



CONTACT INFORMATION

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PRINTED: 08/08/2002

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: SIERRA STONE

ALTERNATE NAMES:

NAVAJO COUNTY MILS NUMBER: 219

LOCATION: TOWNSHIP 12 N RANGE 20 E SECTION 20 QUARTER SE
LATITUDE: N 34DEG 25MIN 02SEC LONGITUDE: W 110DEG 14MIN 51SEC
TOPO MAP NAME: CACTUS FLAT - 7.5 MIN

CURRENT STATUS: PAST PRODUCER

COMMODITY:
STONE SANDSTONE

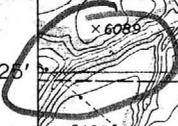
BIBLIOGRAPHY:
ADMMR SIERRA STONE FILE

3812
3810
3809
3808
3807
3806

3952 IV
(CLAY SPRINGS 1:62,500)



SIERRA STONE
T12N R20E Sec 20



CACTUS FLAT 7.5

United States
Department of
Agriculture

Forest
Service

Lakeside
Ranger
District

RR 3, Box B-50
Lakeside, Arizona 85929
(602) 368-5111

Reply To: 2850

Date: September 23, 1992

Mr. Lee Chartrand
Mr. Howard Thomas
Southwestern Stone, Inc
P.O. Box 434
Taylor, AZ 85939

Dear Messrs. Chartrand and Thomas:

A detailed investigation into the material you call "Sierra Stone" has been completed. We have concluded that the material is properly a mineral material and should be sold under a Forest Service mineral material contract per 36 CFR 228(c).

This investigation involved detailed field examinations on June 29 - July 1, 1992 and July 31, 1992 by Forest Service geologists and a review of appropriate case law. You should know that this investigation and my conclusion were not made without thorough research and consideration of your reasons why the material should be locatable. My decision is based on the following facts:

1. Variegated Banding in Many Rock Types - Rock containing variegated banding that is mined for landscape rock or for manufacture into products similar to those made by you and others is found throughout the Colorado Plateau, the entire United States and in other countries. Variegated rock is not confined to sandstones. Granites and other rock types containing variegated banding are recorded in literature. While such banding has aesthetic characteristics that may cause one with the banding to be more desirable than a similar stone without the banding, the phenomenon is hardly uncommon.
2. Variety of Products and Companies - The products produced by you are made by a number of different companies out of a number of different natural materials to include onyx, travertine, coal, other sandstones and other rock. Many of these products are sold as souvenirs at gift shops. The gift shops within the Petrified Forest and Painted Desert National Parks near Holbrook offer clocks, bookends, plaques, coasters and a variety of other souvenirs made out of these types of stone.
3. Substantial Quantities of Identical Stone - Substantial material lies outside the claimed areas, on lands that you have identified but cannot claim and in areas the geologists found that you were not aware of. I refer you to U.S. v. Coleman, 390 US 599 (1968). The Supreme Court states: [6-8] "We believe that the Secretary of the Interior was also correct in ruling

that [i]n view of immense quantities of identical stone found in the area outside the claims, the stone must be considered a 'common variety' and thus fall within the exclusionary language of Section 3 of the 1955 Act, 69 Stat 368, 30 USC 611, which declares that [a] deposit of common varieties of...stone...shall not be deemed a valuable mineral within the meaning of the mining laws..."

4. Coloration - In U.S. v. Dunbar Stone Co., 56 IBLA 65 (1981) it was ruled that beauty of coloration in a building stone is inherently subjective and not necessarily unique, even if it is unusual.

5. Coconino Formation, a Common Variety Stone - The "Sierra Stone" deposit is, in our geologists' opinion, part of the Coconino Formation. The Coconino Formation has been determined by the courts to be a common variety stone that was removed from the mining laws by the Act of July 23, 1955 in Rawls v. U.S., 566 F. 2d 1373 (1978). I realize that you were successful in winning an exception to Rawls for your "Picture Rock" claims near Heber, but my review of that case shows little comparison with the circumstances of your Sierra Stone claims.

Mineral materials are deposits having economic value and used for agriculture, building, construction, landscaping and similar uses. Seventy-five percent of the rock you mine is sold as boulders for a price that is comparable with prices of other rock sold for landscaping. This rock is sold to a competitor who makes products similar to yours. Thus, the price the rock brings is high enough to assure you will not be undersold and low enough so that the purchaser can make a profit from his products. Therefore, the \$250 per ton must be a fair price for the rock. The purchaser is not obligated to make products; he could sell the rock as landscape rock. The bottom line is that only 25% of the rock quarried is made into products you sell; 75% of the rock removed is sold as boulders. A survey of landscape rock in the Phoenix and Tucson area reveals that there are several types of rock that sell for approximately the same price as you sell the Sierra Stone. In fact, some varieties sell for significantly more per pound or per ton.

Therefore, I do not consider the "Sierra Stone" rock has properties "...for which no other mineral can be substituted due to unique properties giving the mineral a distinct and special value..." (36 CFR 228.41(d)). Therefore, it is my decision that the "Sierra Stone" rock is a mineral material as defined by 36 CFR 228 (C) regulations.

Our regulations allow us to offer you a negotiated contract for mineral material on your claims that were staked on or before January 16, 1991, since these claims were staked for the Sierra Stone material. Our review of your file shows that all but Sierra Stone PMC numbers 21 and 22 were staked before that date. Your active operation is in and on the Sierra Stone PMC number 1, 2 and 3. You are mining at the rate of approximately 100 tons per year, which means that you have thousands of years of reserves on these claims. If you accept classification, we can immediately proceed to process your contract.

My decision to return your Plan of Operations based on a classification determination that the material you propose to mine is common variety material, is subject to appeal in accordance with 36 CFR 251. Appeals must be fully consistent with 36 CFR 251.90, "Content of Notice of Appeal", filed with the Reviewing Officer, the Forest Supervisor, Apache-Sitgreaves National Forests,

Federal Building, P.O. Box 640, Springerville, AZ 85938-0640 within 45 days of the date of this decision, with a copy simultaneously sent to me, the Deciding Officer.

I greatly appreciate your cooperation in providing access, records, samples and other information that have been used in this investigation. I hope we can continue our fine working relationships in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward W. Collins".

EDWARD W. COLLINS
District Ranger

cc: RO (2850)
OGC (2850)
AZ Zone (2850)
A-S NF (2850)

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES

VERBAL INFORMATION SUMMARY

1. Mine file: SIERRA STONE (new MILS attached)

2. Mine name if different from above:

3. County: Navajo

4. Information from: Howard Thomas

Company: T and C Enterprises

Address: P.O. Box 832

Taylor, AZ 85939

Phone: 536-4944

5. Summary of information received, comments, etc.:

Howard Thomas (address above) and Lee Chartland, P.O. Box 454, Taylor, AZ 85939, phone 536-4912 are operating a stone quarry business as T and C Enterprises. They have claims on Toroweap Sandstone in the Sitgreaves Forest that can produce building stone and due to staining on bedding planes also be used as wonderstone. The Forest Service does not want to approve their plan of operations, but would like to classify the material as common variety and lease it to them for one year or until their sales show the materials marketability.

Date: November 29, 1988

Nyal J. Niemuth, Mining Engineer

PROPOSED CONTRACT 4/89

0140 K

OMB No. 0596-0081
Expires 08/31/89

USDA - Forest Service

FOR FOREST SERVICE USE ONLY

**CONTRACT FOR THE SALE OF
MINERAL MATERIALS**
(Ref. FSM 2850)

Forest Service Unit Name
Apache-Sitgreaves N.F.'s, Lakeside R.D.
Contract Number
Sierra Stone Material Pit

NOTE: This information is being collected to process your application and effect a binding contract agreement. This information will also be used to identify and communicate with applicants. Response to this request is required to obtain a benefit.

Included in this contract: (Exhibits B & C)
Access road right-of-way 2.4 miles in length, 12 feet in width
as shown on attached map. Basic operating plan is also included.

THIS AGREEMENT, made this _____ day of _____, 19____, under authority of the Acts of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601 et seq.), March 4, 1917 (16 U.S.C. 520), and June 11, 1960 (74 Stat. 205), and the regulations set forth in 36 CFR 228, Subpart C, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Authorized Officer of the Forest Service (hereinafter called the "Authorized Officer"), and Howard Thomas, P. O. Box 832, Taylor, AZ 85939 (hereinafter called the "Purchaser.")

WITNESSETH, That the parties hereto mutually agree as follows:

Sec. 1. *Contract area.* The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, all of the mineral materials described in Sec. 2 below, for severance, extraction, or removal, on the following-described lands situated in the A-S National Forest, County of Navajo, State of Arizona, as shown on the operating plan marked "Exhibit B", attached hereto and made a part hereof, viz: Section 20
Township 12N, Range 20E, G&SRM Meridian, containing 30.0 acres, more or less.

Sec. 2. *Amount and price of materials.* The total purchase price will be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

| KIND OF MATERIALS | QUANTITY (Units Specified) | PRICE PER UNIT | TOTAL PRICE |
|-------------------------|-------------------------------|-------------------|-------------|
| Extraction of sandstone | 1,000 ton | \$1.80 per ton | \$1,800.00 |
| TOTAL | 1,000 ton | \$1.80/ton | \$1,800.00 |

Determination by the Authorized Officer of the quantity of materials taken is binding on Purchaser subject to appeal only as provided in Sec. 14. All materials in the contract area in excess of the estimated quantity listed above are reserved by Government.

Sec. 3. *Payments, passage of title, and risk of loss.* Title to materials sold hereunder passes to Purchaser immediately before excavation and upon proper payment for such materials. No part of the materials sold hereunder may be severed, extracted, or removed by Purchaser until payment for such materials has been made in accordance with the following:

(a) Unless materials sold under this contract are paid for in full in advance, payment for materials must be made in installments of not less than \$ 600.00 each. The first installment must be paid upon approval of this contract.

(b) Each additional installment is due and payable as billed by the Authorized Officer in advance of removal of the remaining material. The first installment will be retained as additional security for the full and faithful performance of this contract by Purchaser, and will be applied in whole or in part to the payment of the last installment required hereunder to make the total payment equal the total price set forth in Sec. 2, above.

15. Fees and Payment

A-6

Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 USC 3101, et. seq., and regulations at 7 CFR Part 3, Subpart B, an interest charge shall be assessed on any payment not made by the payment due date. Interest charge shall be assessed using the most current rate prescribed by the United States Department of the Treasury's Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment was due. In addition, the cost of processing and handling the overdue payment shall be added to the amount due.

A penalty of 6 percent per year shall be assessed on any payment overdue in excess of 90 days from the payment due date.

Payments will be credited on the date received by the designated collection officer or deposit location. If the payment due date(s) falls on a nonworkday, the interest and penalty charges shall not apply until the close of business of the next workday.

A-7

For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records will be made at dates convenient to the holder and reviewers. Financial information so obtained will be treated as confidential as provided in regulations issued by the Secretary of Agriculture (36 CFR 200.6(f)).

The holder will retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise authorized by the Forest Service in writing.

Minimum Payment

The permittee will be required to make, as a minimum, annual payments which total \$8,000.00 each working year regardless of the amount of material actually removed. He will also be required to sell a minimum of 16,000 cubic yards of material each working year regardless of the bid price per cubic yard. The working year will be determined on the basis of the date the permit is signed by the Forest Supervisor. Should the permittee remove less than \$8,000.00 worth of material by the end of each working year, he will be billed for the difference between the \$8,000.00 minimum and the actual amount he has removed. Any such billing will no constitute prepayment for additional material. At the end of the term, any surplus on deposit would be returned to the permittee.

16. Safety, Health, Liability, and Nondiscrimination

B-1

1. The holder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The holder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including

apprenticeship. The holder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Forest Service setting forth the provision of the nondiscrimination clause.

2. The holder will, in all solicitations or advertisements for employees by or on behalf of the holder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The holder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Forest Service, advising the labor union or workers' representative of the holder's commitments under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The holder will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 31, 1967, and of rules, regulations, and relevant orders of the Secretary of Labor.

5. The holder will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Forest Service and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B-8

The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.

B-24

Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the Forest that present risks which the holder assumes. The holder has responsibility of inspecting the site, lot, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.

B-25

The holder shall carry on all operations in a skillful manner, having due regard for the safety of employees; and shall safeguard with fences, barriers, fills, covers, or other effective devices, pits, cuts, and other excavations which otherwise would unduly imperil the life, safety, or property of other persons.

B-31

The permitted area will be maintained to present a clean, neat, and orderly appearance. Trash, debris, unusable machinery, improvements, etc., will be disposed of currently. Building materials, firewood, etc., will be neatly stacked.

B-34

The holder shall dispose of refuse resulting from this use, including waste materials, garbage, and rubbish of all kinds in the following manner:

Written Statement

Monthly, the permittee shall submit to the District Ranger a written statement of the volume and value of materials removed during the month. These statements will be due by not later than the 10th of the following month.

17. Development, Construction, and Performance Bonds

C-16

This permit is contingent upon the installation layout and development plans as submitted by the holder and approved as a part of this permit for this specific location. Any and all subsequent relocations, alterations, revisions, additions, construction, or reconstruction of housing and mounting facilities, including antenna towers or masts, shall require advance notification and approval of the Forest Service and advance modification of this permit.

C-25

Holder shall conduct all activities associated with the permitted use in a manner that will avoid or minimize degradation of air, land, and water quality. In the construction, operation, maintenance, and termination of the permitted use, holder shall perform its activities in accordance with applicable air and water quality standards, related facility siting standards, and related plan of implementation, including but not limited to standards adopted pursuant to the Clean Air Act, as amended (42 USC 1857) and the Federal Water Pollution Control Act, as amended (33 USC 1321).

18. Resource and Improvement Protection

D-3

The holder shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.

D-4

The holder shall protect, in place, all public land survey monuments, private property corners, and Forest boundary markers,. In the event that any such landmarks or monuments are destroyed in the exercise of the privileges authorized by this permit, depending on the type of monument destroyed, the holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Lands of the United States," (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service.

Further, the holder shall cause such official survey records as are affected to be amended as provided by law. Nothing in this clause shall relieve the holder's liability for the willful destruction or modification of any Government survey marker as provided at 18 U.S.C. 1858.

D-10

Topsoil shall be stripped from the permitted area and be deposited in storage piles apart from other excavated material. After the desired amount of material has been removed, and the resulting pit has been trimmed and smoothed as required, the stored topsoil shall be evenly spread over exposed subsoil to the extent that may be practicable, and shall be revegetated.

D-18

The holder agrees to take all necessary precautions to avoid damage to property and resources of the United States and will, independently and upon request of the Forest Service, prevent and suppress fires on or near lands occupied, or to be occupied, under this permit, and to pay and indemnify the United States for any and all injury, loss, or damage, including but not limited to fire suppression costs, the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy to the maximum extent possible in accordance with State laws, ordinances, regulations, and rules.

19. Roads

G-1

1. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations previously approved by the Forest Service.

2. The holder, in exercising the privileges granted by this authorization, shall comply with all applicable State and Federal laws, Orders, and rules and regulations, and shall comply with all State standards for public health and safety, environmental protection, and siting construction, operation, maintenance if in the opinion of the authorized officer those State standards are more stringent than Federal standards, and promulgation of State standards precede the date of this special-use authorization.

3. The holder shall cut no timber except as authorized by construction stipulations or maintenance agreements.

4. The holder shall provide maintenance so that no damage occurs on adjacent National Forest land. The holder shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.

5. The United States may use the roads without cost for all purposes, including the removal of timber cut in construction or maintenance of the road or other incidental use, deemed necessary or desirable in connection with the protection and administration of the lands or resources of the United States; provided that the road only will be used for commercial hauling purposes, only after payment by the United States of its pro rata share of road maintenance costs.

6. Only the Forest Service may extend rights and privileges for use of the road constructed on the premises to other nonfederal users on the condition that such users shall pay a fair share of the current replacement cost less depreciation of the road and any reconstruction costs necessary to accommodate their use.

7. The Forest Service retains the right to occupy and use the right-of-way. It also may issue other uses including rights-of-way, on and through the permitted area provided that the occupancy and use does not unreasonably interfere with the rights granted herein.

8. The Forest Service shall have the right to cross and recross the premises and road at any place by any reasonable means and for any purpose in such manner as does not unreasonably interfere with use of the road.

9. The holder shall maintain the right-of-way clearing by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals and the exact portion of the right-of-way to be chemically treated.

20. Fences

H-1

No fences shall be erected upon the premises, except by written permission of the authorized officer.

H-2

The holder shall construct and maintain gates and cattleguards as designated by the District Ranger.

H-3

All fences constructed under this permit will only be attached to posts and not to live trees.

21. Miscellaneous

X-3

Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit or permit amendment.

X-19

The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

X-29

No signs or advertising devices shall be erected on the area covered by this permit, or highways leading thereto, without prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

X-49

This permit is not exclusive; that is, the Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized.

Mining Operations

The permittee shall carry on all mining operations in a good and workmanlike manner and in compliance with all Federal and State laws and the regulations of the Secretary of Agriculture, having due regard for the health and safety of miners and other employees; and safeguard with fences, barriers, fills, covers, or other effective devices, any shafts, pits, tunnels, cuts, and other excavation which otherwise would unduly imperil the life, safety, or property of other persons.

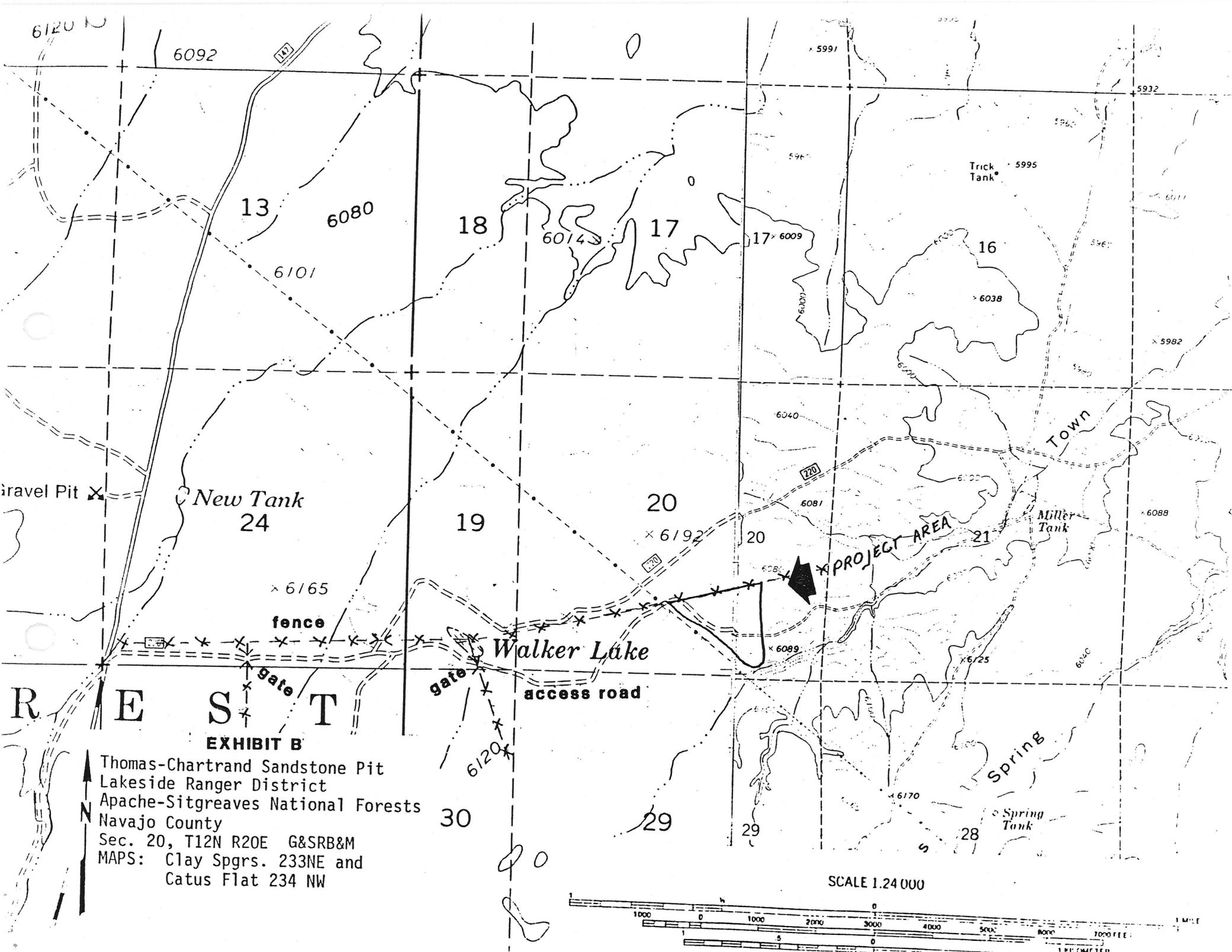


EXHIBIT B

Thomas-Chartrand Sandstone Pit
 Lakeside Ranger District
 Apache-Sitgreaves National Forests
 Navajo County
 Sec. 20, T12N R20E G&SRB&M
 MAPS: Clay Spgrs. 233NE and
 Catus Flat 234 NW

SCALE 1:24 000

