

**2ND AMENDED
THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION**

Source Owyhee River
Name of natural water source (use separate proofs for each major source)

The water is diverted from its source P.O.D. #1 Mori Ditch, P.O.D. #2 Byington Ditch
Name of ditch, flume or pipe line

at the following point(s) P.O.D. #1 -Mori Ditch - within Homestead Entry Survey No. 76, Section 1,
List all points of diversion from this source, appending a sheet if necessary

T. 45 N., R. 53 E., MDM, at a point from which the SW corner of Section 31, T. 46 N., R. 54 E., MDM
Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed

(unsurveyed) bears N. 27°07' E., 753 feet.
and, it should be stated

P.O. D. #2-Byington Ditch - within Homestead Entry Survey No. 76, Section 1, T. 45 N., R. 54 E., MDM,
at a point from which the SW corner of Tract No. 37, T. 46 N., R. 54 E., MDM (unsurveyed) bears
S. 48°18' E., 1,250 feet.

(1) Name of claimant Byington Steel Treating, Inc.
Address HC 35, Box 30 Mountain City, County of Elko
State of Nevada 89831

(2) The means of diversion employed dams and ditches
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was _____

(4) The construction of the ditch or other works was begun 1870
and completed 1870

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom _____ feet, width on top 3.2; 3.8 feet, depth 3.8; 3.6 feet, on a grade of _____ feet per thousand feet.

(6) The conduit has (has not) been enlarged.
NOTE - If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun _____ and completed _____ .

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom _____ feet, width on top _____ feet, depth _____ feet, on a grade of _____ feet per thousand feet.

(9) The claimant is an owner in the above-described conduit.

See Remarks

If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is _____

Fee Title

Fee simple, public domain, etc.

(11) Crops of Native hay have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(12) The water has been used for irrigation from April 1st to October 31st of each year.
Day of month Day of month

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

<u>DITCH SEC.</u>	<u>1/4 1/4</u>	<u>T. N.</u>	<u>R. E.</u>	<u>ACRES</u>	<u>TYPE OF CULTURE</u>	<u>DATE OF CULTURE</u>
#1	1	H.E.S. 39 ✓	45	53	✓ 8.84 ✓ ✓	Harvest 1870
#1	36	H.E.S. 39 ✓	46	53	✓ 4.29 ✓ ✓	Harvest 1870
#2	1	H.E.S. 39 ✓	45	53	✓ 7.42 ✓ ✓	Harvest 1870
#2	1	Lot 12 ✓	45	53	✓ 0.07 ✓ ✓	Harvest 1870
#2	2	H.E.S. 39 ✓	45	53	✓ 2.62 ✓ ✓	Harvest 1870
#2	2	Lot 1 ✓	45	53	✓ 1.72 ✓ ✓	Harvest 1870
#2	36	H.E.S. 39 ✓	46	53	✓ 6.78 ✓ ✓	Harvest 1870
#2	36	H.E.S. 39 ✓	46	53	✓ 8.32 ✓ ✓	Harvest 1870
#2	36	SESW ✓	46	53	✓ 0.07 ✓ ✓	Harvest 1870
#2	36	H.E.S. 39 ✓	46	53	✓ 1.77 ✓ ✓	Harvest 1870
#2	36	H.E.S. 39 ✓	46	53	✓ 2.36 ✓ ✓	Harvest 1870
#2	36	NESW ✓	46	53	✓ 0.14 ✓ ✓	Harvest 1870

(14) The maximum acreage irrigated in any year was 44.40 acres.

(15) The water claimed has been used for irrigation each and every year since the right was initiated. Strike out one not wanted

(16) The years during which no water was used for irrigation or during which the full water right was not used were None

If water was not used, or used in reduced quantity at any time, full information as to causes and duration

of non-use should be given, appending a sheet if necessary

(17) The claimant's water right was not recorded in the office of the County Recorder of _____ County, said record being at page _____ of Book _____ of _____, and being a claim for _____ of water for the irrigation of _____

acres of land in the following legal subdivisions: _____

"After Jesse Cope's mineral discovery in May 1869, by the spring of 1870, the Town of Cope

NOTE - Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(Mountain City) had a population ranging from 500 to 1000 people; Cope had about 130 buildings, one-half of which were canvas tents, the remainder were constructed of adobe, rocks, etc. Cope (Mountain City) was not located at the present site of Mountain City, but was a mile in a southerly direction and on a flat area on the west side of the Owyhee River. A place called Placerville was to become the present Mountain City. By 1872, the Cope District boasted of a population ranging from 2500 to 3000 people. By 1877 most of the people from Cope (Mountain City) had moved downstream about a mile and to the east side of the Owyhee River, which is known as today's Mountain City. (All the above is taken from the book "Nevada's Northeast Frontier", Mountain City, Pages 639-645 by Edna Patterson, et al).

Enclosed are certified copies of land claims made by Jesse Cope, J.J. Groffs, (Groff's Ranch), Shabes, Hurdy and Lucas, and B.C. Stevens, which covered an area from Jesse Creek (California Creek), which was about one third mile wide at the start and about one and on-half mile in length and about two-thirds of a mile wide at the bottom, all of this covering the bottom land. The four certified copies of the land claims say that they were for cultivation and grazing purposes and the certified copy of water rights for James Gur (Misc. Book 1, Page 287), describes Jesse Creek and California Creek as the same. The Groff Ranch shows on the Elko County tax roll in 1870 and 1872. There were no deeds found up to the time the Homestead Entry law came into being. H.E.S. #39, filed by J.B. Hall, occupied some parts of these land claims. As shown in a letter from J.B. Hall to the State Engineer, F.R. Nicholas, in 1909, (copy enclosed) he declared that he owned part of the land claim area for thirteen years and preceded by a former owner for seven years; we claim that there were other prior owners back to the time that the land claims were filed in 1869. Also, in the final proof of the H.E.S. #39, Albert M. Olin states that when Mr. Hall had purchased the property, about 40 acres were in crop, and that he also had kept up the old ditches. We are

claiming that those ditches and irrigation date back to the early land claims. A priority of 1870 is claimed on Byington Ditch #2, and 1870 on Mori Ditch #1. Attached are the following:

1. Land claim - By Jesse Cope
2. Land claim - By B.J. Stevens
3. Land claim - By J.F. Shabes
Samuel Hurdy
J.H. Lucas
4. Land claim - By J.J. Groff
Groff's Ranch
5. Water rights - By James Gur
6. Affidavit - By Walter I. Leberski
7. Affidavit - By William A. Nisbet

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation: stockwater and domestic

(19) The character of the soil is sandy loam. A continuous flow of 2½ cubic
(Sandy, gravelly, loam)
feet of water per second has been used to irrigate 100 acres of land and 4.0
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks: Item #9 - claimant holds a vested right in and to the ditches that flows through
upstream ownership to the head of the claimant's fields.
A copy of affidavit of Identity attached.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Byington Steel Treating, Inc. are full and correct to the best of his knowledge

and belief The undersigned deponent is acting as agent for the claimant - Byington Steel Treating, Inc.

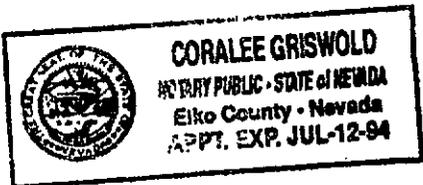
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

William A. Fisher Agent

421 Court Street, Elko, NV 89801

Subscribed and sworn to before me this 23 day of June, 1994

Coralee Griswold



Notary Public in and for the County of Elko

My commission expires July 12, 1994

\$100 FILING FEE MUST ACCOMPANY PROOF

THE STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Owyhee River
Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via ditch systems
Name of ditch, flume or pipe line

at the following point(s)
List all points of diversion from this source, appending a sheet if necessary

P.O.D.#1-Mori Ditch-within Homestead Entry Survey No. 76, Section 1, T.45 N., R.53 E.,
Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed
MDM, at a point from which the SW corner of Section 31, T.46 N., R.54 E., MDM
land, it should be stated

(unsurveyed) bears N 27° 07' E 753 feet

P.O.D.#2-Byington Ditch-within Homestead Entry Survey No. 76, Section 1, T.45 N.,

R.54 E., MDM, at a point from which the SW corner of Tract No. 37, T.46 N., R.54 E.,

MDM(unsurveyed) bears S 48° 18' E 1,250 feet

(1) Name of claimant Byington Ranch

Address Mountain City, County of Elko
Mountain City,
State of Nevada 89831

(2) The means of diversion employed diversion dam, headgate and ditch system
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was

(4) The construction of the ditch or other works was begun 1896
and completed 1896

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom
3.2 3.8
feet, width on top 3.8 feet, depth 3.6 feet, on a grade of feet per thousand feet.

(6) The conduit has (has not) been enlarged.
NOTE-If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun
and completed

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom feet, width on
top feet, depth feet, on a grade of feet per thousand feet.

(9) The claimant is (is not) an owner in the above-described conduit.

See Remarks
If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is

Fee Title
Fee simple, public domain, etc.

(11) Crops of Native Hay
have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or
diversified pasture)

(12) The water has been used for irrigation from April 1 to October 31
of each year. Day of month Day of month

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

Year	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E
.....	.....	acres in the	.....	of Sec	.....	T	.....	R	.....	E

(14) The maximum acreage irrigated in any year was 44.40 SEE REMARKS acres.

(15) The water claimed has ~~(has not)~~ been used for irrigation each and every year since the right was initiated. Strike out one not wanted

(16) The years during which no water was used for irrigation or during which the full water right was not used were.....

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary

(17) The claimant's water right ~~was~~ (was not) recorded in the office of the County Recorder of.....County, said record being at page.....of Book.....of.....

....., and being a claim for.....
of water for the irrigation of.....
 acres of land in the following legal subdivisions:.....

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation: Stockwater and Domestic

(19) The character of the soil is sandy loam A continuous flow of 2 1/2 cubic feet of water per second has been used to irrigate 100 acres of land and acre-feet per acre per annum have been used to irrigate the crops.
(Sandy, gravelly, loam)

(20) Remarks: Item #9-Claimant holds a vested right in and to the ditch that flows through upstream ownership to the head of the claimant's fields

Item #14-Priority-Research to date describes ditch construction and water use beginning in 1896

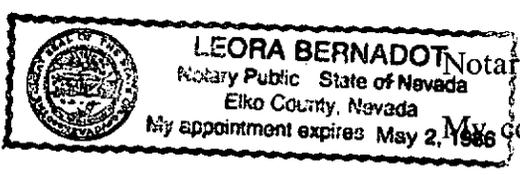
The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Byington Ranch are full and correct to the best of his knowledge and belief. Deponent has been authorized by the claimant's to act as their agent

If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the

claimant

William A. Nisbet
Agent

Subscribed and sworn to before me this 17th day of November, 1982



Leora Bernadot
Notary Public in and for the County of Elko
My commission expires May 2, 1986

\$10 FILING FEE MUST ACCOMPANY PROOF

THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Owhyee River
Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via unnamed ditch
Name of ditch, flume or pipe line

at the following point(s)
List all points of diversion from this source, appending a sheet if necessary

POD #1 NW 1/4 SW 1/4 Sect 1 T.45 N. R53 E. M.D.M.

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated
POD #2 NW 1/4 NW 1/4 Sect 1 T.45 N. R53 E. M.D.M.

(1) Name of claimant Byington Ranch

Address Mountain City, County of Elko
Mountain City,
State of Nevada 89831

(2) The means of diversion employed Diversion Dam, headgate & ditch system
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was

(4) The construction of the ditch or other works was begun prior to 1900
and completed prior to 1900 (see remarks)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom
3.2 3.3
feet, width on top 3.8 feet, depth 3.6 feet, on a grade of feet per thousand feet.

(6) The conduit has (has not) been enlarged.
NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun
and completed

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom feet, width on
top feet, depth feet, on a grade of feet per thousand feet.

(9) The claimant is (is not) an owner in the above-described conduit.
See Remarks

If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is
Fee Title

Fee simple, public domain, etc.

(11) Crops of Native hay, meadow & diversified pasture
have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or
diversified pasture)

(12) The water has been used for irrigation from April 1 to Oct. 31
of each year. Day of month Day of month

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation: stockwater & domestic

(19) The character of the soil is sandy loam A continuous flow of 2 1/2 cubic feet of water per second has been used to irrigate 100 acres of land and acre-feet per acre per annum have been used to irrigate the crops.
(Sandy, gravelly, loam)

(20) Remarks:

Item #4 - Research is continuing in order to define the priority attached to this water right.

Item #9 - Claimant holds a vested right in & to the ditch that flows through upstream ownership to the head of the claimant's fields.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Byington Ranch are full and correct to the best of his knowledge and belief. Deponent has been authorized by the claimant's to act as their
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the agent.

claimant

William A. Rishit, agent

Subscribed and sworn to before me this 15th day of October, 19 81

Leora Bernadot

LEORA BERNADOT
Notary Public - State of Nevada
Elko County, Nevada
Commission Expires May 2, 1982

Notary Public in and for the County of Elko

My commission expires May 2, 1982

\$10 FILING FEE MUST ACCOMPANY PROOF