

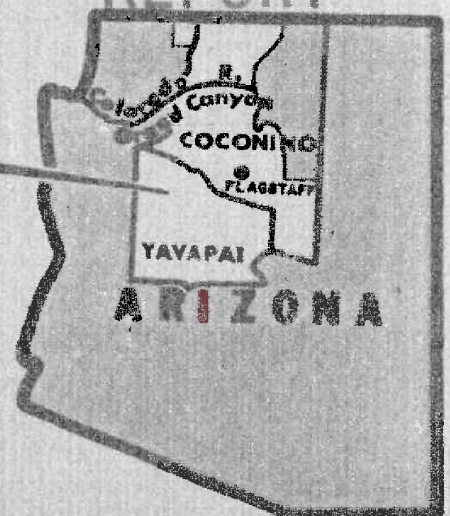
COCOPAI RESOURCE CONSERVATION & DEVELOPMENT PROJECT

RIO DE FLAG WATER BASED RECREATION AND WILDLIFE DEVELOPMENT

RC&D ~~MEASURE PLAN~~
PRELIMINARY

REPORT

COCOPAI
RC&D



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CITY OF FLAGSTAFF

NORTHERN ARIZONA SOCIETY OF SCIENCE AND ART, INC.
COCONINO NATURAL RESOURCE CONSERVATION DISTRICT

ASSISTED BY U.S. DEPARTMENT OF AGRICULTURE AND OTHER COOPERATING AGENCIES
PHOENIX, ARIZONA

AGREEMENT

DATE: MAY 20, 1953.

FIRST PARTIES: C. C. CHESHIRE and MARY DAVIS CHESHIRE,
husband and wife.

SECOND PARTY: HATTIE M. LOCKETT, a widow.

THIRD PARTIES: TOM E. POLLOCK and DOROTHY E. POLLOCK,
husband and wife.

FOURTH PARTIES: MARY RUSSELL F. COLTON and HAROLD S. COLTON,
wife and husband.

FIFTH PARTY: THE NORTHERN ARIZONA SOCIETY OF SCIENCE
AND ART, an Arizona non-profit corporation.

R E C I T A L S

- I -

On October 24, 1952, C. C. CHESHIRE of Flagstaff
Arizona, one of FIRST PARTIES, filed with the State Land Commission
of the State of Arizona the following described application for per-
mission to construct a reservoir and appropriate public waters of
the State of Arizona:

Application No. H-1181

Source of water supply: Rio de Flag, tributary of Little Colo-
rado River.

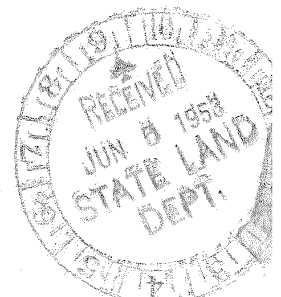
Amount applied for: 300,000 gallons per annum and capacity of
reservoir not to exceed 6.55 acre feet.

Proposed use of water: Stockwatering and wild life.

Place of using water: NE¹/₄SE¹/₄NE¹/₄, Section 5, Township 21 North,
Range 7 East, G&SR&M, Coconino County.

- II -

That prior to said 24th day of October, 1952, the
following applications were duly filed with the State Land Commission



of the State of Arizona for the purpose of establishing of record water rights created prior to June 12, 1919, by prior appropriation of the waters of RIO DE FLAG:

(1) Name of Applicant: HATTIE M. LOCKETT

Application No. A-3208

Date filed: September 24, 1952.

Source of water supply: Rio de Flag, tributary of San Francisco Wash.

Amount applied for: 300,000 gallons per annum

Proposed use of water: Stockwatering

Points of diversion within N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 4, Township 21 North, Range 7 East, GASHAM, Coconino County.

Place of using water: Same as point of diversion.

Said applicant claiming a prior right to the use of said waters through her predecessor in interest as of the year 1890.

(2) Name of Applicants: TOM E. POLLOCK and DOROTHY PEACH
POLLOCK, his wife.

Application No. A-3207

Date filed: July 29, 1952.

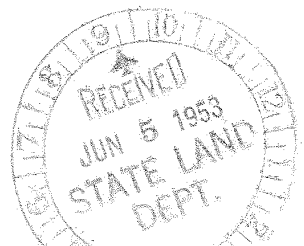
Source of water supply: Underground flow of River de Flag (also known as Rio de Flag), tributary of San Francisco Wash.

Amount applied for: Domestic, 1,000,000 gallons per annum;
Stockwatering, 200,000 gallons per annum.

Proposed use of water: Domestic and stockwatering

Point of diversion within SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 9, Township 21 North, Range 7 East, GASHAM, Coconino County.

Place of using water: Same as point of diversion.



Said applicants claiming a prior right through predecessors in interest since prior to 1919, and continued beneficial use since that time.

(3) Name of applicant: MARY RUSSELL F. COLTON

Application No. A-3216

Date filed: September 22, 1952.

Source of water supply: Coyote Spring Drain, tributary
of Rio de Flag at Coyote Spring.

Amount applied for: 1,000 gallons per day

Proposed use of water: Domestic use.

Point of diversion within SE1/4, Section 4, Township 21
North, Range 7 East, G&SRM, Coconino County.

Place of using water: NE1/4 and E1/4, Section 4, Township
21 North, Range 7 East, G&SRM, Coconino County.

Said applicant claiming a prior right to the use of these waters through her predecessor in interest, dating from the year 1906.

(4) Name of applicant: THE NORTHERN ARIZONA SOCIETY OF SCIENCE
AND ART.

Application No. A-3215

Date filed: September 22, 1952.

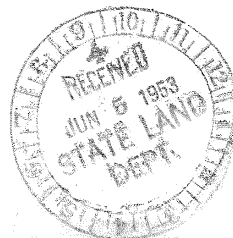
Source of water supply: McMillen Draw, tributary of Rio de
Flag at McMillan Garden Spring.

Amount applied for: 2,000 gallons per day.

Proposed use of water: Domestic use.

Point of diversion within SW1/4, Section 4, Township 21
North, Range 7 East, G&SRM,
Coconino County.

Place of using water: S1/4, Section 4, Township 21 North,
Range 7 East, G&SRM, Coconino County.



Said applicant claiming a priority right to the use of said water through predecessors in interest as of 1896.

- III -

That by virtue of possible infringement of said CHESHIRE appropriation on the established rights of the other applicants hereinabove named, each and all of said applications are considered in the nature of protests with respect to the CHESHIRE application.

- IV -

That one RUSSELL FLEMING of Flagstaff, Arizona, filed protests with the office of the State Land Commissioner of Arizona with respect to each and all of the above-mentioned applicants, which protests are being withdrawn by said protestant FLEMING.

- V -

That C. H. W. SMITH, Water Engineer, Water Division of the State Land Department of the State of Arizona, said applicants and protestants met in person or by attorney at Flagstaff, Arizona, on May 7, 1953, and have reached an agreement which it was proposed should be reduced to writing.

COVENANTS

1. That in consideration of the provisions, conditions and covenants of this agreement herein contained on the part of FIRST PARTIES to be performed, SECOND PARTY, THIRD PARTIES, FOURTH PARTIES and FIFTH PARTY do hereby withdraw their objections and protests to Application No. R-1181 of C. C. CHESHIRE, and assent

is hereby given that said Application No. R-1181 may be approved by the State Land Commissioner of Arizona and the proposed reservoir of FIRST PARTIES may be constructed according to the plans and specifications therefor as presently on file with the office of the State Land Commissioner and as approved by the State Engineer of the State Highway Department of the State of Arizona.

2. In consideration of the withdrawal of said protests by SECOND PARTY, THIRD PARTIES, FOURTH PARTIES and FIFTH PARTY, and each of them, against the allowance of Application No. R-1181, FIRST PARTIES do hereby covenant and agree:

(a) FIRST PARTIES do hereby withdraw their objections and protest to Applications No. A-3208, A-3207, A-3216 and A-3215, and assent is hereby given that said applications may be approved by the State Land Commissioner of Arizona and Certificates of Water Rights issued in each instance.

(b) To install and maintain a weir or other acceptable water measuring device in RIO DE FLAG WASH at the following described location:

At the head or Southwesterly entrance of the two 36-inch culverts whereat the waters of the RIO DE FLAG RIVER enter the proposed reservoir of FIRST PARTIES, as more particularly shown and described on the map on file with the office of the State Land Commissioner of Arizona in support of Application No. R-1181 of C. C. CHESHIRE, a true copy of which is attached hereto, marked EXHIBIT A, and by this reference made a part hereof.

Said measuring device shall be approved by the State Land Commissioner of Arizona and the United States Department of Agriculture

Soil Conservation Service, and shall at all times be accessible for inspection and checking by all parties to this agreement.

(c) To provide for and permit by satisfactory and suitable means approved by the State Land Commissioner of Arizona and the State Engineer of the State Highway Department of Arizona the discharge of water from said reservoir so that the normal flow of water, exclusive of flood waters, which passes through the weir or measuring device called for in paragraph (b) hereof shall at all times be discharged into the streambed below the dam.

(d) To provide for and permit from May 1 to November 30 of each year, when there is no normal flow of water into said reservoir at the point of the weir or measuring device above-described, the discharge through such outlet or outlets of sufficient water to maintain the pools situate on the premises and property of SECOND PARTY in the RIO DE FLAC streambed, commonly known and referred to as Pools No. 1, No. 2 and No. 3, as more particularly shown and described on the map on file with the office of the State Land Commissioner of Arizona in support of SECOND PARTY'S Application No. A-3208, a true copy of which is attached hereto, marked EXHIBIT B, and by this reference made a part hereof, said pools being situate in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, Township 21 North, Range 7 East, the approximate locations thereof being as follows:

POOL No. 1, S. 79° 20' East, 1040 feet from the West Quarter corner of said Section 4;

POOL No. 2, S. 70° 30' East, 1100 feet from the West Quarter corner of said Section 4;

POOL No. 3, S. 49° 50' East, 2000 feet from the West Quarter corner of said Section 4.

Provided, however, that FIRST PARTIES shall not be required to comply with the provisions of this paragraph in the event there is no water in storage in said reservoir.

(e) At FIRST PARTIES' expense, to at all times keep and maintain in good repair and free from all obstructions the outlet or outlets above-mentioned for the discharge of water from said reservoir as above provided.

3. In the event FIRST PARTIES shall fail to keep, observe and perform the covenants and conditions in this agreement contained, any or all of the other parties to this agreement may institute proper legal action for its enforcement and to compel specific performance hereof; provided, however, that written notice shall first be given to FIRST PARTIES of what any or all of the other parties to this agreement consider to be a breach or default of the covenants and conditions herein contained and FIRST PARTIES shall have five (5) days from the receipt of said notice to fully remedy such breach or default, in which event the other parties shall not have the right to proceed against FIRST PARTIES for such breach or default. In the event any or all of the other parties to this agreement institute such legal proceedings for the enforcement of the terms and conditions in this agreement contained on the part of FIRST PARTIES to be kept and performed, such party or parties instituting such action shall be entitled, upon proper

showing of a breach or default on the part of FIRST PARTIES to such sum as the court shall deem reasonable as and for attorneys fees, to such damages as they, or any of them, may have sustained, all court costs necessarily incurred, and to all legal and equitable relief which they, or any of them, shall be entitled by law.

4. Any notice required to be given or which shall be given to FIRST PARTIES by any or all of the other parties to this agreement, shall be given in writing and served upon FIRST PARTIES by either personal service or by prepaid registered mail with a return receipt requested addressed to C. C. CHESHIRE, Flagstaff, Arizona, and by serving upon or mailing a copy thereof by registered prepaid mail to the State Land Commissioner of Arizona, State Office Building, Phoenix, Arizona, and the notice shall be deemed complete upon receipt thereof by FIRST PARTIES.

5. No assent, express or implied, by SECOND PARTY, THIRD PARTIES, FOURTH PARTIES and FIFTH PARTY, or any of them, to any breach or default of FIRST PARTIES' covenants herein contained, shall be deemed to be a waiver of any succeeding breach of the same, or any other covenant.

6. This agreement constitutes the entire agreement between the parties hereto and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein, and no alteration or modification of or waiver of any of their rights by SECOND PARTY, THIRD PARTIES, FOURTH PARTIES and FIFTH PARTY, or any of them, under this agreement shall be binding upon them unless and until approved by said parties in



writing. The terms of this agreement may be modified or amended only by an instrument in writing executed with the same formality as this agreement is so executed and parol evidence shall never be admissible in any court, tribunal or governmental agency to modify, amend or vary the terms of this written agreement.

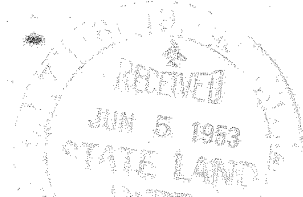
7. This agreement is subject to the ratification and approval hereof by the State Land Commissioner of Arizona and an executed copy hereof shall be furnished and placed on file and of record in the State Land Department. The original of this agreement shall be recorded in the office of the County Recorder of Coconino County, Arizona. In addition to the approval of this agreement by the State Land Commissioner of Arizona, as above provided, the State Land Commissioner is hereby authorized by the parties hereto to make and enter such orders as may be required by law or the rules and regulations of the State Land Department to effect this agreement.

8. This agreement and the provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties to this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands or caused these presents to be executed by duly qualified officers as of the day and year first hereinabove written.

C. C. Cheshire
C. C. CHESHIRE
Mary Davis Cheshire
MARY DAVIS CHESHIRE

FIRST PARTIES



Hattie M. Lockett

HATTIE M. LOCKETT

SECOND PARTY

Tom E. Pollock

TOM E. POLLOCK

Dorothy E. Pollock

DOROTHY E. POLLOCK

THIRD PARTIES

Mary Russell S. Colton

MARY RUSSELL S. COLTON

Harold S. Colton

HAROLD S. COLTON

FOURTH PARTIES

THE NORTHERN ARIZONA SOCIETY OF SCIENCE
AND ART, FIFTH PARTY

By Harold S. Colton

Its President

ATTEST:

Its _____

STATE OF ARIZONA)
COUNTY OF COCONINO) SS.

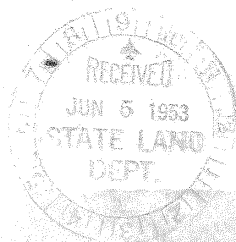
ON THIS, the 20th day of May
1953, before me, the undersigned Notary Public, personally appeared
C. C. CHESHIRE and MARY DAVIS CHESHIRE, husband and wife, known to
me to be the persons whose names are subscribed to the within instru-
ment, and acknowledged to me that they executed the same for the
purpose therein contained.

seal.

IN WITNESS WHEREOF, I hereunto set my hand and official

My commission expires: December 18, 1956

Margaret M. Scott
NOTARY PUBLIC



STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

ON THIS, the 29th day of May,
1953, before me, the undersigned Notary Public, personally appeared
HATTIE M. LOCKETT, a widow, known to me to be the person whose name
is subscribed to the within instrument, and acknowledged to me that
she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

My commission expires: March 7, 1954
Shayne K. Siler
NOTARY PUBLIC

STATE OF ARIZONA)
) SS.
COUNTY OF COCONINO)

ON THIS, the 25th day of May,
1953, before me, the undersigned Notary Public, personally appeared
TOM E. POLLOCK and DOROTHY E. POLLOCK, husband and wife, known to
me to be the persons whose names are subscribed to the within instru-
ment, and acknowledged to me that they executed the same for the pur-
pose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

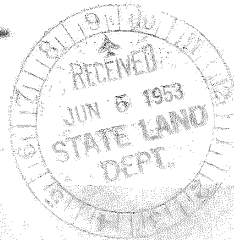
My commission expires: December 18, 1956
Margaret M. Scott
NOTARY PUBLIC

STATE OF ARIZONA)
) SS.
COUNTY OF COCONINO)

ON THIS, the 25th day of May,
1953, before me, the undersigned Notary Public, personally appeared
MARY RUSSELL F. COLTON and HAROLD S. COLTON, wife and husband, known
to me to be the persons whose names are subscribed to the within
instrument, and acknowledged to me that they executed the same for
the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

My commission expires: December 18, 1956
Margaret M. Scott
NOTARY PUBLIC



STATE OF ARIZONA)
) SS.
COUNTY OF COCONINO)

ON THIS, the 25th day of May,
1953, before me, the undersigned Notary Public, personally appeared

Harold S. Colton and _____
who acknowledged themselves to be the President

and _____, respectively, of THE NORTHERN
ARIZONA SOCIETY OF SCIENCE AND ART, an Arizona non-profit corpora-
tion, and that they as such officers, being authorized so to do, exe-
cuted the foregoing instrument in the capacity therein stated and
for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

My commission expires: December 18, 1956

Margaret M. Scott
NOTARY PUBLIC

The foregoing AGREEMENT is hereby approved this
5 day of June, 1953.

IN WITNESS WHEREOF, the State Land Commissioner of
Arizona has hereunto set his hand and affixed his official seal of
office.

[Signature]
STATE LAND COMMISSIONER OF ARIZONA
By James A. Burger
DEPUTY STATE LAND COMMISSIONER



