

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Stutler Canyon Creek  
Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a diversion structure, pipeline, & unnamed  
Name of ditch, flume or pipe line ditches.

at the following point(s) within the SE 1/4 NE 1/4 of Section 16, T.12N., R.19E., M.D.M.  
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

(1) Name of claimant Ernest E. Pestana, Trustee of the Pestana 1986 Family Trust  
Address 1431 Atteberry Lane, County of \_\_\_\_\_  
San Jose,  
State of California 95131 Telephone No. (408) 954-1000

(2) The means of diversion employed diversion structure, pipeline, ditches (See attachment.)  
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun Prior to March 1, 1905  
and completed prior to March 1, 1905. (See attachment.)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom \_\_\_\_\_ feet, width  
4" dia. pipeline. (See attachment.)  
on top \_\_\_\_\_ feet, depth \_\_\_\_\_ feet, on a grade of \_\_\_\_\_ feet per thousand feet.

(6) The conduit ~~has~~ has not been enlarged. See attachment.  
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 \_\_\_\_\_ See attachment for information regarding relocation of pipeline.

(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.  
13.99 percent. (See attachment.)

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

105  
06

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

(11) Crops of alfalfa, native hay, 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 May 1 to October 15 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.

1905	23.04	acres in the	NW $\frac{1}{4}$	of Sec. 14	T. 12N.	R. 19	E.
Year							
1905	72	acres in the	SE $\frac{1}{4}$ NE $\frac{1}{4}$	of Sec. 15	T. 12N.	R. 19	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.
		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 23.76 acres.

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

(16) The years during which no water was used for irrigation or during which the full water right was not used were See attachment  
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 Douglas County, said record being at page \_\_\_\_\_ of Book \_\_\_\_\_ of \_\_\_\_\_, and being a claim for all appurtenant rights  
95.04 acre feet annually of water for the irrigation of 23.76

acres of land in the following legal subdivisions:

Division of Land Map, Gerald F. and Pamela F. Whitemire, Douglas County Records, Book 1286, Page 552. Boundary Line Adjustment, Douglas County Records, Book 1088, Pages 370 and 371.

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:  
Stock watering and domestic, January 1 through December 31 of each year.

(19) The character of the soil is gravelly sandy loam A continuous flow of .2852 cubic feet of water per second has been used to irrigate 23.76 acres of land and 4.0 acre-feet per acre per annum have been used to irrigate the crops.  
(Sandy, gravelly, loam)

(20) Remarks Ernest E. Pestana claims vested rights to 13.99 percent of the waters of Stutler Canyon Creek for irrigation during the period May 1 to October 15 annually to irrigate 23.76 acres.

See attachment for more complete description of claim of vested right.

94 MAR 18 P 1:33 RECEIVED STATE ENGINEERS OFFICE

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Ernest E. Pestana, Trustee are full and correct to the best of his knowledge and belief.

Deponent, a State Water Right Surveyor, is Claimant's Agent. If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

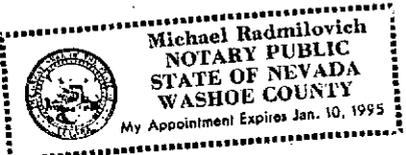
Send copies of notices to: Milton L. Sharp, P.E. 1005 Terminal Way, #257 Reno, NV 89502

[Handwritten signature]

Telephone No. (702) 323-7006

Subscribed and sworn to before me this 15th day of March, 1994

[Handwritten signature]



Notary Public in and for the County of Washoe

My commission expires 1-10-95

\$100 FILING FEE MUST ACCOMPANY PROOF

ATTACHMENT

SUPPLEMENTARY INFORMATION, PROOF OF APPROPRIATION OF WATER FOR IRRIGATION.

GENERAL

Claims of vested right by Ernest E. Pestana, Trustee, to a portion of the waters of Stutler Canyon Creek are supported by information contained in a report prepared by Milton L. Sharp, P.E., State Water Right Surveyor No. 784, titled Water Rights and Water Resources Investigation, Sheridan Creek, Stutler Creek and Gansberg Spring, dated March 1993. A copy of the report has been submitted to the State Engineer in support of Proofs of Appropriation filed by Donald S. and Kristina M. Forrester, Donald T. and Peggy Hall, Ron and Ginger Mitchell, Ernest E. Pestana, Robert S. Severson, Theodore and Katherine A. Weber, Ron and Ginger Mitchell, Ernest E. Pestana and Joy Whipple, referring to the waters of Sheridan Creek and Stutler Canyon Creek.

DESCRIPTION OF DIVERSION, ITEMS 2, 3, 4, 5, 6, 7 and 9.

The water flowing in Stutler Canyon Creek is diverted from its channel at a point in the SE 1/4 NE 1/4 of Section 16, T.12N, R.19E, M.D.M. and into a pipeline. Water is also diverted from Gansberg Spring under Permit No. 7595, Certificate No. 1760, in the SE 1/4 SE 1/4 of said Section 16, and the pipeline diversion from Gansberg Spring joins the diversion from Stutler Canyon Creek at a point in the SE 1/4 NE 1/4 of said Section 16. From the point

where the two pipelines join, the waters of Stutler Canyon Creek and Gansberg Spring were originally diverted easterly from the point of confluence via a pipeline located north of and aligned approximately parallel to the south line of the N 1/2 of Section 15, T.12N., R.19E., M.D.M. and discharged to cultivated lands located generally east of Old Foothill Road (now Sheridan Lane) and south of Centerville Lane, including the lands owned by the Claimant.

At some date between 1966 and 1974 a portion of the pipeline diversion from Stutler Canyon Creek and Gansberg Spring was relocated. From a point near the center of Section 15, the pipeline was aligned in a southeasterly direction to Sheridan Creek. Physical evidence and a conservation plan map prepared in 1973 indicate that the pipeline crossed Sheridan Creek, then was aligned approximately parallel to Sheridan Creek and extended to a point approximately 200 feet east of Old Foothill Road where the waters of Stutler Canyon Creek and Gansberg Spring were mingled with the waters of Sheridan Creek and Barber Creek.

In recent years, the pipeline crossing of Sheridan Creek has been removed, and the water diverted from Stutler Canyon Creek and Gansberg Spring is discharged directly into the North Diversion of Sheridan Creek.

The map which accompanies this Proof of Appropriation indicates point of diversion and location and alignment of the pipeline as

originally constructed and as relocated in 1966 to 1974. Date of survey (Item 3) for the points of diversion and original pipeline location refers to date indicated on the map filed in the office of the State Engineer by E.H. Sweetland, State Water Right Surveyor, July 29, 1930.

The relocation of the pipeline during the period 1966 to 1974 and the manner in which the water was used thereafter were contrary to vested rights established by water use prior to 1905 with respect to Stutler Creek water and are contrary to provisions of Permit No. 7595 and Certificate No. 1760 with respect to Gansberg Spring water. The original location of the pipeline as indicated on the E.H. Sweetland map has been used to identify lands which have justifiable claims of vested right to the waters of Stutler Canyon Creek and to identify place of use of the water appropriated from Gansberg Spring by Certificate No. 1760.

The Claimant asserts claim of ownership in the pipeline and works of diversion in the same percentage as he asserts claim of vested right to the waters of Stutler Canyon Creek (Item 9). Also see response to Item 13 and 20.

DESCRIPTION OF CLAIM OF VESTED RIGHT AND DATE OF PRIORITY OF USE,  
ITEMS 13, 15 AND 16.

The map which accompanies this Proof of Appropriation identifies lands which have vested right to use of Stutler Canyon Creek water

based on evidence of use established prior to March 1, 1905, continuing to the present time. Table 6-1, page 6-26, of the Sharp report contains a summary of land areas by 40 acre sectional subdivision which have verifiable claims of vested right and the total annual appropriation based on duty of 4.0 acre feet per acre during the irrigation season and 2.02 acre feet annual appropriation for separate domestic use.

A tabulation of cultivated acreage within quarter-quarter sections and type of cultivation is also provided on the map which accompanies this Proof of Appropriation.

Date of priority of use for the vested rights claimed to the waters of Stutler Canyon Creek cannot be determined precisely from the historical record, but is known to be prior to March 1, 1905 from a reference in Certificate No. 1760 to vested right from Stutler Creek. The certificate of Appropriation, approved by State Engineer George W. Malone in 1932, contains a statement that the Gansberg Spring appropriation is supplementary to vested right to waters of Sheridan Creek and Stattler Creek. (Stutler Creek has also been know as Stattler Creek.) The State Engineer in issuing Certificate No. 1760 was satisfied that the diversion of water from Stutler Creek had been initiated prior to March 1, 1905 or he would not have identified the use as a vested right. The Certificate does not state an exact date of priority of use for the vested rights for Sheridan Creek or Stutler Creek water.

Because exact date of priority of use cannot be established, a date of January 1, 1905 has been designated as the date to indicate a use established prior to March 1, 1905. There is no evidence to indicate that vested rights with an earlier date of priority of use could be claimed for other lands not included in Table 6-1.

The historical record indicates that irrigation of lands now owned by Claimant using the water of Stutler Canyon Creek has been continuous since the use was initiated. (See Sharp Report, Subsection 6.2.) The full water right was used in every year, except during years when the yield from Stutler Canyon Creek was insufficient to supply the full water right. During years in which yield was deficient, the maximum amount of water available was used.

Justification and documentation used to identify lands with vested rights to Stutler Canyon Creek water are described in Subsection 6.2 of the Sharp Report. Historical evidence used to establish date of priority of use is also cited in Subsection 6.2 of the report.

#### DESCRIPTION OF PESTANA CLAIM OF VESTED RIGHT, ITEMS 13, 16 AND 20.

Claimant Ernest E. Pestana asserts claim of vested right to 13.99 percent of the water flowing in Stutler Canyon Creek at the designated point of diversion during the period May 1 to October 15 annually, .2852 cubic feet per second, not to exceed 95.04 acre

feet to irrigate 23.76 acres.

Table 6-2 of the Sharp Report (beginning on page 6-28) summarizes vested rights for Stutler Canyon Creek water for all land parcels for which vested rights can be claimed. Land parcels are identified by the Douglas County Assessor's parcel number designation. The map which accompanies this Proof of Appropriation also includes tabulation of cultivated acreage for separate parcels. The Claimants own APN 19-212-26.

Claimant also asserts claim of vested right to a portion of the waters of Sheridan Creek under separate Proof of Appropriation, supplementary to vested right from Stutler Canyon Creek, for 23.76 acres and asserts claim to a portion of the waters of Gansberg Spring heretofore appropriated under Certificate of Appropriation No. 1760, Permit No. 7595, supplementary to vested rights from Sheridan Creek and Stutler Canyon Creek for 23.04 acres. Claimant limits his claims to a maximum of 4.0 acre feet per acre from all sources during the period May 1 to October 15.

Claimant also asserts claim of vested right to a portion of the waters of Stutler Canyon Creek for stock watering and for domestic use during the period January 1 to December 31 of each year.

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Stutler Canyon Creek
Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a diversion structure, pipeline & unnamed ditches
Name of ditch, flume or pipe line

at the following point(s) within the SE 1/4 NE 1/4 of Section 16, T. 12 N., R. 19 E., M.D.M.
List all points of diversion from this source, appending a sheet if necessary

See attachment

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

(1) Name of claimant Ernest E. Pestana, Trustee of the Pestana 1986 Family
Address 1431 Atteberry Lane, County of
San Jose,
State of California 95131 Telephone No. (408) 954-1000

(2) The means of diversion employed diversion structure, pipeline, ditches (See
Dam and ditch, pipe line, flume, etc. attachment.)

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905
and completed prior to March 1, 1905 (See attachment.)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom
4" dia. pipeline (See attachment.)
on top feet, depth feet, on a grade of feet per thousand feet.

(6) The conduit has (has not) been enlarged. See attachment.
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
See attachment for information regarding
completed relocation of pipeline.

(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.

13.99 percent. (See attachment.)
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

(11) Crops of ~~alfalfa, native hay, 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 May 1 to October 15 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:

1905, 0.72 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec 15, T 12N, R 19 E.  
Year

1905, 7.42 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec 14, T 12N, R 19 E.

1905, 15.62 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec 14, T 12N, R 19 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.

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..... 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 23.76 acres.

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

(16) The years during which no water was used for irrigation or during which the full water right was not used were See attachment.  
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 Douglas County, said record being at page \_\_\_\_\_ of Book \_\_\_\_\_ of \_\_\_\_\_, and being a claim for all appurtenant rights 95.04 acre feet annually of water for the irrigation of 23.76

acres of land in the following legal subdivisions:

Division of Land Map, Gerald F. and Pamela F. Whitemire, Douglas  
County Records, Book 1286, Page 552. Boundary Line Adjustment,  
Douglas County Records, Book 1088, Pages 370 and 371.

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:  
Stock watering and domestic, January 1 through December 31 of each  
year.

(19) The character of the soil is gravelly sandy loam. A continuous flow of 2853 cubic  
(Sandy, gravelly, loam)  
feet of water per second has been used to irrigate 23.76 acres of land and 4.0  
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Ernest E. Pestana claims vested rights to 13.99 percent of the waters of Stutler Canyon Creek for irrigation during the period May 1 through October 15 annually to irrigate 23.76 acres.

See attachment for more complete description of claim of vested right.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Ernest E. Pestana, Trustee are full and correct to the best of his knowledge and belief.

Deponent, a State Water Right Surveyor, is Claimant's Agent.

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

Send copies of notices to:  
Milton L. Sharp, P.E.  
1005 Terminal Way, #257  
Reno, NV. 89502

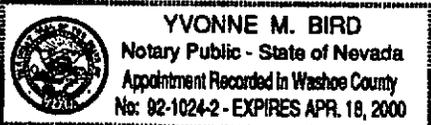
*Milton L. Sharp*  
Telephone No. (702) 323-7006

Subscribed and sworn to before me this 27 day of Sept, 1996

*Gronne A. Bail*

Notary Public in and for the County of Washoe

My commission expires 4-18-2000



STATE ENGINEERS OFFICE  
96 SEP 30 PM 4:33

RECEIVED \$100 FILING FEE MUST ACCOMPANY PROOF

ATTACHMENT

SUPPLEMENTARY INFORMATION, PROOF OF APPROPRIATION OF WATER FOR IRRIGATION.

GENERAL

Claims of vested right by Ernest E. Pestana, Trustee, to a portion of the waters of Stutler Canyon Creek are supported by information contained in a report prepared by Milton L. Sharp, P.E., State Water Right Surveyor No. 784, titled Water Rights and Water Resources Investigation, Sheridan Creek, Stutler Creek and Gansberg Spring, dated March 1993. A copy of the report has been submitted to the State Engineer in support of Proofs of Appropriation filed by Donald S. and Kristina M. Forrester, Donald T. and Peggy Hall, Ron and Ginger Mitchell, Ernest E. Pestana, Robert S. Severson, Theodore and Katherine A. Weber, Ron and Ginger Mitchell and Ernest E. Pestana, Trustee, referring to the waters of Sheridan Creek and Stutler Canyon Creek.

POINT OF DIVERSION

The water is diverted from its source, via a diversion structure, pipeline and unnamed ditches at a point within the SE 1/4 NE 1/4 of Section 16, T. 12 N., R. 19 E., M.D.M. from which the southeast corner of said Section 16 bears S 7° 10' 24" E a distance of 2,892.59 feet. The waters of Stutler Canyon Creek are then conveyed through a pipeline to a point in the SE 1/4 SE 1/4 of Section 15, T. 12 N., R. 19 E., M.D.M. where the waters of Stutler Canyon Creek are commingled with the waters of Sheridan Creek in the Sheridan Creek channel. The commingled waters are diverted

from the Sheridan Creek channel at a point in the NE 1/4 SE 1/4 of Section 15, T. 12 N., R. 19 E., M.D.M. at a point from which the southwest corner of said Section 15 bears S 72° 20' 31" W a distance of 5,412.47 feet.

DESCRIPTION OF DIVERSION, ITEMS 2, 3, 4, 5, 6, 7 and 9.

The water flowing in Stutler Canyon Creek is diverted from its channel at a point in the SE 1/4 NE 1/4 of Section 16, T. 12 N., R. 19 E., M.D.M. and into a pipeline. Water is also diverted from Gansberg Spring under Permit No. 7595, Certificate No. 1760, in the SE 1/4 SE 1/4 of said Section 16, and the pipeline diversion from Gansberg Spring joins the diversion from Stutler Canyon Creek at a point in the SE 1/4 NE 1/4 of said Section 16. From the point where the two pipelines join, the waters of Stutler Canyon Creek and Gansberg Spring were originally diverted easterly from the point of confluence via a pipeline located north of and aligned approximately parallel to the south line of the N 1/2 of Section 15, T. 12 N., R. 19 E., M.D.M. and discharged to cultivated lands located generally east of Old Foothill Road (now Sheridan Lane) and south of Centerville Lane, including the lands owned by the Claimant.

At some date between 1966 and 1974 a portion of the pipeline diversion from Stutler Canyon Creek and Gansberg Spring was relocated. From a point near the center of Section 15, the pipeline was aligned in a southeasterly direction to Sheridan

Creek. Physical evidence and a conservation plan map prepared in 1973 indicate that the pipeline crossed Sheridan Creek, then was aligned approximately parallel to Sheridan Creek and extended to a point approximately 200 feet east of Old Foothill Road where the waters of Stutler Canyon Creek and Gansberg Spring were mingled with the waters of Sheridan Creek and Barber Creek:

In recent years, the pipeline crossing of Sheridan Creek has been removed, and the water diverted from Stutler Canyon Creek and Gansberg Spring is discharged directly into the North Diversion of Sheridan Creek.

The map which accompanies this Proof of Appropriation indicates point of diversion and location and alignment of the pipeline as originally constructed and as relocated in 1966 to 1974. Date of survey (Item 3) for the points of diversion and original pipeline location refers to date indicated on the map filed in the office of the State Engineer by E.H. Sweetland, State Water Right Surveyor, July 29, 1930.

The relocation of the pipeline during the period 1966 to 1974 and the manner in which the water was used thereafter were contrary to vested rights established by water use prior to 1905 with respect to Stutler Creek water and are contrary to provisions of Permit No. 7595 and Certificate No. 1760 with respect to Gansberg Spring water. The original location of the pipeline as indicated on the E.H. Sweetland map has been used to identify lands which have

justifiable claims of vested right to the waters of Stutler Canyon Creek and to identify place of use of the water appropriated from Gansberg Spring by Certificate No. 1760.

The Claimant asserts claim of ownership in the pipeline and works of diversion in the same percentage as he asserts claim of vested right to the waters of Stutler Canyon Creek (Item 9). Also see response to Item 13 and 20.

DESCRIPTION OF CLAIM OF VESTED RIGHT AND DATE OF PRIORITY OF USE, ITEMS 13, 15 AND 16.

The map which accompanies this Proof of Appropriation identifies lands which have vested right to use of Stutler Canyon Creek water based on evidence of use established prior to March 1, 1905, continuing to the present time. Table 6-1, page 6-26, of the Sharp report contains a summary of land areas by 40 acre sectional subdivision which have verifiable claims of vested right and the total annual appropriation based on duty of 4.0 acre feet per acre during the irrigation season and 2.02 acre feet annual appropriation for separate domestic use.

A tabulation of cultivated acreage within quarter-quarter sections and type of cultivation is also provided on the map which accompanies this Proof of Appropriation.

Date of priority of use for the vested rights claimed to the waters

of Stutler Canyon Creek cannot be determined precisely from the historical record, but is known to be prior to March 1, 1905 from a reference in Certificate No. 1760 to vested right from Stutler Creek. The certificate of Appropriation, approved by State Engineer George W. Malone in 1932, contains a statement that the Gansberg Spring appropriation is supplementary to vested right to waters of Sheridan Creek and Stattler Creek. (Stutler Creek has also been know as Stattler Creek.) The State Engineer in issuing Certificate No. 1760 was satisfied that the diversion of water from Stutler Creek had been initiated prior to March 1, 1905 or he would not have identified the use as a vested right. The Certificate does not state an exact date of priority of use for the vested rights for Sheridan Creek or Stutler Creek water.

Because exact date of priority of use cannot be established, a date of January 1, 1905 has been designated as the date to indicate a use established prior to March 1, 1905. There is no evidence to indicate that vested rights with an earlier date of priority of use could be claimed for other lands not included in Table 6-1.

The historical record indicates that irrigation of lands now owned by Claimant using the water of Stutler Canyon Creek has been continuous since the use was initiated. (See Sharp Report, Subsection 6.2.) The full water right was used in every year, except during years when the yield from Stutler Canyon Creek was insufficient to supply the full water right. During years in which yield was deficient, the maximum amount of water available was

used.

Justification and documentation used to identify lands with vested rights to Stutler Canyon Creek water are described in Subsection 6.2 of the Sharp Report. Historical evidence used to establish date of priority of use is also cited in Subsection 6.2 of the report.

DESCRIPTION OF PESTANA CLAIM OF VESTED RIGHT, ITEMS 13, 16 AND 20.

Claimant Ernest E. Pestana asserts claim of vested right to 13.99 percent of the water flowing in Stutler Canyon Creek at the designated point of diversion during the period May 1 to October 15 annually, .2852 cubic feet per second, not to exceed 95.04 acre feet to irrigate 23.76 acres.

Table 6-2 of the Sharp Report (beginning on page 6-28) summarizes vested rights for Stutler Canyon Creek water for all land parcels for which vested rights can be claimed. Land parcels are identified by the Douglas County Assessor's parcel number designation. The map which accompanies this Proof of Appropriation also includes tabulation of cultivated acreage for separate parcels. The Claimants own APN 19-212-41.

Claimant also asserts claim of vested right to a portion of the waters of Sheridan Creek under separate Proof of Appropriation, supplementary to vested right from Stutler Canyon Creek, for 23.76

06338

acres and asserts claim to a portion of the waters of Gansberg Spring heretofore appropriated under Certificate of Appropriation No. 1760, Permit No. 7595, supplementary to vested rights from Sheridan Creek and Stutler Canyon Creek for 23.04 acres. Claimant limits his claims to a maximum of 4.0 acre feet per acre from all sources during the period May 1 to October 15.

Claimant also asserts claim of vested right to a portion of the waters of Stutler Canyon Creek for stock watering and for domestic use during the period January 1 to December 31 of each year.

WATER RIGHTS DIVISION  
SALT LAKE CITY, UTAH  
JULY 23 1960