

THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source [Name of natural water source (use separate proofs for each major source)]: Coleman Canyon Creek and Springs. **The water is diverted from its source** [Name of ditch, flume or pipe line]: Coleman Canyon Ditch **at the following point(s):** [List all points of diversion from this source, appending a sheet if necessary. 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]: Lot 12, Section 12, T44N, R55E, at a point from which the SW corner of Section 7, T44N, R56E bears South 5°07' East 2,267.0 feet.

(1) **Name of Claimant:** John Wood Griswold and Jeanne B. Griswold, Trustees of the J. Griswold Family Trusts, one-third (1/3) interest; Walter I. Leberski and Wanda E. Leberski, one-third (1/3) interest; Margaret M. Martin, John H. Martin, Jr. and Mary Ellen Martin, one-third (1/3) interest.

Address: 776 West Sage Street, Elko 89801 **County of** Elko, **State of:** Nevada, **Telephone No.:** (702) 738-5754

(2) **The means of diversion employed** [Dam and ditch, pipe line, flume, etc.]: Dam and Ditch.

(3) **The date of the survey of ditch, canal, or pipe line was:** about 1873.

(4) **The construction of the ditch or other works was begun:** Unknown **and completed:** 1873.

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

(6) **The conduit** has **been enlarged.**

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- (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. (As shown on culture map.)
- (9) The claimant is an owner in the above-described conduit. [If claimant is an owner in the conduit, state interest held on this line]: 100%
- (10) The nature of the title to the land for which the water right is claimed is [Fee simple, public domain, etc.]: Fee simple in the name of James F. Martin, a single man, with 18 miner's inches reserved in name of claimants in Deed recorded in Book 747, Page 525, copy attached.
- (11) Crops of meadow 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 15 to July 15 of each year, when available.
- (13) List the year of priority for acreage irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

YEAR 1874, 0.230 ACRES IN THE Lot 12 OF SEC. 12, T. 44 N., R. 55 E.

YEAR 1874, 0.202 ACRES IN THE Lot 12 OF SEC. 12, T. 44 N., R. 55 E.

YEAR 1874, 0.735 ACRES IN THE Lot 3 OF SEC. 7, T. 44 N., R. 56 E.

YEAR 1874, 0.275 ACRES IN THE Lot 3 OF SEC. 7, T. 44 N., R. 56 E.

THE DOCTRINE OF RELATION BACK IS CLAIMED.

- (14) The maximum acreage irrigated in any year was 1.442 acres.
- (15) The water claimed has been used for irrigation each and every year since the right was initiated, if available.

- (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 is necessary]: Claimants have owned land since 1974 and have used waters each year since that time in the irrigation of meadow.
- (17) The claimant's water right was recorded in the office of the County Recorder of Elko County, said record being at Page 394 of Book 1 of Miscellaneous Records, and being a claim for 500 miner's inches of water, and at Page 246 of Book 2 of Water Rights, being a claim of 5,000 miner's inches of water for the irrigation of an unstated number of acres of land in the following legal subdivisions: Unstated. (SEE REMARKS.) [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: Domestic and livestock.
- (19) The character of the soil is [Sandy, gravelly, loam] gravelly. A continuous flow of unknown cubic feet of water per second has been used to irrigate 1.442 acres of land and unknown acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks:

The priority claimed under this Proof is 1873 by virtue of "Location of Water Right" executed by C. B. Roussell and E. Penrod, recorded in Book 1 of Miscellaneous Records at Page 394 (certified copy attached). This location was for the Eureka Canal which was claimed as beginning on the South Fork of the Bruneau River "and conveying the same" with the waters from "Penrod", "Slate", "Brush" and "Hope" Creeks. The use of the waters was stated to be for "mining, milling and other purposes." Mineral Surveys, conducted in 1892 by Thomas K. Stewart, serve to identify Slate Creek as that stream presently known as Gold Creek (copy plat of Penrod Placer Claims A and B attached).

In 1892, Emanuel Penrod executed a conveyance to L. S. Cornell, et al., conveying to those parties the Eureka Canal by Deed recorded in Book 22 of Deeds at Page 90, Elko County, Nevada. At the time of this conveyance, major mining activity was in progress upon a portion of Penrod Placer Claims A, B and C, in which the irrigated lands are located. Wm B. Duvall filed a location of the "Old Eureka Ditch" in Book 2 of Water Rights at Page 246 on October 13, 1893, in which a total of 5,000 miner's inches of water were claimed. This canal is described as originating in Penrod Creek "about a quarter of a mile above Hugh Martin's house and extending to Hope Gulch opposite Island Mountain Dwelling House." The location of this house is found in the 1896 cadastral survey of the Ruby Valley Guide Meridian which states that the "Island Mountain Co.'s boarding house bears S 89°10' E, 16.31 chs." from the West one-quarter of Section 7, T44N, R56E, being upon lands

owned by claimants and the terminus of the ditch also within said lands. A ground inspection evidences that at the terminus the waters of Penrod Creek, now known as Martin Creek, were co-mingled with Gold Creek waters. It is apparent that E. Penrod continued diversion of waters of Penrod Creek (Martin Creek), Hope Creek (Coleman Canyon), and Slate Creek (Gold Creek) from 1873 to 1890 as the records of the Elko County Assessor show him being assessed for a water ditch and pipe line in 1890. All of the above evidences that the waters of Penrod Creek (now Martin Creek) were transported through the Eureka Canal, and co-mingled with the waters of Hope Gulch (Coleman Canyon) and Slate Creek (Gold Creek) for use upon Penrod Placer claims A, B and C, primarily for mining.

However, evidence exists that these waters were also used for irrigation. Such evidence is as follows:

1. The cadastral survey plat for which surveying was done in 1906 shows the location of a fenced field (copy attached). Ditches presently in use approximate the boundaries of the culture shown upon the cadastral survey plat.
2. The minutes of said survey refer to intersecting fences on the south line of Section 17, which fences run North and South and lie 15.11 chains apart. From this, and the area shown on the cadastral survey plat, a total of 90 plus acres are shown as being in some form of culture. In addition, the plat locates a major ditch.
3. Inspection of the area reveals any number of large ditches, which from location indicate use for mining purposes. In addition, a number of small ditches are located to evidence irrigation use for a total of 15 acres, more or less.

The Mineral Survey notes for Penrod Placer Claims A, B and C, dated December 14, 1892, refer to the fact that the canal from Penrod Creek empties into Slate Creek, and the combined waters were then used upon Penrod Placer Claims A, B and C. Therefore, Slate Creek (now Gold Creek) was a portion of the diversion for use in the three placer claims.

It is not the intent of the claimants herein to claim any waters of Penrod Creek (now Martin Creek) from the Eureka Canal. The waters of Slate Creek (now Gold Creek) were primarily used for irrigation, and this is the only source claimed. In addition, the claimants herein have assigned to Raymond Y. Mendive, et ux, any right, title and interest they have in and to the waters of Penrod Creek (now Martin Creek) and the Eureka Canal, but retain the priority of 1873 from Gold Creek.

An additional diversion of water upon the lands of the claimant herein was made by J. R. Hardman by Statement of Appropriation of the Waters of Gold Creek, Penrod or Martin Creek, recorded June 7, 1906 in Book 2 of Water Rights at Page 463, Elko County, Nevada. In this statement, a diversion of water of Gold Creek (at a point about 1/4 mile "above where Gold Creek enters and joins Martin," or Penrod Creek) is made with diversion being claimed in April, 1901. It was claimed that the water was used upon his possessory claim to the South and West of the diversion. No possessory claim is found of record. However, based upon the location of old ditches upon the ground (Hardman Ditch as shown upon the culture map) and the statement of Hardman,

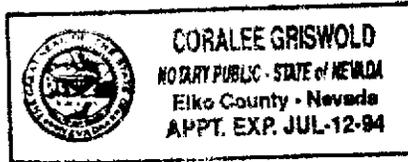
a priority date of 1901 is evidenced. No chain of title from J. R. Hardman to the claimants herein is found except for the fact that Hardman leased the property from Duryee, a predecessor, and claimants have acquired any rights Duryee may have established through Hardman's diversion.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by the claimants herein are full and correct to the best of his knowledge and belief. [If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.]

Proof being made by John W. Griswold, one of the claimants herein.

By John W. Griswold
Telephone No. (702) 738-5754

Subscribed and sworn to before me this 9 day of October,
19 94.



Coralee Griswold

Notary Public in and for the County of Elko

My commission expires July 12, 1994

\$100 FILING FEE MUST ACCOMPANY PROOF

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