Serial No. 05754

THE STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR

STOCK WATERING PURPOSES

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(1) **Name of Claimant** Joseph B. Key, Trustee of the Cabana Motel, Inc. Pension Plan [Street and No. or P. O. Box No.] P. O. Box 818 **of** [City or town] Reno [State and Zip Code No.] Nevada 89504.

(2) **Source of water** [Name of natural water source] Chokecherry Spring.

(3) **The water is diverted by** [Dam, ditch, pipe line, natural channel, spring area, etc.] short pipeline to trough.

(4) **The water is diverted at the following point(s)** [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. Diversion over a channel reach must be described by course and distance to a section corner for both the beginning and end of such reach.] at a point within the NE¼SE¼ of Section 11, Township 36 North, Range 55 East, MDM from which the Southeast corner of said Section 11 bears South 41°30'00" East a distance of 2,200 feet.

(5) **The water is impounded in** [Troughs, tanks, pools, reservoir, natural channel, etc.] trough.

(6) **The construction of the ditch or other works was begun** [Date] unknown **and completed** [Date] unknown.

(7) **The nature of the claimant's title to the land upon which the source of water and place of use are located is** [Patented, deeded, public domain with grazing permit, etc.] unfenced land owned by claimant in fee simple.

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(8) **The claimant's water right** was not **recorded in the office of the County Recorder of** _____ **County, at Page** ____ **of Book** ____ **of** _____ NOTE - Failure to record in the county in no way invalidates a water right, but if water right was so recorded, supply full information under (8).

(9) **The approximate number of animals watered by the claimant during the first year** [Date] 1879 **was** unknown **cattle** unknown **horses** unknown **sheep or** [Other] none. **The watering was conducted**

during each of the following months. The number of animals is unknown in 1879, but would have been minimal and increasing to 35 head belonging to claimant's predecessors and using the source by 1904. The use is made during the months of April through November, dependent upon weather, forage conditions and grazing seasons established by the Bureau of Land Management.

(10) The approximate number of animals watered by the claimant in subsequent years was as follows: [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] 35 head of cattle of claimant's predecessors used this source during each subsequent year except for periods of drought or herd depletion for economic reasons.

(11) The amount of water which has been necessary to be diverted for this purpose has been [448.83 gal. per min. equals 1 cubic foot per second] 0.0011 **cubic feet per second.**

(12) The works are located at [Describe as being within a 40-acre subdivision, section, township and range of public survey. If on unsurveyed land, it should be stated] NE¼SE¼ of Section 11, Township 36 North, Range 55 East.

REMARKS:

This claim is based upon use prior to 1905 of an open range area by three ranches and the livestock waters associated with the vested irrigation waters with those ranches.

In this summary, those ranches will be referred to as Fernald Ranch, which in the Humboldt River Decree was entitled to use water for irrigation, stock and domestic purposes under Proof 00203; the Clubine Ranch under Proof 00242; and the Wright Ranch under Proof 00211.

A review of the records in the office of the County Recorder of Elko County, Nevada evidences that portions of the Clubine Ranch and Wright Ranch were owned and irrigated in 1872, and the Fernald Ranch at a later date, being 1879.

A review of the Elko County Assessment Rolls reveals that these properties had varying numbers of livestock, but by 1889, seemed reasonably stable in the following numbers:

Fernald	275 Cattle
Lowe (Portion of Clubine Ranch)	900 Cattle (Included Other Properties)

Daniel Murphy (Portion of Wright Ranch)	5,400 Cattle (Included Other Properties)
Wright, J. and O&R	300 Cattle

By 1904, the year immediately prior to the end of the period to claim vested water rights, the following numbers are indicated:

Clubine	125 Cattle
Fernald	525 Cattle
Wright	400 Cattle

By 1905, Clubine and Braun were assessed for 400 cattle. From the above, it is assumed that the three ranches had grazed on the open range a total of 1,325 cattle in connection with the culture acreages. As to priority, the year 1879 is claimed as reasonable. The numbers at that time are unknown, but would have been minimal (5 to 10 head of cattle) in that year and increasing to the number claimed by 1904.

The claimant herein does not own any of the land which qualified for vested irrigation rights to which the range livestock waters are associated. However, he is a successor in interest to the open range area utilized prior to 1905. A chain of title which is attached hereto traces the chain of title of the three ranches as to the Fernald and Wright Ranches for the portion which holds vested irrigation rights. As to the Clubine Ranch, the chain shows only the purchase by H. Moffat Company.

These three ranches all used the range in the vicinity of this stockwater in common. Evidence is found of this as to the Clubine and Fernald Ranches wherein brand registrations found in the office of the Elko County Recorder describe the range of the Fernald Ranch as North of the Humboldt River and of the Clubine Ranch as Lamoille and Humboldt River. The Lamoille range is considered to have been used in conjunction with lands owned in that valley. No early evidence could be found as to the range area of the Wright Ranch, except for BLM records of customary area of use being in and around this stockwater. The range area of the Clubine Ranch was acquired by H. Moffat Company, who also acquired various other properties which made use of the area, including portions of the Daniel Murphy operation. Through the adjudication and allotment program conducted by the Bureau of Land Management, and sales of property and transfer of ownership grazing preferences upon the public land, the range area used in conjunction with this livestock water became allotted to the D.C. Layton Ranches or the Priscilla Layton Limited Partnership, from whom the claimant purchased range lands and acquired the area of use formerly used in common by the Clubine, Fernald and Wright Ranches. It is noted that the major portion of the grazing preference of the Wright Ranch was placed in a private allotment area which did not include this water source. The acquisition of the area of use of these ranches, which includes this source, is evidenced by a Grazing Application, Preference Summary, executed by the Layton interest to the claimant herein, a copy being attached. Also attached is a map showing the

boundaries of the grazing allotment as established by the Bureau of Land Management, which depicts the area of livestock grazing use of the claimant.

The area grazed by the claimant's livestock is a portion of that used by predecessors, and the number of livestock watered from this source is based upon a normal pattern of the grazing animals, with the number using the source varying as to season of use and total number in the area.

The season of use will vary from year to year, depending upon a rotation grazing management system and forage growth conditions, but all use from the source is within the period shown in this Proof.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by THE CABANA MOTEL, INC. PENSION PLAN **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.] Deponent is executing this Proof pursuant to his authority as Trustee.

CABANA MOTEL, INC. PENSION PLAN

By Joseph B. Key

JOSEPH B. KEY, Trustee
P. O. Box 818
Reno, NV 89504

Telephone No. (702) 322-3366

Subscribed and sworn to before me this
20th **day of** April, **19**92.

Julie Sigstad

Notary Public in and for the County of Washoe

My commission expires 6-8-94

$50 FILING FEE MUST ACCOMPANY PROOF

JULIE SIGSTAD
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES JUNE 8, 1994