

Protecting Arizona's Native Plants by Law and Regulation

An Interview With Richard A. Countryman

Assistant Director, Arizona Commission of Agriculture and Horticulture

The native plant law of Arizona applies equally to private land, federal land and state land. This makes it a tough law to get around. Arizona has probably the most effective and best enforced native plant law in the United States. Now that the federal government is forming regulations dealing with endangered and threatened plant species, it might be productive to look at how use of protected native plants is regulated in Arizona. The high degree of regulation of protected native plants in Arizona comes undoubtedly from the rich diversity of unusual cacti and other desert plants in this much-varied state.

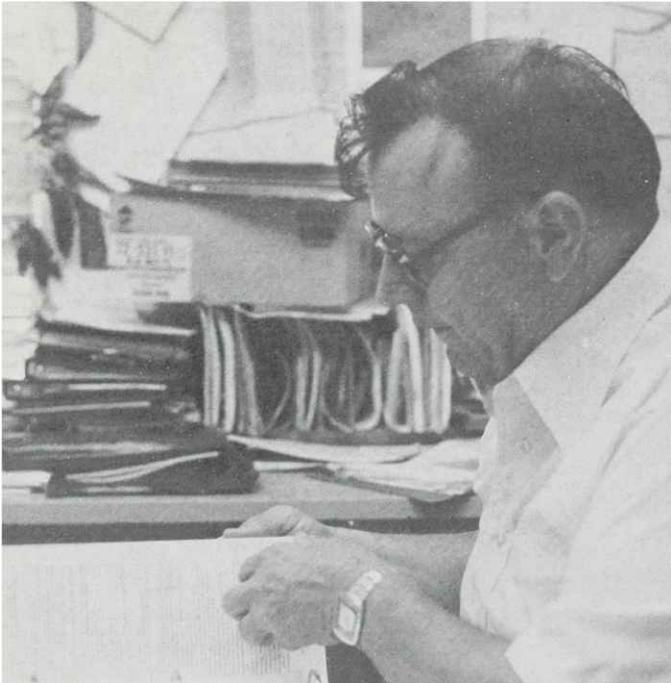
Recently *Desert Plants* went to the offices of the Arizona Commission of Agriculture and Horticulture in the state capitol district of Phoenix to take a close look at how state law and Commission regulations protect Arizona's native plants from being destroyed or mutilated or from being dug up without cause and without permission of the landowner. The following dialogue with the Commission's Assistant Director, Richard A. Countryman, represents the findings that were made.

Desert Plants: We appreciate very much your taking time to discuss with us the Arizona Native Plant Law, Mr. Countryman. Just how long has Arizona had such a law?

Mr. Countryman: Since 1929. At that early date, when Phoenix had a population of only 38,000 and Tucson 26,000, the Arizona Legislature had the foresight to enact a law to protect the rare desert plants of the state. The law was considerably updated in 1967 and funding provisions were made to bring a native plant investigator on the scene at the Arizona Commission of Agriculture and Horticulture. The law has been amended continually since 1967 to meet the conditions encountered and to close the loopholes. We now have six full-time men assigned to investigating native plant law violations.

Desert Plants: Can we assume from the fact that you need this number of men working full-time in this area that commercial dealing in protected native plants has become a relatively big business in Arizona?

Mr. Countryman: Yes. Private land-owners still have the right to sell certain protected native plants from their land, but only under stringent regulations designed to uncover theft of protected plants from government land or from land where permission for removal has not been granted. The value of protected native plants that people demonstrated



"Certain plants can be collected only for scientific, educational or preservation purposes . . ."



"According to the Arizona Revised Statutes, Section 3-901, Paragraph C . . ."

a legal right to move came to \$1,731,094 during the last fiscal year alone. Now that the state is experiencing a boom in building of single-family homes and other residences, landscaping activities are increasing. Desert landscaping is becoming more popular as water rates rise with increasing energy costs. We are seeing an increase in both legal and illegal digging of protected plants. Arrests are up from 46 to 91 during the 1978-1979 fiscal year.

Desert Plants: How does the law apply to destroying or mutilating protected native plants?

Mr. Countryman: It is illegal to knock protected plants over with a vehicle (including a bulldozer), to chop them with an axe or hatchet or to mutilate them by rifle, pistol, archery target practice, or to drive over them or flatten or destroy them.

Desert Plants: How are such cases dealt with by the courts?

Mr. Countryman: There are the usual penalties of fines and imprisonment. In addition, there is a growing tendency for a judge to require restitution as well.

Desert Plants: Previously you spoke of persons moving plants legally or illegally. Are we to understand that a particular species of protected native plant could be legally dug up or moved or sold in one instance, but illegally so in another?

Mr. Countryman: Some species of native plants are so rare, endangered or threatened that the Legislature has mandated that permits for their removal can only be for scientific or educational purposes or to preserve the plants from imminent destruction. Other protected species can be removed from nature under commercial permits from the Commission, but only when the applicant already has a legal right to take the specific plants in question. That is to say that the applicant must already own the plants or have permission of the land-owner to take the plants. We never legitimize an otherwise illegal situation by issuing a permit. A permit in no way transfers ownership.

Desert Plants: Which species of natives are considered so rare that removal can only be for scientific, educational or preservation purposes?

Mr. Countryman: These plants are listed in the Arizona Revised Statutes, Section 3-901, paragraph B: *Washingtonia filifera* (Native Fan Palm), *Lysiloma thornberi* (Ornamental Lace-tree), *Bursera fagaroides* (Elephant Tree), *Cereus schottii* (Senita Cactus), *Cereus thurberi* (Organ-pipe Cactus), *Toumeyia papyracantha* (Native Paper-spine Cactus), *Toumeyia peeblesiana* (Navajo Cactus), *Neoevansia diguetii* (Dahlia Cactus), all *Pediocactus* species, all *Sclerocactus* species and *Agave arizonica*.



"It is illegal to . . . mutilate them by rifle, pistol, archery target practice . . ."

Desert Plants: But Mr. Countryman, we see species like the Native Fan Palm and Ornamental Lace-tree for sale everyday in nurseries and less frequently we see Senita Cactus and Organ-pipe Cactus. How can this be?

Mr. Countryman: The law applies only to native plants which have grown wild in Arizona without being propagated or cultivated by human beings. Plants grown from seed or other legitimate means of propagation in nurseries are not covered by the law.

Desert Plants: Can pads or cuttings of protected native plants be taken without a permit?

Mr. Countryman: No. This would tend to mutilate the plants in nature and could not be allowed under the law. However, cuttings of legitimately cultivated plants can be made and the resulting plants would not be native plants under the meaning of the law because they are specifically exempted as having been "propagated or cultivated by human beings."



"It is illegal to chop them with an axe or hatchet . . ."

Desert Plants: Can fruits or seeds be collected from protected native plants?

Mr. Countryman: Only with permission of the owner of the land where the plants grow. We do not require Commission permits for fruit or seed collecting, but persons should remember that they are subject to trespassing laws. All parts of the desert are owned by someone, either private land-owners or federal or state governments.

Desert Plants: Might not some conservation-minded persons think that collecting of seeds or fruits should be made illegal?

Mr. Countryman: In most instances a plant produces a tremendous number of seeds, many times more than germinate in nature. Growing protected plants from seed helps reduce the demand on native ones of the same species.

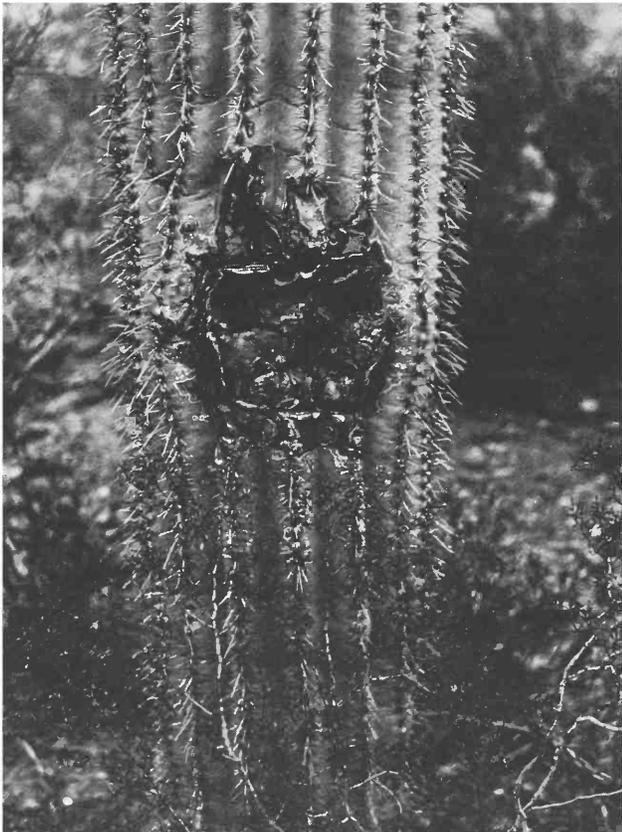
Desert Plants: Won't the new federal endangered species act prohibit collecting of certain seeds on public lands?



"If this was your second offense, you could go to jail for 18 months and pay a fine up to \$1000 . . ."



"We can and do prosecute in Arizona if a person presents a false bill-of-sale from out of state . . ."



"Have you ever seen a Saguaro damaged by a shotgun blast?"

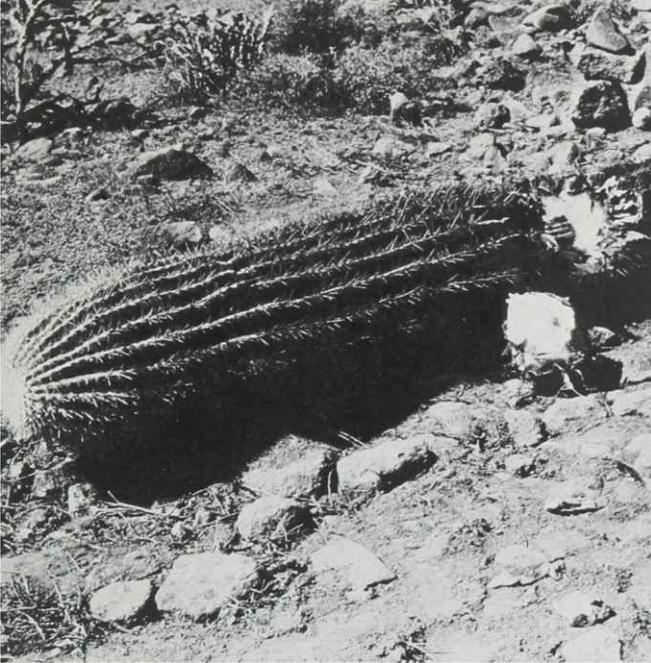
Mr. Countryman: This law should provide guidance to landowners and administrators of public lands for either allowing or disallowing seed collecting, depending on the species. In the past the Forest Service or Bureau of Land Management or other government agencies used discretion when issuing seed collecting permits.

Desert Plants: You mean then that permits are required for seed collecting?

Mr. Countryman: The type of permit that these government agencies grant is essentially a "permission of the land-owner." The Commission of Agriculture and Horticulture does not act in the capacity of a land-owner, so its permits are in a purely regulatory capacity. It does not regulate seed collecting by permits, although a seed-dealer's license must be obtained from the Commission by anyone intending to sell more than a pound of seed.

Desert Plants: Yes. The distinction between these types of permits is easy to see. We can also see how a person could easily confuse the Commission's regulatory permit with the other type of permit. Has anyone ever thought the Commission's permit entitled him to get out and find a native plant to collect, sort of like a deer-hunter with a tag?

Mr. Countryman: We never issue a permit under the state law until we are satisfied that the party applying for the permit already has legal ownership



"A 100 year old Saguaro destroyed by vandals is a sad sight . . ."



"I'm reluctant to disclose our methods but we do have investigatory techniques that yield evidence acceptable to a judge . . ."

of the plants in question or has written permission of the land-owner, or a permit from a government agency acting as manager of the land.

Desert Plants: You have mentioned plants which are protected but which can be removed from nature by a private individual or commercial nursery when the Commission issues a permit.

Mr. Countryman: These are listed under Arizona Revised Statutes Section 3-901, paragraph C in four groups: 1) all species of the following families, Liliaceae (Lily Family), Amaryllidaceae (Amaryllis Family), Orchidaceae (Orchid Family), Crassulaceae (Orpine Family) and Cactaceae (Cactus Family). 2) all species of the following genera: *Aquilegia* (Columbine), *Lobelia* (Lobelia), *Dodecatheon* (Shooting Star), *Primula* (Primrose), *Fouquieria* (Ocotillo). 3) the following species: *Atriplex hymenolytra* (Desert Holly), *Cercis occidentalis* (Western Redbud), *Dalea spinosa* (Smoke Tree), *Holacantha emoryi* (Crucifixion Thorn), *Fremontia californica* (Flannel Bush), *Pinus aristata* (Bristlecone Pine), *Rhus kearneyi* (Kearney Sumac), *Sapium biloculare* (Mexican Jumping Bean) and *Sebastiania pavoniana* (Mexican Jumping Bean). 4) the following species of live or dead plants or parts thereof: *Prosopis juliflora* (Common or Honey Mesquite), *Prosopis pubescens* (Screwbean Mesquite), *Cercidium microphyllum*

(Little-leaf Palo-verde), *Cercidium floridum* (Blue Palo-verde), *Parkinsonia aculeata* (Jerusalem Thorn, Long-leaf Palo-verde) and *Olneya tesota* (Ironwood Tree).

Desert Plants: It looks like your personnel have to be pretty good at identifying a large number of protected native plants.

Mr. Countryman: Our line of work is a rather technical field in the Commission to begin with and I believe it becomes even more technical in the native plant area.

Desert Plants: Suppose we operate a nursery and we want to obtain a dozen 5-foot tall Saguaro cacti to sell. Do we just come to you to get a permit?

Mr. Countryman: No. We will only issue a permit after you bring in a permission form signed by the land-owner giving the complete legal description of the land involved and a complete list of protected native plants to be removed. If you were going to dig these Saguaros on government land you probably wouldn't get permission except under exceptional circumstances. If you were caught digging, transporting or selling these Saguaros, you would probably be apprehended and receive a stiff fine.

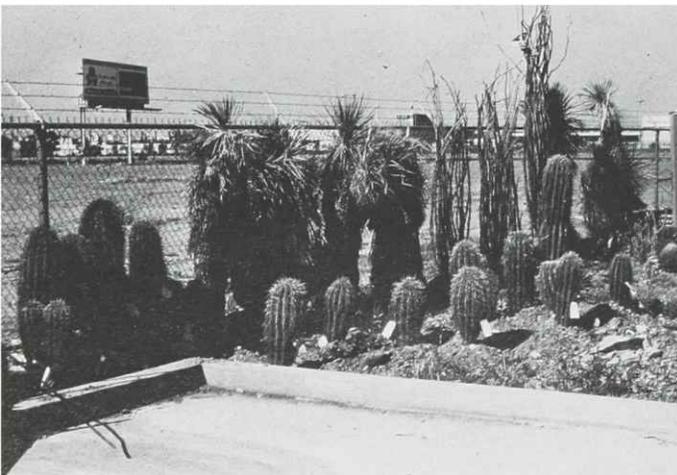
Desert Plants: How would anyone know that the Saguaros were illegal?



"Last year we made house-calls that turned up 3,062 cases of compliance and 177 cases of non-compliance . . ."



"Stolen cacti are brought to our holding yard . . ."



"Once the confiscated plants are in the holding yard, we plant them loosely so they can be removed . . ."

Mr. Countryman: If you can't show that you grew them from seed and they don't have native plant tags or blue seals, then they are subject to confiscation. If you try to sell a dozen such undocumented Saguaros, we would prosecute.

Desert Plants: What then?

Mr. Countryman: A first offense is a Class 3 misdemeanor, up to 90 days in jail and a \$500 fine. If this was the second time around for you, it would be a Class I misdemeanor and you could receive up to 18 months in jail and a \$1,000 fine. If a corporation is involved, it could receive up to a \$20,000 fine under Class 1.

Desert Plants: Is a person really apt to receive a stiff penalty such as a \$1,000 fine.

Mr. Countryman: Yes, indeed. I could readily point to instances of fines up to \$1,000. In addition, the law allows each individual plant to constitute a separate offense.

Desert Plants: We can see the value of having full-time native plant investigators. Does the money to support this program come from the taxpayer?

Mr. Countryman: The Commission received 90% of the permit fees and 90% of the fines under the Native Plant Law to provide money for the program.

Desert Plants: Supposing we wanted to obtain the dozen Saguaros legally, how would we be apt to do it?

Mr. Countryman: You would probably look for a rancher who wanted to clear cacti from grazing land or who was putting up a new building or perhaps putting in a new road. Such a person might agree to sell you some Saguaros from his land. He would sign the permission form. We would then check the location to see that the quantity and kind of cacti specified on the permission form were actually there. If the cacti were not there, we would not issue a permit. Also, if it proved from county land records that the rancher didn't actually own the land but was leasing it, say from the State of Arizona, then the application would be denied. We stop quite a few people from breaking the law by denying applications.

Desert Plants: What is to stop a person from finding a dishonest land-owner to sign a permission form for a dozen Saguaros when it is actually intended to dig the Saguaros from government land?

Mr. Countryman: This is one trick that has been tried, alright, and it shows why investigators are needed to keep track of the comings and goings of native plants. We make plaster casts of tire-marks where someone has backed up to an illegal Saguaro

and hoisted it onto a truck. We have ways of matching roots from a confiscated plant with ones left behind in the hole. I'm reluctant to reveal all of our methods, but believe me, there are several investigatory techniques which yield evidence that a judge in a court of law will ordinarily accept.

Desert Plants: Do your people go into court, then?

Mr. Countryman: Yes. There are three ways we appear in court, 1) as a complaining witness, 2) as a regular witness, or 3) as an expert witness. During the last fiscal year the Commission signed 43 complaints bringing persons to court. Citations by various law enforcement agencies brought another 48 to court. When we sign the complaint, we must appear in court in the capacity of a complaining witness. In a native plant case, we would also be apt to be called as a regular witness in a capacity of "keeper-of-the-records," that is, we could testify that a particular person did not have a permit to dig up a Saguaro from a specific tract of land. We could also serve as an expert witness in technical matters having to do with details uncovered or on the cash value of a confiscated plant. Each case is different. When the value is over \$100, a felony case of theft can be made. Usually this would require a complaint by the land-owner.

Desert Plants: You don't actually prosecute a native plant case do you?

Mr. Countryman: No. We assist the prosecutor in preparing his case. The prosecutor most often is the County Attorney. Aside from regular court cases, we do have quasi-judicial hearings in the Commission offices.

Desert Plants: You mentioned fees. How much does it cost to obtain a permit?

Mr. Countryman: A permit can be written for a number of plants. Each plant must be tagged. The tag for a Saguaro costs \$2.00 while a tag for any other protected species is \$1.00. The fee for a cord of wood of protected trees is \$1.00. Here again, by paying \$1.00 per cord for the wood permit, a person doesn't obtain ownership of the wood.

Desert Plants: Why should dead wood be protected?

Mr. Countryman: Once wood is cut up it's next to impossible to show what was dead or alive when it was cut. The Legislature wanted to protect certain tree species which were being cut for firewood. Once the wood is on a truck and a few miles away from where it was cut, it's hard to tell if it came from an Arizona State Park, from National Forest Land or from private property. When wood of Mes-

quite, Palo-verde or Ironwood is taken from private property, a wood permit is required for amounts over a cord. For amounts under a cord, a person should have permission of the land-owner just as was the case with amounts over a cord, but the state regulatory permit is not required. No special wood permit is required from the Commission when wood is removed under a permit from the Forest Service or Bureau of Land Management.

Desert Plants: But why should a tree like Mesquite be protected in the first place?

Mr. Countryman: It's true that Mesquite can be an unwanted invasive tree on some ranges. However, in Yuma County we had instances where the Mesquite, Palo-verde and Ironwood were being chained out and hauled into Mexico for firewood, for fueling the brick kilns and for carving. These were the only trees in some desert areas and if something hadn't been done fast the wholesale theft would have left no trees in many spots. People doing the hauling were selling the wood in Mexico and bringing back narcotics for sale in the United States. Now we don't have to catch the violators in the act of cutting the trees. Now a truckload of wood can be stopped before it passes the border and a citation issued. Also, before the law was passed, a large number of people didn't care where they cut their firewood. Places included highway rights-of-way at night, private property, anywhere a chain-saw operator could work. Now people need formal permission from the land-owner and must obtain a permit. With fuel costing more nowadays many people are burning wood in fireplaces or Franklin stoves. Wood from legitimate sources has risen to \$85 to \$100 per cord. Unfortunately, this has caused increased illegal cutting.

Desert Plants: Is it really possible to keep track of the comings and goings of protected native plants? What if someone wants to dig up a plant in his yard to give to a friend across town? What if someone buys protected native plants from outside the state and brings them in?

Mr. Countryman: Yes, we have developed a number of methods for keeping tabs on native plants and to deal with just about any possibility that arises. When cacti are brought into Arizona, personnel at the inspection station fill out a card reporting the species, quantity, destination and other facts. These cards come here and are kept on file for our information. If the plants are native-grown and the same species as protected in Arizona, we apply blue seals to them. Usually the shipment is



"We uncovered the theft of a large number of Arizona Rainbow Cacti that had been taken to California..."

quarantined to its destination, inspected there and blue seals applied. This operation can be done at the Arizona border as well. On the United States-Mexican border, the federal plant quarantine people blue-seal the plants for us.

Desert Plants: Are barrel cacti such as *Echinocactus ingens* or the Royal Agave, *Agave victoriae-reginae*, blue-sealed when they have been dug up in Mexico and brought into the United States?

Mr. Countryman: No. We can tell that they are species that do not grow wild in Arizona.

Desert Plants: But how would a sheriff's deputy or a Department of Public Safety officer know that these species don't grow wild in Arizona?

Mr. Countryman: We work very closely with all law-enforcement agencies. We help train and educate, provide assistance and information. We make available 24-hour telephone numbers of Commission personnel to law enforcement agencies. In addition, if a case is not entirely clear, we can place a "HOLD" tag on a plant until it is identified by an expert or the situation is otherwise resolved.

Desert Plants: If a plant is grown out of state from seed and brought into Arizona, is it blue-sealed?

Mr. Countryman: No. Blue seals are not ordinarily needed for seed-grown plants.

Desert Plants: How can a person differentiate between a plant that was seed-grown by man and one that grew wild on the desert if both plants are of the same species?

Mr. Countryman: Expert testimony in a court of law can be developed regarding the structure of the root system, the overall nursery-grown vs. desert-grown appearance and so forth. A nursery flat of 36 uniform appearing Saguaros, each two inches high and with no evidence of broken roots would probably be taken by a court of law as material grown from seed by man. On the other hand, if someone saw a person carefully dig up the 36 tiny Saguaros on the desert, or if any other adverse evidence existed, then the decision would probably go the other way. We generally know which nurseries grow plants from seed and know what such seed-grown material looks like.

Desert Plants: Do you check nurseries over for native plant violations?

Mr. Countryman: Last year we made 514 nursery checks. In addition, we have 26 employees around the state who get involved in various aspects of nursery regulation and plant inspection. These people devote part-time to Native Plant Law aspects of their jobs in addition to our six full-time investigators. As a result, we have the most effective native plant law in the United States.

Desert Plants: Once protected native plants are planted in a yard, how can you tell if they were legally or illegally obtained?

Mr. Countryman: We ran 425 checks of subdivisions last year alone. We keep records on the kinds and numbers of protected native plants in each yard in the subdivision. When a new plant appears on the scene, we make a house-call to determine if the native plant law has been complied with. Last year these house-calls turned up 3,062 cases of compliance and 177 cases of non-compliance.

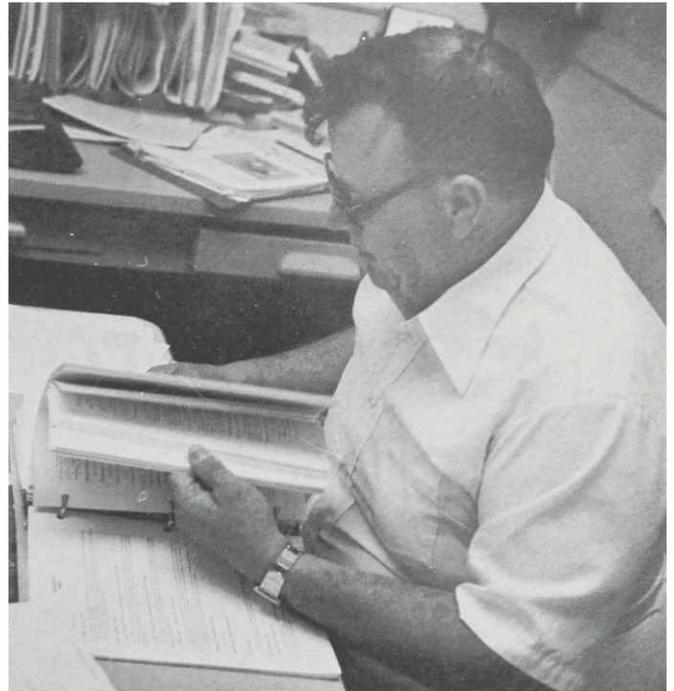
Desert Plants: How do you determine compliance?

Mr. Countryman: Upon planting a protected native plant, the owner removes the tag or blue seal and retains it until it is checked by our investigators. The home-owner should keep the tag since, like a deed, it provides a record of ownership.

Desert Plants: What if a person has several native cacti in his yard which are being cultivated and which were legally obtained in the past. Can a person give them to a friend across town?



"I would say that 80% of the violators are cactus wholesalers or cactus peddlers . . ."



"Arizona has the best regulated native plant law in the United States."

Mr. Countryman: Upon request, we will blue-seal the plants so they can be moved.

Desert Plants: The blue seals are always issued without charge aren't they?

Mr. Countryman: Yes. We can provide this service on a time-available basis. If a nurseryman has fifty plants that need to be blue-sealed, he may have to wait a few days until we happen to be in the neighborhood on other business.

Desert Plants: How do you know that plants coming in from an adjacent state for blue-sealing didn't actually originate in Arizona or were otherwise illegally obtained?

Mr. Countryman: We require a bill-of-sale from a legitimate source. This prevents theft of native plants from adjacent states. We can and do prosecute in Arizona if a person presents a false bill-of-sale from another state. We have been working with officials of several states to prevent theft of plants from government land in these states. Often the material comes into Arizona and we spot it from falsified bills-of-sale or other suspicious circumstances. We have worked on cases in Utah, New Mexico, California and Nevada, all cases where the plants were being marketed in Arizona. Arizona and Utah as well as federal officials combined forces on one recent case.

Desert Plants: We've noticed that plants coming in from Mexico are seldom longer than 18 inches.

Mr. Countryman: Yes, that's the largest that can be handled by the federal plant quarantine people in their fumigation chambers.

Desert Plants: Oh, so that's what it's all about.

Mr. Countryman: Material also enters Arizona from Mexico by way of smuggling on back roads.

Desert Plants: How would you characterize the violators – those persons who were actually arrested last year — were they hard cases or just casual violators?

Mr. Countryman: I would say that 80% of the violators are in the wholesale cactus or cactus-peddling business. Many of these individuals are of questionable character. In the case of the minor offender who was merely ignorant of the law, we confiscate the plants and issue a warning. Last year we issued 84 warnings. We have thought it better to "educate rather than prosecute." We presented 103 talks on native plant protection in Arizona to school groups, clubs and various organizations during the last year. Also, we generated 23 television, radio or news articles and had booths or displays at 5 garden and plant shows.

Desert Plants: We want to thank you very much, Mr. Countryman, for answering all of our ques-

tions. We certainly have a much better insight now into conservation of protected plants in Arizona and a healthy respect for the many types of knowledge and techniques that a native plant investigator uses in his daily work. Is there anything which you would care to add?

Mr. Countryman: We do want to enlist the aid of the people of the state. However, do not accost a possible violator. Write down the license number of the vehicle immediately and then report the situation to the nearest law-enforcement agency. You can call the Arizona Commission of Agriculture and Horticulture or any sheriff's office, Department of Public Safety office or the Arizona Game and Fish Department.

Also, I would like for more people to know that the law now requires private land-owners planning to clear land of protected plants to notify the Commission 30 days in advance so that attempts can be

made to save the plants from destruction. When state land is involved, 60 days' notice must be given.

Desert Plants: These new provisions seem to be commendable. What happens to such material?

Mr. Countryman: We try to place such material where it can be used for scientific or educational purposes or for landscaping public buildings as far as possible.

Desert Plants: By the way, before we leave, what provisions are made for scientific and educational plant collecting?

Mr. Countryman: Aside from the plants that can be collected only for scientific, educational or preservation purposes, the same provisions apply as for commercial permits except that no fee is due from the scientific or educational institution.

Desert Plants: Again, we want to thank you for such an interesting discussion.