

THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Mill Creek & Tributaries
Name of natural water source (use separate proofs for each major source)

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

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

SW 1/4 SE1/4 Section 3, T45N., R53E., M.D.B.&M. or at a point from which the
Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed
SE Corner of said Section 3 bears S. 82° 08' E. a distance of 2404 feet
land, it should be stated

(1) Name of claimant Dennis R. & Marcia J. Bieroth

Address Bieroth Ranch, County of Elko

State of Mountain City, NV.

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

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

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

and completed unknown

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom unknown

feet, width on top feet, depth 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 unknown

and completed unknown

(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. UNKNOWN

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

Claimant is the sole owner of the subject property

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 simple

Fee simple, public domain, etc.

(11) Crops of see attached

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 see attached to

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 see attached 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

(14) The maximum acreage irrigated in any year was..... 75.29..... 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..... see attached.....
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: water also used for stockwater and domestic

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

(20) Remarks: see attached

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Dennis R. & Marcia J. Bieroth are full and correct to the best of his knowledge and belief. Deponent is acting as authorized agent for claimant

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

claimant

5405 Mae Anne Avenue
Reno, NV 89523

Michael D. Buschelman

Michael D. Buschelman, P.L.S.

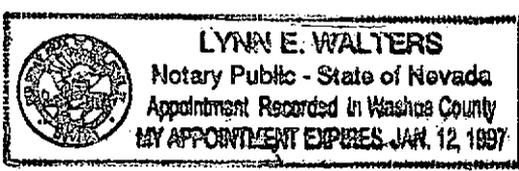
(702) 747-8550

Subscribed and sworn to before me this 14th day of October, 1996

Lynn E. Walters

Notary Public in and for the County of Washoe, Nevada

My commission expires Jan. 12, 1997



\$50 FILING FEE MUST ACCOMPANY PROOF

ATTACHMENT

ITEM: POINTS OF DIVERSION, ITEM NO. 11 & ITEM NO. 13

BIEROTH RANCH - MILL CREEK - PROOF NO. _____

SOURCE: MILL CREEK & TRIBUTARIES

POD #1: SW1/4 SE1/4 SECTION 3 T45N, R53E MDM

T N	R E	SEC	1/4	1/4	H AC	M AC	DP AC
45	53	3	SW	SE	1.30 ✓	0	0
		3	SE	SE	1.30 ✓	0	0
45	53	10	NW	NE	3.00 ✓	0	0
		10	NE	NE	13.60 ✓	0	0
45	53	11	NW	NW	9.20 ✓	0	0
		11	NE	NW	6.70 ✓	0	0
		11	NW	NE	7.00 ✓	0	0
		11	NE	NE	11.30 ✓	0	0
45	53	12	NW	NW	7.50 ✓	0	0
		12	NE	NW	0.50 ✓	0	0
		12	SW	NW	0.50 ✓	0	0
		12	SE	NW	11.50 ✓	0	0
		12	SW	NE	1.60 ✓	0	0
		12	NW	SE	0.22 ✓	0	0
		12	NE	SW	0.07 ✓	0	0

ITEM NO. 11 - EXPLANATION OF CROPS IRRIGATED

Cultures being irrigated are defined as follows:

H AC = Harvest land in acres with crops of oats, alfalfa, native and/or domesticated grasses. In some areas, oats and alfalfa have been planted but the predominate plants are grasses. Harvest lands are being irrigated as long as water was available. In less than adequate water years and as water flows declined, Harvest acreage closest to the points of diversion continue to be irrigated. Crops within the hay corrals noted on the culture maps are irrigated and harvested prior to stacking hay.

M AC = Meadow land in acres with crops of native and/or domesticated grasses. The distinction between Meadow and Harvest lands is observed to be defined by the ability of haying equipment to access the parcel. The lack of water way crossings, topography and/or rocky field conditions prevented equipment access. The volume of water utilized for irrigation is the same as Harvest lands. The period of time that Meadow lands are irrigated is the same as Harvest.

DP AC = Diversified Pasture land in acres with crops of native and/or domesticated grasses intermixed with sage brush or other brushes. The volume of water utilized for the diversified pasture irrigation is diverted during runoff periods. These runoff periods are defined as those times when the streams and/or rivers provided more water than needed to irrigate Harvest and Meadow crop lands.

ITEM NO. 12 - IRRIGATION SEASON

The diversion of water for irrigation purposes begins on April 1st and ends on September 15th of each year.

ITEM NO. 16 - NON IRRIGATION OR LESS THAN FULL IRRIGATION YEARS

Surface water flows vary considerably from year to year. During normal or above normal years essentially all of the crop lands are irrigated. The claimant must derive the maximum crop yield to maintain a financial good standing. During less than normal water years, certain inaccessible areages are not irrigated and the water is utilized where it is most prudent and economical.

Water has been used for irrigation, stockwater and domestic purposes for approximately 100 years. During drought conditions there have been numerous acreages that have not received water or less than their full allotment. The claimant is not able to provide a full detailed explanation of each particular non-irrigated acreages or drought years, at this time.

ITEM NO. 19 - SOIL CHARACTERISTICS, WATER FLOW & DUTY ESTIMATES

The irrigated acreages are normally located along the course of the spring, stream or river supplying the needed water supplies. The soil characteristics along these water courses are normally composed of a thin layer of topsoil over sands and gravels.

An estimate of continuous water flow requirements have not been determined due to the fluctuation in water flow in the spring, stream or river providing water. A measurement and monitoring program will need to be completed before an accurate rate of flow and volume per acre can be determined.

ITEM NO. 20 - REMARKS

The diversion of water for stockwater and domestic purposes begins on January 1st and ends on December 31st of each year.

Utilize supporting map filed under Permit No. 9610.

**SUMMARY OF PRIORITY OF IRRIGATION USE
BY
BIEROTH RANCH**

The Bieroth Ranch makes use of water for irrigation, domestic and livestock purposes of the following streams:

Van Duzer Creek and its tributary, Trail Creek
Owyhee River
Chicken Creek
Mill Creek

VAN DUZER CREEK

Records of the State Water Engineer contain Proof 01020 on this creek with a claimed priority of 1885, the basis of the claim being a Notice of Claim Location executed by Samuel E. McGinnes recorded in Book 3 of Miscellaneous Records at Page 548, Elko County, Nevada. The place of use is within Homestead Entry Survey 71. It is noted that the proof states that 71.01 acres are irrigated while the tabulation on the proof shows a total of 98.10 acres. The proof may require amendment. In addition, Mr. Bieroth has indicated that there is an additional diversion of this creek within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 45 North, Range 53 East, MDB&M, approximately 200 feet upstream from the point where the main ditch crosses Chicken Creek, which he felt should be included. As this is not a diversion from the channel, but a ditch, it may not be desired to include in the map.

As the diversion point on Van Duzer Creek is immediately below the point where Trail Creek enters Van Duzer Creek, Mr. Bieroth has felt that Trail Creek should be included as a source. The affidavit of George Nelson filed with the proof concerns use upon Van Duzer Creek and Chicken Creek, which apparently includes not only Homestead Entry Survey 71 but also Homestead Entry Survey 225.

Under Applications 23601 through 23605, a map was prepared, apparently to supplement the proof.

The existing proof apparently does not include Homestead Entry Survey 225.

The diversion of water by Joseph R. Paleni and W. D. Hand along Van Duzer Creek is further evidenced by an article in "The Mountain City News" of January 12, 1898 which states they are stockmen in that area.

No information for priority prior to 1885 is found.

CHICKEN CREEK

It appears that the affidavit of George Nelson applies to that portion of Homestead Entry Survey 71 on Chicken Creek, together with Van Duzer Creek. For that reason, the 1885 priority date appears correct.

The proof as filed shows a very small part of Homestead Entry Survey 225. A further claim of water from Chicken Creek is found in a claim executed by William T. McGinnes recorded in Book 3 of Miscellaneous Records at Page 548 for 400 miner's inches with the point of diversion being one and one-quarter miles from the mouth of the creek with a priority date of 1888. This would encompass a portion of Homestead Entry Survey 225. It is not apparent if this claim was included in the previous proof.

OWYHEE RIVER

There is no evidence of use of water from the Owyhee River, primarily within Homestead Entry Survey 167, except for Application 23601 which states diversion would be by a pump. It is understood this has not been done.

MILL CREEK

The lands upon Mill Creek are portions of Homestead Entry Surveys 63, 93 and 204 and are owned as to an undivided one-half interest by Bieroth Ranch with the other one-half owned by heirs of Hugh C. Bieroth. These lands are in the drainage below the Rio Tinto Mine and presently have a water right under Certificate 2382, Permit 9610 with a priority of 1932. Drainage from the old mine dumps has eliminated the meadow shown under the proof map, and it is presently of pasture use.

The only evidence of early diversion of water is of two land claims, one by Michael McCall and the other by T. B. Kerr recorded in Book 1 of Land Claims at Pages 77 and 78, which may substantiate a priority of 1870. As this land is owned one-half by Bieroth Ranch and one-half by the heirs, it will be necessary for Dennis Bieroth to make the decision if he desires to pursue a vested water right.

A Mrs. J. R. McGinness is assessed for a possessory claim approximately two miles from Mountain City in 1888, which would possibly be upon Mill Creek.

In connection with the water rights to be claimed, there is some ditch and culture information on the Homestead Entry Surveys, all of which were prepared after 1920. These are available at the BLM.

THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Mill Creek & tributaries
Name of natural water source (use separate proofs for each major source)
The water is diverted from its source by ditch systems
Name of ditch, flume or pipe line

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

SW 1/4 SE 1/4 Section 3, T. 45 N., R. 53 E., M.D.B. + M. or at a point from
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
which the SE corner of said Section 3 bears S. 82° 08' E. a
distance of 2404 feet. Act 12/7/94

(1) Name of claimant Dennis R. & Marcia J. Bieroth
Address Bieroth Ranch, County of Elko
State of Mountain City, NV Telephone No. (702) 763-6637

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

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

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and completed unknown

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fee simple
Fee simple, public domain, etc.

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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 see attached to
of each year. Day of month Day of month

37
E1

EL
37

(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.

see attached
Year, acres in the of Sec., T., R. E.

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

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claimant

5405 Mae Anne Avenue
Reno, NV 89523

Michael D. Buschelman

Michael D. Buschelman, P.L.S.

Telephone No. (702) 747-8550

Subscribed and sworn to before me this 14th day of June, 1994

Lynn E. Walters

LYNN E. WALTERS

Notary Public - State of Nevada

Appointment Recorded in Washoe County

MY APPOINTMENT EXPIRES JAN. 12, 1997

Notary Public in and for the County of Washoe, Nevada

My commission expires Jan. 12, 1997

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		12	SW	NW	0.50	0	0
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Utilize supporting map filed under Permit No. 9610.