

CORPS OF ENGINEERS, U. S. ARMY

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LOS ANGELES DISTRICT
PHOENIX REAL ESTATE FIELD OFFICE
210 WEST ADAMS STREET
PHOENIX, ARIZONA

AIR MAIL

SPECIAL DELIVERY

REFER TO FILE NO.

601.1 (Arizona, Cochise County -
Fort Huachuca) PSLRS

18 December 1950

SUBJECT: Information Concerning Reacquisition of Above Installation

TO: District Engineer
Los Angeles District
Corps of Engineers, U. S. Army
751 South Figueroa Street
Los Angeles, California

ATTENTION: Real Estate Division

1. The schedule for reacquisition of the above installation is assumed to be for reacquisition of the Fort Huachuca Military Reservation and the so-called Fort Huachuca Artillery Range as formerly constituted.

2. With reference to the Military Reservation, there are four types of land. (a) That deeded to the State for the Game and Fish Commission by deed dated January 14, 1949, recorded in Docket 22 of Deeds on Page 422. (b) The cemetery and access road deeded to the State by deed dated March 26, 1948. (c) The land under Buildings T-1018 and T-4093, and said buildings, specifically excepted from conveyance to the State for the National Guard on Page 11 of the correction deed to the National Guard dated April 18, 1950. (d) National Guard land - see paragraph 3a below.

a. With reference to (a) above, the deed to the State for the Game and Fish Commission specifies that the premises must be used for the conservation of wild life, title and possession reverting to the United States for non-use. Leasing precluding use by wild life would appear to cause reversion. However, it is doubtful the United States could lease the premises, prevent conservation of wild life, and then take advantage of the reversion clause.

Regarding reversion, the President, Congress, or any of the Secretaries of Defense, may determine that said premises are needed for national defense purposes, whereupon title reverts to the United States with immediate right of possession thereof.

b. Regarding (b) above, the cemetery and access road deed conveys to the State forever, together with the responsibility for perpetual care and maintenance thereof (except title reverts for failure to maintain).

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c. As to the land and buildings above mentioned, these appear to be in the United States under the jurisdiction of the General Services Administration.

d. As to the National Guard, see paragraph 3a below.

3. As to the Artillery Range, this seems to fall in four categories. (a) Land deeded to the State of Arizona for the National Guard by correction deed dated April 18, 1950. (b) Department of Interior land deeded to the Government by the State of Arizona. (c) State of Arizona land, some of which has been offered for exchange and is pending, some offered and rejected, and some never offered. (d) 3219.92 acres of land, unofficially known as Tracts 16 and 37, formerly under lease from the Boquillas Land and Cattle Company, who was lessee of the State of Arizona of Tract 37 - 179.16 acres.

a. As to the National Guard land, the correction deed dated April 18, 1950, on Page 13 thereof, apparently gives the right to the State to sell, lease, or otherwise dispose of, upon obtaining the written authorization of the Administrator (G.S.A.), or his successor in function. Possibly, this right is limited by paragraph 1 directly above on Page 13, which requires the land to be used for maintaining civilian components of the armed forces of the United States and for incidental purposes pertaining thereto but for no other purpose. Areas within the Artillery Range may be outleased for grazing purposes, and buildings or betterments within Areas #1 to #6, inclusive, and Area 18 of the reservation, may be outleased, providing receipts therefrom shall be paid into the National Guard fund and used for the maintenance of the property conveyed by said deed. There is a clause allowing the United States to claim reversion for non-compliance with the terms of the deed. There apparently is, strictly speaking, no recapture clause as to the title, as in the deed to the State for the Game and Fish Commission. Paragraph 4, however, provides that the United States shall have the right during the existence of a declared national emergency to unrestricted possession, control and use of the property without charge, with the duty to maintain the premises and to pay a fair rental for any structures added without Federal aid.

b. As to the Department of Interior land deeded to it by the State of Arizona in exchange for other land, this appears to be unincumbered and could be secured by a Public Land Order withdrawing the same and a use permit secured pending issuance of a Public Land Order.

c. As to the State of Arizona land, this could either be purchased, secured by exchange, or leased. Purchasing would require payment of the full appraised value. The same would be possibly true in a condemnation action. Exchange presents many difficulties and is somewhat lengthy. Leasing provides the simplest method of securing possession, probably, but whether or not this could be for a nominal consideration during

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the war years is not known, as a new administration is now in charge of the Land Department and it has indicated that it might adopt the policy of the California Land Department, and charge adequate rent.

d. As to the land of the Boquillas Land and Cattle Company, this could be secured in fee or leased. Fee would probably be for the full appraised value and would meet with serious objections such as caused a reversal of the original directive to acquire in fee and caused the land to be acquired by lease. It is possible that this land might be leased for a nominal consideration so that the Cattle Company could be assured of its return at the termination of the use.

4. The contemplated difficulties in reacquisition are dependent upon a determination whether the property is to be acquired in fee or by lease.

a. If acquired by fee acquisition, title difficulties are those customarily encountered in securing title to any installation. Sixty days from the date directive is secured should be ample time to exercise recapture provision in the Game and Fish Commission deed. A deed would have to be secured from the State of Arizona on the National Guard property and on the cemetery and access road. A Public Land Order withdrawal should not take long. Exchange of State land would be a lengthy procedure. Possibly, a declaration of taking could be filed on State land, with title to be revested in the State at such time as the Department of Interior would agree to exchange of a particular section. Boquillas Land and Cattle Company land could be purchased or a declaration of taking filed.

(1) Moving occupants off the land would take approximately thirty days maximum. These would include persons now leasing buildings from a Corporation known as the Fort Huachuca Enterprises, Inc., which, in turn, leases from the National Guard, Fish and Game employees living in quarters and National Guard employees. As to animals, there are about 300 buffalo located on the reservation proper, and cattle and horses located on the Artillery Range under grazing leases from the National Guard, cancellable at will, which could be moved without too great difficulty in the same period of thirty days. Other game on the old reservation, in considerable numbers, would, undoubtedly, have to remain on the premises. It might be pointed out in this connection there are numerous commercial ventures, such as a grocery store, a restaurant, a theater, a barber shop, a post office, a laundry and dry cleaning store, which it might be advantageous to consider allowing to remain under appropriate leases from the Government.

5. As to leasing, the difficulties are dependent on whether the use should be exclusive, or reserving to the present occupants, such as the National Guard and the Fish and Game Commission, limited rights:

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a. As to exclusive use, the Game and Fish Commission is willing to execute any type of a lease at a nominal cost. Leasing precluding use by wild life would appear to cause reversion. However, it is doubtful the United States could lease the premises, prevent conservation of wild life, and then take advantage of the reversion clause. The same is true as to the State, it is believed, on the cemetery and access road. Whether the State has authority to lease under the terms of the deed, this office is not prepared to say. The National Guard, it is believed, can execute a valid lease with the consent of the Secretary of Defense. Department of Interior land can be secured under a use permit or Public Land Order. State of Arizona land could be secured under a lease. Boquillas Land and Cattle Company could, undoubtedly, be leased.

The difficulties of removal are as outlined in paragraph 4a(1) above.

b. If leasing is predicated on reserving certain rights to the proposed lessors:

(1) The Game and Fish Commission earnestly requests consideration that a small area be reserved to it in the reservation proper in the Northeast Corner thereof, now fenced, for its buffalo. Another plan would be to have the buffalo move from area to area under proper control, as a Commanding Officer directed.

c. The National Guard has been directed to hold a weekend training program, beginning the 1st of January, 1951, and two weeks encampment in the last half of August 1951. A heavy weapon company, located at Warren, having 76 men, also uses the range intermittently. The Guard has considerable equipment, including tanks, located on the reservation, this being the concentration center for its equipment for Arizona. The Guard earnestly requests consideration that it be permitted exclusive use of the buildings in Area 7, weekend use of the ranges, and training areas, subject to the approval of the Commanding Officer, and use of the same facilities during the last half of August, 1951, again subject to the orders of the Commanding Officer. The above requests by the Army National Guard are, of course, based on the assumption that the Army National Guard is not inducted.

d. As to recommending the method of reacquisition, this office is somewhat in doubt as to for whom the installation is required, the type of use, the duration of use and how soon the same might be required, and various other factors. The summaries in paragraphs 2 and 3, and other paragraphs herein, present the title situation and method by which title in fee could be acquired. However, this office believes that a long term lease, for a nominal consideration, for 25 years, or longer, to allow construction of buildings and improvements, could be readily secured from all concerned, particularly since this would insure to the proposed lessors

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a certain return of the land to them after the use terminates. This office recommends that such a method be adopted. Should fee acquisition be later necessary, leasing would not have hindered the program. This office further recommends that, compatible with the use made by the Using Military Agency, all steps be taken to preserve to the Game and Fish Commission and to the National Guard, such rights and/or areas as would enable them to accomplish their missions.

6. Preliminary discussions were held this morning upon receipt of correspondence concerning Fort Huachuca with Lt. Colonel Frank E. Fraser, Executive Officer of the National Guard, Lt. Colonel Michael Curry, also of the National Guard, and Mr. Thomas Kimball, Director of the Game and Fish Commission of Arizona. The Governor's Office was telephoned and the Governor was in the southern part of the State but his Secretary, Mr. Killingsworth, stated that representatives of the National Guard and of the Game and Fish Commission could speak for the State. In the afternoon, a lengthy discussion was held with the same men. The incoming Governor, taking office January 1, 1951, Mr. Howard Pyle, was telephoned and informed of the subject matter of discussion, and he was also asked if consultation with the above officers met with his approval and if they could speak authoritatively for him as to the future. He stated he would rely on what was agreed upon by these officers.

7. Because of the tremendous difficulties, both the National Guard and the Game and Fish Commission had in securing title through the then War Assets Administration, they are, frankly, very much in favor of a lease giving them back the land at its termination, rather than giving up the fee title which would again cause them trouble in resecuring the land later. While the Boquillas Land and Cattle Company was not consulted, they being in Bisbee, it is felt that the same is true as to them, since they were able to bring about an amendment of the original directive to acquire in fee to that of acquiring by lease.

Ed. Atkinson

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Chief, Phoenix Real Estate
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