

MEMORANDUM

Office of the State Engineer
Water Resource Allocation Program
Water Rights Division, District 1

DATE: April 9, 2004
FILE: Miscellaneous Field Report
TO: Nancy Cunningham, Water Resource Supervisor
FROM: Joseph Fields, Water Resource Specialist
SUBJECT: Atarque Lake, Declaration of Ownership of Surface Waters Perfected Prior to 1907, Gallup Basin

SUMMARY - On April 7, 2004, a field investigation was conducted by the Office of the State Engineer (OSE) personnel, John Dickinson and Joseph Fields, District I, Albuquerque Office, for the purpose of checking Atarque Lake. A Declaration of Ownership of Water Right of Surface Waters Perfected prior to 1907 was filed for Atarque Lake on December 31, 2003 and replaced on March 31, 2004. The Declaration filed on December 31 was not accepted by the State Engineer and returned to Yates Petroleum Corporation, contact person, Peter Shoenfeld, 100 La Salle Circle, Suite A, P.O. Box 2421, Santa Fe, New Mexico 87504-2421.

Below is information from the Declaration filed on March 31, 2004:

Diversion Amount: Unknown

Consumptive Amount: 3,535 acre feet per annum, EVAPORATION, additional but presently unknown amounts for other uses.

Purpose of Use: Livestock, Irrigation, Recreation, Fishing, Boating, Swimming, Stock Watering.

Place of Use: 755 + acres of land (See Attachment 1)

Water was First Applied to Beneficial Use: Before March 19, 1907 and since that time has been used fully and continuously for all of the above described purposes except as follows: The dam was destroyed by 1971 and the water has not been used since that time.

Construction Works Consist of: A dam, outlet works, reservoir, and other works.

Hydraulic Properties-Storage Dam: Maximum storage capacity 21,000* acre feet.

Type of Dam: Stone, mortar, concrete, timbers. Remaining construction details are unknown but probably earth-fill.

Elevation or feet depth above outlet: Approx. 35'*

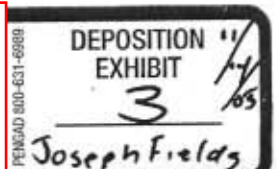
Area of Water Surface, Acres: Approximately 755 acres

Storage Capacity: 21,000* acre feet

Additional Statements or Explanations: *Paragraph 1: Additional owners are John A. Yates and Trust Q Under The Last Will and Testament of Peggy A. Yates, Deceased

*Paragraph 10: All hydraulic properties of the dam are estimated, since the dam ceased to operate and was no longer operable by 1971.

Exhibit 3
01cv00072-MV-WPL
Subfile ZRB-2-0098



Attachment 1 (Declaration)

Paragraph 5:

755 acres, more or less, comprising the surface area of Atarque Lake, as shown on the USGS Quadrangle mapsheet entitled "Atarque Lake, N. Mex. N3445W10845/7.5", an enlarged copy of a portion of which is attached hereto, located in Sections 1 and 12 of T6N, R19W, and in Sections 6 and 7, T6N, R18W all NMPM. In addition, to the best of the declarant's information and belief, the water was used for irrigation, household, domestic, and stock watering use on unknown number of acres, the precise location of which is also unknown, in the SW1/4 of Section 12, T6N, R19W, and in the NW1/4 of Section 13, T6N, R19W, NMPM, and around the perimeter of the lake.

Below is a copy of the 1972 USGS Map "Atarque Lake, N. Mex." showing the subject lakebed. The USGS classifies the map feature shown for the lake as "Dry Lake" under their heading, Rivers, Lakes, and Canals. The dashed blue lines around the lake indicate indefinite or unsurveyed boundary. The topography of the Lake was done by photogrammetric methods from aerial photographs taken in 1971 and field checked in 1972.

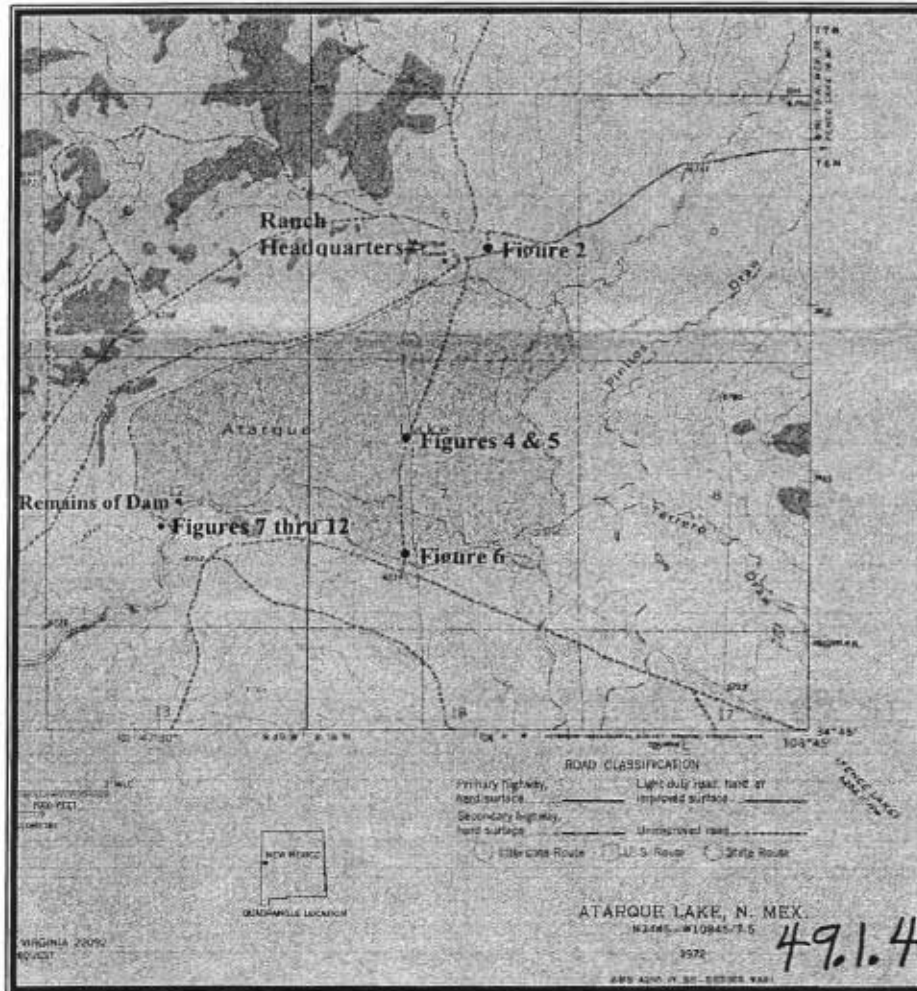


Figure 1:
A copy of the 1972 USGS Map showing Atarque Lake. The numbers shown on the map correlate to the Figure numbers and are the approximate location of where the pictures were taken.

The following Figures are pictures from the field trip showing the present status of Atarque Lake.

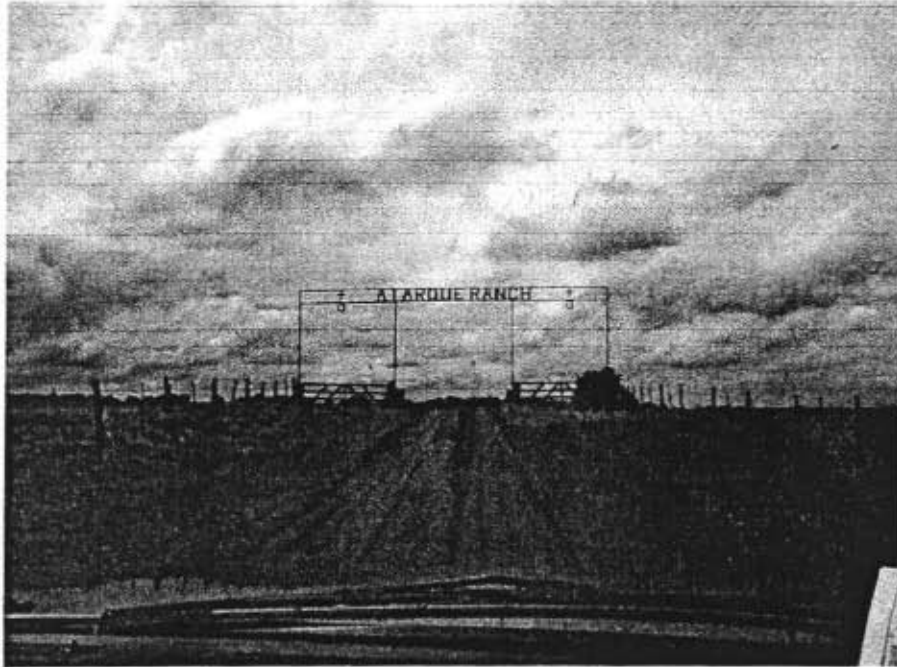


Figure 2: Picture shows the iron gate entrance to Atarque Ranch off State Highway 32. The road to the Ranch is Cibola County Road 32.



Figure 3: The view is looking southwest across the dry lakebed from the ranch compound.



Figure 4: View is of the dry lakebed looking north back to the ranch compound. The picture was taken from a road that crossed the middle of the old lake (see map for approximate location). Figure 5 shows the lakebed looking north from the same location.

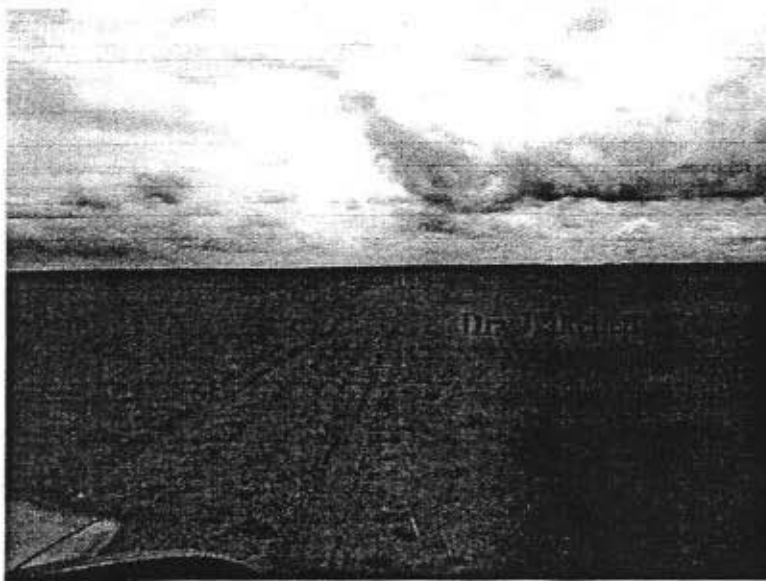


Figure 5: View is of the dry lakebed looking south from a road in the middle of the lake. The picture was taken from the same location as in Figure 4.

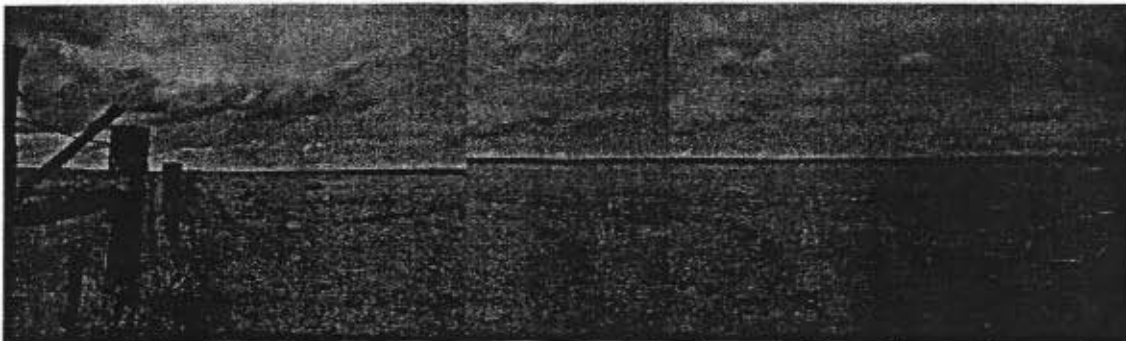


Figure 6: View is looking northwest across the Lake from the fence line at the south border of the lake as shown in Figure 1. The land rises south of the fence line to form a natural berm.

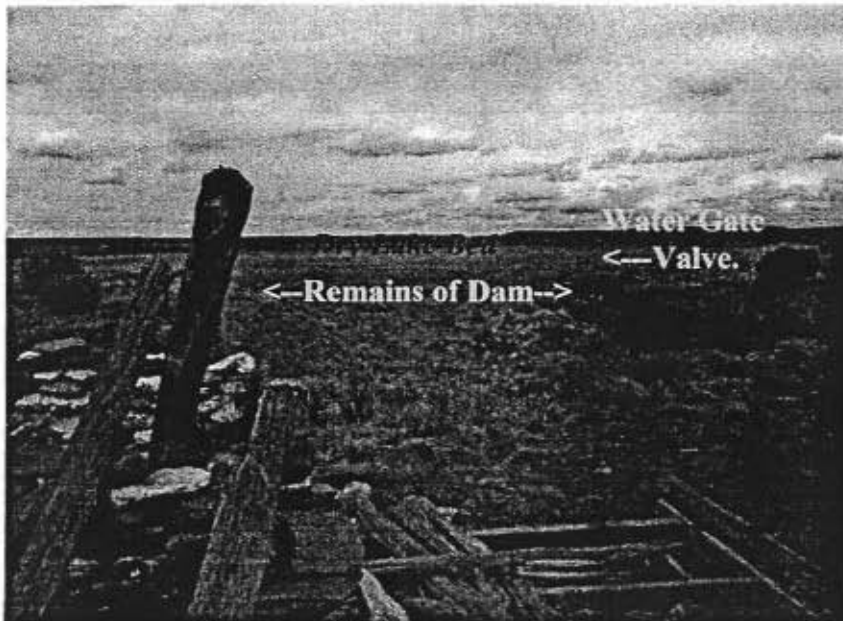


Figure 7: View is looking northeast to the old lakebed and remains of the Dam. The Dam is at the mouth of narrow Canyon with lava walls, which are approximately 20 to 30 feet high.



Figure 8: Close up of the water gate valve works and view of the dry lakebed looking northeast. The ranch compound is the white building located to the right of the gate valve.



Figure 9: View is of the lakeside inlet gate valve at the remains of the Dam. The gate is not in working condition.



Figure 10: View of the Canyon side outlet at the remains of the Dam. The gate valve works are the only remaining vestiges of the Dam works and are not functional.



Figure 11: View shows the remains of the Dam and gate valve works from as seen from the Lake. The Dam has been functionally destroyed and would have to be completely rebuilt in order to impound water again.



Figure 12: View shows the Dam destroyed as seen from the canyon looking north into the dry lakebed.

REMARKS

Per the 1972 USGS 7.5 minute topographical map, Atarque Lake was classified as "Dry Lake Bed" and remains so. In the replacement Declaration, Mr. Shoenfeld stated that "The dam was destroyed by 1971 and the water has not been used since that time". Apparently, the dam was destroyed in the early 1970's and the lake drained. The statements in the Declaration correlate with the status of the Lake as shown on the 1972 USGS Map. Inspection of the dam itself revealed that it has been functionally destroyed and what is left is no longer operable. In order to impound water again, the entire dam works would have to be completely rebuilt. Water can no longer be impounded and any runoff flows through braided channels in the lakebed through the remains of the dam into the canyon.

Based on the statements in the Declaration, the 1972 USGS Map and the field inspection, it is my opinion that water has not been put to beneficial use from 1971 to the present date. Once a water right has been established it requires continuous beneficial use of

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water to be considered valid. Based on decisions by the courts, intent to abandon may be presumed if at least 16 years of nonuse or at least 4 years of nonuse plus additional facts of intent to abandon are present. Once the right is considered lost, the original right may not be reestablished by subsequent use. It appears any right that was established has been abandoned and there is no right to declare.

DIRECTIONS

Take Interstate 40 westbound out of Albuquerque to the Gallup, New Mexico, and Exit 22, which is also the turn off to southbound State Road 602. Travel south approximately 31 miles to State Highway 53 and turn left or east. Travel east to State Road 32 and turn right or south. Travel south approximately 22 miles to Cibola County Road 32 and the entrance to the Atarque Ranch gate (see Figure 2). Turn right and travel west approximately 6 miles to the Atarque Ranch headquarters. Atarque Lake is located directly south of the Ranch headquarters.

JF:jf

cc: Ted Bagley, Santa Fe OSE, Litigation and Adjudication Program; Jess Ward, District 1 OSE