

February 16, 1938

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ARIZONA ATTORNEY GENERAL

Mr. Howard S. Reed
State Engineer
Phoenix, Arizona

Attention: Mr. J. D. Sheley,
Right of Way Agent

Re: Title to Geronimo Monument and
Maintenance Camp near Apache.

Dear Sir:

We have the supplemental abstract of title, No. 6338, from the Abstract, Title Insurance and Trust Company of Bisbee, Arizona, covering the above premises, and have your easement and quitclaim deeds from the owners to the State covering the same property.

As we understand, the State acquired the title to these premises from W. S. Graves and wife, and the land on which the monument and maintenance camp are located is claimed by Ben P. Snure.

We have the benefit of a tracing showing the approximate location of the El Paso and Southwestern Railroad right of way and the State highway right of way, and the approximate location of the maintenance camp and monument. We have prepared copies of this map and attach them to this opinion for the purpose of explaining our discussion of the abstract.

The title in Graves and wife and in Snure to whatever land they own in Section 13 is all deraigned from joint deeds from the Bank of Douglas, as administrator of the estate of J. W. Richhart, deceased, and David L. Read, administrator with the will annexed of the estate of Lillah R. Richhart, deceased. The abstract does not disclose the probate proceedings but we assume that the administrations

carried through by the Bank of Douglas are regular and convey good title.

On December 12, 1935 the foregoing administrators deeded to W. S. Graves the NE $\frac{1}{4}$ of Section 13, and the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 13 lying west of the right of way of the El Paso and Southwestern Railroad. This deed was recorded December 14, 1935.

On July 31, 1935, by deed recorded February 11, 1936, the same administrators deeded to Ben P. Snure all of the W $\frac{1}{2}$ of Section 13 lying east of the right of way of the El Paso and Southwestern Railroad.

On March 23, 1936, by deed recorded June 1, 1937, Ben P. Snure and wife deeded to W. S. Graves a four and one-half acre tract out of the southeast corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13, which would appear to be the triangular tract in the NW $\frac{1}{4}$ of Section 13 lying east of the railroad, and which had been deeded by the administrators' deed of July 31, 1935 to Snure.

The administrators' deed to Graves we have colored in red, and the deed to Snure we have colored in blue, and have marked by red lines over the blue the portion deeded by Snure to Graves.

Unless there are conveyances not disclosed by the record we have, Graves and wife are the present owners of all of the N $\frac{1}{2}$ of Section 13, and that portion of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 13 lying west of the railroad, and the Snures are the owners of that portion of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 13 lying east of the railroad. The parties probably own additional land not pertinent to the question here presented.

On June 26, 1934 Graves and wife granted an easement to the State of Arizona intended to cover the tract occupied by the Geronimo Monument. The description of this tract places it in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, a distance of approximately one-half to three-fourths of a mile away from the highway and away from its actual location. However, the description is tied in to the intersection between the highway right of way and the north boundary line of Section 13, and its location can be readily ascertained from that tie-in. However, the easement was granted June

26, 1934, and the first title we find in Graves is from the administrators' deed of December 12, 1935. Unless the administrators' sale had been made to Graves prior to the date of the easement and the execution of the deed to Graves had been merely delayed until December 1935, Graves and wife had no title from which they could carve out an easement to the land. We will consider this point later.

In October, 1935 Graves and wife deeded to the State of Arizona a tract of land which constitutes the maintenance camp grounds in question. This tract is tied in to engineer's stations and to the Geronimo Monument tract, and, so far as the description is concerned, we would consider it a sufficient conveyance.

However, at the time the deed was executed the Graves had not yet received their deed from the Bank of Douglas and Read, and did not receive the same for more than two months afterwards.

On November 30, 1935 Graves and wife executed another quitclaim deed, which is recited to be for the purpose of superseding and vacating the easement of June 26, 1934 and the quitclaim deed of October 3, 1935. The deed properly ties in to engineer's stations and to the common corner of Sections 18, 7, 12 and 13, and is a sufficient deed in all matters relative to description, but at the time of the grant Graves had not received the deed from the administrators and was not the owner of the land, so far as the file before us discloses.

We believe, however, that the last quitclaim deed is a sufficient grant of both tracts, the monument tract and the maintenance camp tract, to the State of Arizona. Graves and wife acquired title after the execution of this deed, and a quitclaim deed conveys an after-acquired title, and hence, when Graves received the deed from the administrators in December, 1935, their prior quitclaim inured to the benefit of the grantee, the State of Arizona.

There are some mortgages, to the Land Bank Commissioner and the Arizona Live Stock Production Credit Association, appearing in the abstract. The first of these mortgages is dated April 1, 1935, and is from Graves and wife to the Land

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Bank Commissioner, and mortgages the NE $\frac{1}{4}$ of Section 13, except the southwest one acre of ground. This is apparently a recognition of the easement to the Geronimo Monument. At the time of this mortgage Graves had not yet received his deed to the land. The second mortgage is to Arizona Live Stock Production Credit Association, and is a farm credit administration mortgage. It was executed April 12, 1935, eleven days after the mortgage to the Land Bank Commissioner. This mortgage was declared by the mortgagee to be subordinate and junior to the mortgage to the Land Bank Commissioner. This mortgage antedates the quitclaim deeds from Graves to the State of Arizona, and also antedates the deed from the administrators to Graves. The third mortgage is a mortgage to the Arizona Live Stock Production Credit Association, dated January 20, 1936, and covers the NE $\frac{1}{4}$ of Section 13, and other land. It was executed subsequent to the recording of the quitclaim deed to the State and, of course, is subject to the grant to the State.

The two first mortgages executed may constitute a slight cloud on the title to the maintenance camp, but it is so slight we believe it may be disregarded unless and until a foreclosure of the mortgage is instituted, when it can be taken care of.

Assuming that the tracing and locations given are correct, we are of the opinion that the State has good title to the tracts of land in question, and that Mr. Snure has no title whatever in said tracts. In the quitclaim deed of November 30, 1935, the two tracts are combined and appear on the map we attach to this opinion as a single tract.

Very truly yours,

JOE CONWAY
Attorney General

A. R. LYNCH
Assistant Attorney General