ORIGINAL

Serial No. 06579

THE STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING PURPOSES

(1) Name of claimant DENNIS AND MARCIA BIEROTH

BIEROTH RANCH of MOUNTAIN CITY
Street and No. or P.O. Box No. City or town

NEVADA 89831
State and Zip Code No.

(2) Source of water SEE ATTACHED
Name of natural water source.

(3) The water is diverted by THE NATURAL CHANNEL, AND SPRING AREAS
Dam, ditch, pipe line, natural channel, spring area, etc.

(4) The water is diverted at the following point(s) SEE ATTACHED
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.

(5) The water is impounded in THE NATURAL CHANNEL
Troughs, tanks, pools, reservoir, natural channel, etc.

(6) The construction of the ditch or other works was begun UNKNOWN
Date

and completed UNKNOWN
Date

(7) The nature of the claimant's title to the land upon which the source of water and place of use are located is DEEDED AND PUBLIC DOMAIN WITH GRAZING PERMIT
Patented, deeded, public domain with grazing permit, etc.

(8) The claimant's water right was (was not) recorded in the office of the County Recorder of SEE ATTACHED 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).

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NO MAP

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(9) The approximate number of animals watered by the claimant during the first year..... Date, was.....cattle.....horses.....sheep or..... Other The watering was conducted during each of the following months.....

SEE ATTACHED

(10) The approximate number of animals watered by the claimant in subsequent years was as follows:

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.

(11) The amount of water which has been necessary to be diverted for this purpose has been.....

SEE ATTACHED cubic feet per second.

448.83 gal. per min. equals 1 cubic foot per second.

(12) The works are located at REFER TO ATTACHED SUPPORTING MAP FOR LEGAL DESCRIPTION

Describe as being within a 40-acre subdivision, section, township and range of public survey. If on unsurveyed land, it should be stated.

OF NATURAL CHANNEL

Remarks.....

Remarks.....

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by DENNIS AND MARCIA 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.

DENNIS AND MARCIA BIEROTH
Claimant

By MICHAEL D. BUSCHELMAN, P.L.S.

5405 MAE ANNE AVENUE
Street and No., or P.O. Box No.

RENO, NEVADA 89523
City, State, Zip Code No.

Subscribed and sworn to before me this 14th day of JUNE, 19 94.

Olivia R. Luck

Notary Public in and for the County of WASHOE, NEVADA

My commission expires Oct. 4, 1995

OLIVIA R. LUCK
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES OCT. 4, 1995

$10 FILING FEE MUST ACCOMPANY PROOF

Form AA Rev. 9-72)

06579

RECEIVED
OCT 15 1996
STATE ENGINEER'S OFFICE

ATTACHMENT
2nd AMENDED
SERIAL NO. 06579

PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING PURPOSES

NAME OF CLAIMANT: **DENNIS AND MARCIA BIEROTH**

ITEM NO. 2, ITEM NO. 4 - SOURCE OF WATER, POINT OF DIVERSION

SOURCE: ROCKY GULCH CREEK AND TRIBUTARIES
POD #1: SW1/4 NE1/4 SECTION 13 T45N R53E, MDM.

USGS 7.5 MINUTE QUAD: MOUNTAIN CITY, NEVADA

ITEM NO. 6 - CONSTRUCTION OF THE DITCH OR OTHER WORKS

BEGUN PRIOR TO 1885; COMPLETED PRIOR TO 1885 - REFER TO ITEM NO. 3

ITEM NO. 8 - RECORDATION OF CLAIMANT'S WATER RIGHT

UNKNOWN

ITEM NO. 9 - LIVESTOCK WATERED BY CLAIMANT IN FIRST YEAR

ROCKY GULCH CREEK, ITS TRIBUTARIES AND SPRINGS WITHIN ITS DRAINAGE 150 HEAD OF CATTLE FOR PERIOD OF USE BEING 4-1 TO 11-30. FIRST YEAR OF LIVESTOCK WATERING IS 1885.

ITEM NO. 10 - LIVESTOCK WATERED BY CLAIMANT IN SUBSEQUENT YEARS

REFER TO ITEM #11

ITEM NO. 11 - AMOUNT OF WATER DIVERTED

THE TOTAL VOLUME OF WATER REQUIRED TO SATISFY THE NEED OF 150 HEAD OF CATTLE IS CALCULATED AS FOLLOWS:

20 GALLONS PER DAY X 150 HEAD OF CATTLE X 275 DAYS = 825,000 GALLONS

20 GALLONS PER DAY X 150 HEAD OF CATTLE = 3000 GALLONS PER DAY
3000 GALLONS PER DAY = 0.005 CFS

THE RATE OF FLOW WILL BE CONSIDERABLY SMALLER THAN IS NEEDED TO PROVIDE WATER FOR STOCKWATERING PURPOSES, THEREFORE A VOLUME OF WATER IS MORE REPRESENTATIVE OF THE NEEDS OF THE ANIMALS.

BIEROTH RANCH

LIVESTOCK AREAS OF USE AND NUMBERS

In addition to vested water rights for livestock on improved ranch lands, this ranch makes use upon other privately owned lands and public lands within the Humboldt National Forest upon the Chicken Creek allotment.

At the present, a permit is held for 253 head of livestock. The allotment is divided into four separate fields and managed under a deferred rotation system. This results in use being made by the total numbers in the different drainages at portions of the year.

For example, the entire permitted numbers may use the Mill Creek waters for the period of March, April and May in one calendar year and then be moved to the Chicken Creek drainage for the period of June, July, August and then to the Dry Creek, Rocky Gulch, Rabbit Draw areas for the balance of the grazing season. During the next grazing season, no early use may be made of the Mill Creek water, but only late season use. However, over a number of grazing seasons the total number of permitted livestock will make use of any one water during the entire grazing season from March 1 to November 30. The actual season of use non-allowed by the Forest Service is less than March 1 to November 30, unless such early or late use is authorized. However, during the administration of the area the season of use has been shortened from that prior to 1905.

In the case where more than one drainage is found in a separate field, the total numbers of livestock are divided among those waters.

Based upon the above, the following use for domestic livestock under a vested water right is claimed:

Mill Creek, its tributary of McCall Creek and other tributaries and springs in its drainage area	255 Head
Chicken Creek, its tributary of Little Chicken Creek and other tributaries and springs in its drainage area	255 Head
Rabbit Draw and springs in its drainage area	150 Head
Rocky Gulch and springs in its drainage area	150 Head
Dry Creek and springs in its drainage area	150 Head

All use being for the period of March 1 to November 30.

No definite priority information has been found. However, Forest Service regulations require that a present holder of a permit must be a successor in interest which grazed livestock upon the Forest Service lands prior to 1905. Based upon this, vested livestock water rights are claimed upon the Forest Service lands.

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PRIORITY OF IRRIGATION WATER
WITHIN THE OWYHEE RIVER BASIN
OF
BIEROTH RANCH

This property makes use of water for irrigation, together with supplementary uses of domestic and livestock upon private lands from the following streams:

Van Duzer Creek
Chicken Creek
Owyhee River
Mill Creek

Proofs of vested water rights have been filed on only Van Duzer Creek and Chicken Creek under Proofs 02616 and 01020. Proof 01020 specifies 71.01 acres, but the culture map shows 98.10 irrigated acres from Van Duzer Creek. An amended proof will correct acreage. Proof 02616 claims 45.60 acres from Chicken Creek.

Permits have been issued or applied for. A summary of all available filings in the State Water office is as follows:

Proof or Permit No.	Source	Acres	Priority
Proof 01020	Van Duzer Creek	98.10	1885
Proof 02616	Chicken Creek	45.60	1885
Application 23603(Application 23604(Application 23605(	Van Duzer Creek and Chicken Creek	Apparently Supplemental to Proofs	No Action
Application 23601(Application 23602(	Owyhee River	44.00	No Action
Permit 6003	Van Duzer Creek	12.73	1920
Permit 9610	Mill Creek	75.07*	1932

* Portion not owned

VAN DUZER CREEK

The proof which has been filed states that the claimant's water right was filed in Book 3 of Miscellaneous Records at Page 548 with a priority of 1885 and the place of use described in Homestead Entry Survey 71. This document claims a priority of 1888, but apparently 1885 was the date use actually began.

CHICKEN CREEK

The proof which has been filed states that the claimant's water right was not filed in the office of the County Recorder of Elko County, Nevada. However, a Statement of Water Right by William T. McGinness lists a point of diversion about 1¼ miles from the mouth of Chicken Creek as recorded in Book 3 of Miscellaneous Records at Page 548 with a priority of 1888. It appears that this priority should also be 1885 as claimed in the proof.

OWYHEE RIVER

No proof was found in the office of the State Water Engineer as to use on the Owyhee River. Application 23601 was apparently made for this purpose. However, a Statement of Water Right executed by James L. McGinness locates a point of diversion about two miles above the Vance Mill Dam, said statement recorded in Book 3 of Miscellaneous Records at Page 558, Elko County, Nevada, claiming diversion in 1888.

In an Affidavit executed by S. E. McGinness for Joseph R. Paleni, recorded in the office of the County Recorder of Elko County, Nevada concerning the I F brand, he states in 1913 that he has been a resident of the area for forty years which would be 1873. Therefore, his claim of priority of 1885 appears appropriate.

The above concerns Homestead Entry Surveys 71, 167 and 225. Proofs 01020 and 02616 refer to an Affidavit by George Nelson. This Affidavit was not supplied in the information received and should be reviewed to attempt to corroborate the statements made above, as the descriptions contained in the Statement of Water Rights are difficult to locate with any certainty.

MILL CREEK

The State Water Engineer's office does not show any vested rights upon Mill Creek. However, they do show a certificate with a date of priority of 1932. In the event it is possible to show an earlier priority through proof of vested water rights, this should be done.

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THE TOTAL VOLUME OF WATER REQUIRED TO SATISFY THE NEED OF XXX HEAD OF CATTLE, XXX HEAD OF HORSES, XXX HEAD OF SHEEP IS CALCULATED AS FOLLOWS:

20 GALLONS PER DAY X # OF CATTLE X # OF DAYS =

20 GALLONS PER DAY X # OF HORSES X # OF DAYS =

4 GALLONS PER DAY X # OF SHEEP X # OF DAYS =

THE RATE OF FLOW WILL BE CONSIDERABLY SMALLER THAN IS NEEDED TO PROVIDE WATER FOR STOCKWATERING PURPOSES, THEREFORE A VOLUME OF WATER IS MORE REPRESENTATIVE OF THE NEEDS OF THE ANIMALS.

INFORMATION IS NOT AVAILABLE AT THIS TIME BUT WILL BE PROVIDED IN THE NEAR FUTURE

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NAME OF CLAIMANT: **DENNIS AND MARCIA BIEROTH**

ITEM NO. 8 - RECORDATION OF CLAIMANT'S WATER RIGHT

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ITEM NO. 9 - LIVESTOCK WATERED BY CLAIMANT IN FIRST YEAR

INFOMATION NOT RESEARCHED AS OF THIS DATE

ITEM NO. 10 - LIVESTOCK WATERED BY CLAIMANT IN SUBSEQUENT YEARS

INFORMATION NOT YET RESEARCHED, BUT WILL BE PROVIDED UPON REQUEST