, No. W1-11-3423. On
the same date, a proposed form of Order and
Decree of Stipulated Federal Reserved
Water Rights of the United States of
America in the San Pedro River Watershed
was lodged with the Court.

23 /s/ Barbara K. Brown
Barbara K. Brown

1 **United States Department of Agriculture, Forest Service**

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STATEMENT OF CLAIMANT NUMBER	39-08321
OWNER	United States of America
NAME	Powers Garden Spring (Cow Camp Tank)
DATE OF RESERVATION	September 26, 1910
SOURCE	Powers Garden Spring
POINT OF DIVERSION	NE¼ SW¼ Sec 13 T09S R19E
PLACE OF USE	SW¼ NW¼ Sec 13 T09S R19E
FLOW RATE/VOLUME	0.56 acre foot per annum with right to fill and refill
USES	Necessary uses of water for livestock watering to support the purposes of preserving timber and securing favorable water flows
BASIS OF CLAIM	Federal reserved water right
REMARKS	The stockpond at the place of use is named Cow Camp Tank.