No. 71956

APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Date of filing in State Engineer's Office NOV 29 2004

Returned to applicant for correction

Corrected application filed

Map filed MAY 29 2000 under 68844T

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The applicant **Edward J. Hayes & Constance G. Hayes**, hereby make application for permission to change the **Point of Diversion and Place of Use** of water heretofore appropriated under **all of Permit No. 64267**

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1. The source of water is **underground**

2. The amount of water to be changed **0.120 cfs, 12.00 acre feet annually**

3. The water to be used for **Irrigation and Domestic**

4. The water heretofore permitted for **Irrigation and Domestic**

5. The water is to be diverted at the following point **the SW¼ of the NE¼ of Section 8, T.22N., R.21E., M.D.M., or at a point from which the northwest corner of said Section 8 bears North 64° 35' 19" West a distance of 3312.50 feet. See map supporting Applications 68845, 68847 and 68849.**

6. The existing permitted point of diversion is located within **the NW¼ of the NE¼ of Section 9, T.22N., R.21E., M.DM., or at a point from which the northeast corner of said Section 9 bears North 64° 50' 00" East a distance of 2940.0 feet. See Map No. 63064.**

7. Proposed place of use **3.0 acres within the NW¼ of the NE¼ and the NE¼ of the NE¼ of Section 9, T.22N., R.21E., M.D.M.. See maps supporting Permit No. 63064**

8. Existing place of use **3.0 acres within the NW¼ of the NE¼ of Section 9, T.22N., R.21E., M.D.M.. See map supporting Proof of Beneficial Use under Permit No. 63223.**

9. Use will be from **January 1** to **December 31** of each year.

10. Use was permitted from **January 1** to **December 31** of each year.

11. Description of proposed works **Existing well, pump and irrigation system.**

12. Estimated cost of works **Completed.**

13. Estimated time required to construct works **Completed.**

14. Estimated time required to complete the application of water to beneficial use **5 years**

15. Remarks: **This water will be used by Fahnestock Enterprises to cultivate sod on property owned by Edward and Constance Hayes. A Water Rights Agreement between Hayes and Fahnestock is being submitted herewith.**

By **s/ George G. Lindesmith**
George G. Lindesmith
Tri State Surveying 1925 E. Prater Way
Sparks, Nevada 89434

Compared **gkl/** sc lt/

Protested

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APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion and place of use of the waters of an underground source as heretofore granted under Permit 64267, Certificate 16547 is issued subject to the terms and conditions imposed in said Permit 64267,Certificate 16547 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The total combined duty of water under Permits 71953, 71954, 71955, 71956, 71957 and Certificated Permits 63064, Certificate 15932, 63065, Certificate 15933, 63072, Certificate 15934, 63074, Certificate 15935, 63456, Certificate 15939, 63708, Certificate 15940, 64265, Certificate 15941, 64266, Certificate 15942, 64268, Certificate 15943 and 64269, Certificate 15944 shall not exceed 151.0 acre-feet annually.

This permit is issued for the irrigation of 3.0 acres within the described place of use.

(CONTINUED ON PAGE 3)

(Permit Terms Continued)

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The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed **0.1111** cubic feet per second, **but not to exceed 12.0 acre-feet annually, and not to exceed a yearly duty of 4.0 acre-feet per acre of land irrigated from any and/or all sources.**

Work must be prosecuted with reasonable diligence and be completed on or before:
N/A

Proof of completion of work shall be filed on or before:
N/A

Water must be placed to beneficial use on or before:
September 19, 2008

Proof of the application of water to beneficial use shall be filed on or before:
October 19, 2008

Map in support of proof of beneficial use shall be filed on or before:
October 19, 2008

IN TESTIMONY WHEREOF, I, HUGH RICCI, P.E., State Engineer of Nevada, have hereunto set my hand and the seal of my office, this **19th** day of **September** A.D. **2005**

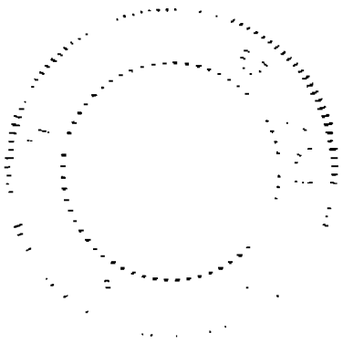
Hugh Ricci, P.E.
State Engineer

Completion of work filed June 19, 2003 under 68228

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____



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Lease

Edward J. and Constance Hayes Lease to Fahnestock Enterprises, Inc. DBA Western Turf

Edward J. and Constance Hayes (Lessor) agrees to lease to Western Turf (Lessee) the property and water rights usage under the following terms and conditions described below.

1. **Property Location** – Approximately 80 acres located in the North half of the North East quarter section 9 Township 22 North Range 21 East Mount Diablo Meridian, APN 077-100-12 and APN 077-100-13.
2. **Water rights** – Included in the lease are 151 acre feet of water rights/usage owned by Lessor. It is also agreed that Lessee may place water rights owned by Western Turf, Harry and Joanne Fahnestock and other parties for use on this property during the term of the lease. Lessee may not use the full duty of water rights associated and/or diverted to the property. Lessee will not be responsible for any actions or losses resulting from the failure of the Lessee to use all of the water rights associated with and/or diverted to the property.
3. **Term** – The term of the lease will be for five years commencing August 1, 2002 and terminating July 31, 2007. Unless otherwise agreed to in writing by Lessee and Lessor, Lessee will have exclusive use of the property.
4. **Payment Schedule** – Lease is based on actual acres planted and may vary from year to year. There will be no lease due for the first year due to start up costs that include fencing and irrigation facilities. The second year lease will be at a rate of $75.00 per acre planted and subsequent years lease will be $125.00 per acre planted. Equal payments of half of the amount due will be made October 1 and December 1 of the year for the amount of acres planted during that year.
5. **Power Costs** – Lessee will pay for the power costs associated with irrigating the property leased.
6. **Liability Insurance** – Liability Insurance will be carried by Lessee in the amount of $1,000,000.00, Lessor to be named on said policy. Lessee will deliver to Lessor an insurance binder in said amount.
7. **Maintenance and Repair** – Lessee will observe and monitor the operation of the well and pumping facilities located on the Lessor property and will immediately report any problems to Lessor. Lessor will be responsible for any repairs to the Lessor equipment necessary to deliver the optimum amount of water to the leased property. Lessee will be responsible for any repair and maintenance to the wells, pumps and irrigation equipment owned by Lessee. In the event that an emergency repair is needed to the Lessor equipment and the Lessor is not available by telephone, Lessor grants the Lessee the right to have said repairs performed. An emergency is defined as any equipment failure that will limit the irrigation resulting in crop damage and/or loss.
8. **Hold Harmless** – Lessee shall hold harmless Lessor against and Lessee crop loss or losses of any type except as note in 7. Above.
9. **Water Usage** – Lessee shall not exceed usage of 4 acre feet of water per acre. Lessee and/or other parties designated by Lessee to transfer water rights and

usage to Lessor property will pay for water right transfer costs. These transfers may be terminated at the end of time of harvest. All water rights placed for use on this property will be in compliance with permits issued by the Nevada Division of Water Resources State Engineer.

10. **Termination** – This lease shall be terminated on or before July 31, 2007 if agreed to by both parties in writing, or, by the Lessee with 60 days notice in writing. At the termination of the lease Lessee will have the right to remove and keep possession of any and all fencing, irrigation and other improvements constructed or supplied to the property by the Lessee.

Agreed to this 3 day of June, 2002 by and between the undersigned.

Harry G. Fahnestock, President
Western Turf

Edward J. Hayes

Constance Hayes

Addendum to lease agreement between Hayes and Fahnestock Enterprises, Inc., DBA Western Turf

Paragraph 7:

Add – Lessee will record water usage monthly and make the report(s) available to Lessor on a monthly basis.

Paragraph 8:

Change the wording to ..."Lessor against any Lessee crop loss"...

Paragraph 10:

Change 60 days to 90 days notice...

Agreed to this 3 day of June, 2002 by and between the undersigned.

Harry G. Fahnestock, President
Western Turf

Edward J. Hayes

Constance G. Hayes