Application No. V06595

STATE OF NEVADA
AMENDED

PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING OR WILDLIFE PURPOSES

(1) Name of claimant ELKO LAND AND LIVESTOCK COMPANY

1655 MOUNTAIN CITY HIGHWAY of ELKO
Street Address or PO Box — City or Town

NEVADA, 89801
State and ZIP Code

(2) Source of water THE NATURAL CHANNEL, TRIBUTARIES, AND SPRING AREAS OF BADGER CREEK
Name of natural water source

(3) The water is diverted by:
LIVESTOCK USING THE NATURAL CHANNEL, TRIBUTARIES, AND SPRING AREAS

Dam, ditch, pipe line, natural channel, spring area, etc.

(4) The water is diverted at the following point(s):
P.O.D. 1 - HEADWATERS OF SAID CREEK IN THE SW1/4NE1/4, SECTION 3, T43N, R53E, MDM
P.O.D. 2 - HEADWATERS OF SAID CREEK IN THE SW1/4SE1/4, SECTION 3, T43N, R53E, MDM
P.O.D. 3 - HEADWATERS OF SAID CREEK IN THE NW/14NW1/4, SECTION 11, T43N, R53E, MDM

INCLUDING THE HEADWATERS OF ALL INTERVENING OR DOWNSTREAM SPRINGS OR TRIBUTARIES, ALL IN ELKO COUNTY, NEVADA.

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.

(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 BEFORE 1883
Date
and completed BY 1883
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:
PRIVATE LAND IN FEE TITLE (DEEDED) AND U.S. PUBLIC DOMAIN LANDS WITH U.S. GOVERNMENT GRAZING PERMITS.

Patented, deeded, public domain with grazing permit, etc.

(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 1883
Date

was 5500 cattle _____ horses _____ sheep or wildlife (describe) _____

The watering was conducted during each of the following months:
JANUARY 1 THROUGH DECEMBER 31 OF EACH YEAR

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

5500 CATTLE OR THE EQUIVALENT NUMBER OF SHEEP - PLEASE REFER TO HISTORICAL ABSTRACT SUBMITTED HEREWITH.

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

1.28 cubic feet per second.

448.83 gallons per minute equals 1 cubic foot per second

(12) The works are located at:

ALONG THE NATURAL STREAM CHANNEL, TRIBUTARIES, AND SPRING AREAS OF SAID CREEK, GENERALLY BETWEEN THE HEADWATERS LISTED IN ITEM (4), ABOVE, AND THE TERMINUS IN THE NE1/4SW1/4 OF SECTION 5, T44N R54E, MDM, ELKO COUNTY, NEVADA

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

Remarks

THIS AMENDED PROOF OF APPROPRIATION OF WATER FOR STOCKWATERING OR WILDLIFE PURPOSES AMENDS THAT CERTAIN PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING PURPOSES NO V06595 DATED JUNE 14TH 1994.

THIS CREEK IS TRIBUTARY TO THE EAST FORK OF THE OWYHEE RIVER.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by ELKO LAND AND LIVESTOCK COMPANY are full and correct to the best of his/her knowledge and belief.

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

ELKO LAND AND LIVESTOCK COMPANY
Name of Claimant

By

JEFF WHITE, VICE PRESIDENT

1655 MOUNTAIN CITY HIGHWAY

ELKO, NV 89801

Telephone No. (775) 778-2519

Telephone No. (775) 778-2519

State of Nevada

County of ELKO

Subscribed and sworn to before me on Feb. 27, 2013

by Jeff White

Carole T. Smith
Signature of Notary Public Required

CAROLE T. SMITH
Notary Public, State of Nevada
Appointment No. 99-37848-6
My Appt. Expires Aug. 24, 2015

Notary Stamp or Seal Required

Revised 05/12 - POA

$50 FILING FEE MUST ACCOMPANY PROOF

Historic Grazing Activity of the IL Ranch
Northern Elko County, Nevada
W. F. Price, PLS, WRS – 03/01/2013

Introduction

I, William F. Price, am a Professional Land Surveyor, licensed in Nevada (PLS 6205) and California (PLS 7697), a Nevada State Water Right Surveyor (No. 685), and a Registered Professional Landman, registered by the American Association of Professional Landmen ("AAPL"). I have practiced and continued my education in this profession for more than thirty years.

In the course of this profession I have performed and directed extensive research in the public records of the various states located in the western portion of the United States, particularly Nevada, including but not limited to, records maintained by various local jurisdictions such as County Assessors, Clerks, and Recorders, and various Federal Agencies, including but not limited to records of the US Department of Interior, Bureau of Land Management ("BLM").

Drawing on this expertise I have completed research of historic documents associated with certain lands known as the IL Ranch, North Portion (hereinafter referred to as "IL Ranch") in what is now northern Elko County, Nevada, along the East Fork and the South Fork of the Owyhee River. The purpose of this research is to ascertain pertinent historic facts emanating from the public records and historic manuscripts with respect to the historic use of water from the Owyhee River, both the South Fork and the East Fork, and their tributaries from the time the IL Ranch lands were first entered and used for grazing purposes to the present day ("the Project").

The IL Ranch consists of private lands and corresponding grazing permits on public lands lying generally within portions of the following Townships and Ranges, all being part of the Mount Diablo Meridian, Elko County, Nevada, presently owned or controlled by Elko Land and Livestock Company, a Nevada corporation ("ELLCo"):

A) The IL Ranch:
   a. Private Lands and Public Lands with U.S. Government Grazing Permits generally within portions of:
      i. Range 47 East – Townships 41 through 47 North
      ii. Range 48 East – Townships 41 through 47 North
      iii. Range 49 East – Townships 41 through 47 North
      iv. Range 50 East – Townships 41 through 46 North
      v. Range 51 East – Townships 41 through 45 North
      vi. Range 52 East – Townships 41 through 45 North

vii. Range 53 East – Townships 41 through 45 North
viii. Range 54 East – Townships 42 through 44 North
ix. Range 55 East – Townships 42 through 44 North

The area described above is depicted on attached Exhibit A, Map 1. A detail of the portion of the IL Ranch that lie within the East Fork of the Owyhee River ("the Owyhee East Fork Lands"), and the locations of the IL Ranch private lands that comprise a portion of the Owyhee East Fork Lands are depicted on attached Exhibit A, Map 2.

The lands that comprise the private portion of the IL Ranch are more particularly enumerated in the land description portion of that certain Grant, Bargain and Sale Deed dated May 14, 2012, recorded May 14, 2012 as Document #655892 in the Official Records of the Recorder of Elko County, Nevada (attached hereto as Exhibit B).

B) The IL Ranch East Fork Proofs:
   a. The IL Ranch has been used historically for livestock purposes since the 1800's. Six Proofs of Appropriation of Water for Stock Water Purposes affecting the Owyhee East Fork Lands were filed in the office of the Nevada State Engineer on June 15, 1994 by Agri Beef Company:
      i. V06595 – waters of Badger Creek, its springs and tributaries.
      ii. V06596 – waters of Van Duzer Creek, its springs and tributaries.
      iii. V06599 – waters of Deep Creek and the North Fork of Deep Creek, its springs and tributaries.
      iv. V06600 – waters of Beaver Creek, its springs and tributaries
      v. V06601 – waters of the South Fork of Deep Creek, its springs and tributaries
      vi. V06602 – waters of Trail Creek, its springs and tributaries
   b. Each IL Ranch East Fork Proof set forth a priority date of 1870.
   c. All six IL Ranch East Fork Proofs collectively cited 5,600 cattle from January 1 to December 1 of each year.
   d. All six IL Ranch East Fork Proofs were transferred to ELLCo effective August 18, 2012.
   e. ELLCo desires to amend the six IL Ranch East Fork Proofs to accomplish the following:
      i. To change the claimed priority date from 1870 to 1883
      ii. To more accurately describe in geographic terms the actual historic use by livestock belonging to IL Ranch.

The Project involved researching public records and historical manuscripts including but not limited to the below-listed records ("the Records"):[1]

[1] Except for widely available historic manuscripts (secondary references), copies of excerpts from these records are attached as Exhibits to this Report. Where historic facts are not in question, secondary manuscripts were relied upon. In all other cases, primary historic documents are provided as indicated.

1. The book entitled “Nevada’s Northeast Frontier” by Edna B. Patterson, Louise A. Ulph and Victor Goodwin, copyrighted 1969 and 1991 (“Nevada’s Northeast Frontier”);
2. The records of the Treasurer and the Recorder of Elko County, Nevada:
    a. Tax Records
    b. Deed Records
    c. Miscellaneous Records
3. The records of the United States (“U.S.”) Department of Interior, Bureau of Land Management (“BLM”) records presently maintained in the BLM Nevada State Office in Reno, Nevada, (available online at http://www.nv.blm.gov/LandRecords/index.php), or stored in archives at the National Archives and Records Administration facilities in Washington DC, and San Bruno, California (“NARA”), including, but not limited to:
    a. Homestead entry files.
    b. General Land Office (“GLO”) survey plats and notes (aka “BLM”).
    c. Master Title Plats (“MTP”) and corresponding Historical Index (“HI”) sheets.
    d. Geographic Coordinate Data Base (“GCDB”) digital files representing BLM’s best estimate of the geographic positions of the Public Land Survey System (“PLSS”) lines (commonly referred to as “Section Lines”).
4. Geo-referenced “geotiff” orthophoto maps from the U.S. Department of Agriculture National Agriculture Imagery Program (“NAIP”) from 2010;
5. The office of the Nevada Division of Water Resources, State Engineer;
6. U.S. Statutes at Large;
7. Nevada State Library and Archives article “Surveyor General and State Land Office – Administrative History.”;
8. Nevada Historical Society Quarterly article “County Evolution In Nevada” by Stan Mottaz, Spring, 1978;
9. Nevada Revised Statutes Chapter 243 – Counties: Creation; Boundaries; Seats; Abolishment;
10. U.S. Census records available on ancestry.com;
11. Nevada Division of State Lands, Carson City, Nevada;
12. Northeast Nevada Museum in Elko, NV;
13. The University of Nevada, Reno (“UNR”), Special Collections section of the UNR Library;
14. The Nevada Historical Society;
15. The Pershing County Museum, Lovelock, Nevada;
16. U.S. Geological Survey maps available online through the Keck Library at the University of Nevada, Reno, Nevada; and
17. Nevada Department of Transportation 30 Minute Quad maps available online through the Keck Library at the University of Nevada, Reno, Nevada.

Findings of the Project

1. General Historic Facts

The following are the general historical facts pertaining to the IL Ranch:

a. Modern human activity on the IL Ranch began with the establishment of the California Emigrant Trail, established at least as early as 1841. Cattle herds appeared along the trail, including the IL Ranch at this time. By 1849, the trail to California "became crowded" following the discovery of gold at Sutter's Fort in California[2].

b. The United States acquired the southwestern United States, including the IL Ranch, from Mexico in 1848 pursuant to the Treaty of Guadalupe Hidalgo.[3]

c. The Utah Territory was established as an organized Territory of the United States on September 9, 1850. The Utah Territory encompassed the IL Ranch in its entirety.[4]

d. Humboldt County was created in Utah Territory January 5, 1856 and encompassed the IL Ranch its entirety.[5]

e. The Nevada Territory was established from that portion of the Utah Territory west of the 116th Meridian on March 2, 1861. This Territory encompassed the IL Ranch in its entirety.[6]

f. Lander County was established in the Nevada Territory December 19, 1862, encompassing the IL Ranch in its entirety.

g. The State of Nevada was established from the Nevada Territory and a portion of the Utah Territory by an act of the U.S. Congress dated March 21, 1864, formally accepted October 31, 1864.[7]

h. Following the U.S. Civil War (1861 to 1865) large numbers of cattle came into Nevada.[8]

i. Beginning with the Act establishing the Nevada Territory, the U.S. Congress granted certain lands within the confines of the Territory to the Nevada Territory, including portions of the IL Ranch. Beginning June 8, 1868, the U.S. Congress passed a series of laws revising this grant, subject to existing rights, and enabling the State of Nevada to select certain lands

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[2] Patterson Edna B. - Nevada's Northeast Frontier, 1991, pages 91-97, and pages 207-208.

[3] Patterson, Edna B. - Nevada's Northeast Frontier, 1991, page 3. Also, the Treaty of Guadalupe Hidalgo available at http://www.loc.gov/rr/hispanic/ghtreaty/.

[4] U.S. Statutes at Large.

[5] Mottaz, Stan – County Evolution in Nevada, Nevada Historical Society Quarterly, Spring 1978, page 28.

[6] U.S. Statutes at Large.

[7] U.S. Statutes at Large.

[8] Patterson, Edna B. - Nevada's Northeast Frontier, 1991, page 211.

within the confines of the State through the State Selection process, including lands within the IL Ranch.[9]

j. Beginning in 1865, the Nevada Legislature passed a series of laws empowering individuals to purchase selected lands, including portions of the IL Ranch ("the Nevada State Selection Lands").[10]

k. The Central Pacific Railroad ("CPRR") passed through Lander County about 75 miles south of the IL Ranch in the fall of 1868,[11] earning claim to every other (odd numbered) Section of land in that vicinity.

l. Elko County was created out of Lander County by an act of the Nevada Legislature on March 1, 1869, encompassing the IL Ranch in its entirety. The town of Elko was established as the County Seat.

m. The CPRR met the Union Pacific Railroad at Promontory Summit, Utah May 10, 1869.[12] The completion of the CPRR greatly enhanced and increased the commerce of the area, particularly in terms of livestock grazing and related activities.

2. Historic facts specific to the IL Ranch

According to a review of the Records, the following are the historical facts specific to the IL Ranch:

a. Beginning in 1871, Cadastral Surveyors from the U.S. General Land Office began surveying portions of the IL Ranch and vicinity. These surveys continue to this day under the auspices of the U. S Department of Interior, Bureau of Land Management. The resulting plats are included herewith in Exhibit C – GLO (BLM) Survey Plats.

b. Settlers had already begun entering portions of the IL Ranch by this time. Some of the plats depict fields, meadows, cabins, and mines that had been established by 1871.

c. Before 1872, Mr. Issac L. Requia ("IL Requia") began consolidating these entries. Over the next several years, he consolidated all the land that could be purchased into a ranch very closely resembling the modern IL Ranch. IL Requia sold these lands to the Owyhee Land Association in 1880. In 1883, the Owyhee Land Association sold the IL Ranch to the Nevada Land and Cattle Company Limited. By 1887, the Nevada Land and Cattle Company had 9,569 cattle on the IL Ranch (Report to stockholders by T. D. Parkinson, General Superintendent – Nevada's Northeast Frontier, Exhibit D, pages 364 and 365).

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[9] U.S. Statutes at Large.

[10] Nevada State Library and Archives article "Surveyor General and State Land Office – Administrative History."

[11] Patterson Edna B. - Nevada's Northeast Frontier, 1991, page 175.

[12] Patterson Edna B. - Nevada's Northeast Frontier, 1991, page 177.

d. The IL Ranch was acquired by the Altube Brothers (hereinafter referred to as Altubes) in 1898. (Elko County Deed Records, Exhibit E)
e. About 1898, Mr. John G. Taylor (later, John G. Taylor, Inc. – hereinafter referred to as John G. Taylor) also started using the same IL Ranch lands for grazing up to 22,500 sheep (Elko County Tax Records, Exhibit F). The Altubes and John G. Taylor competed heavily for grazing and the Altubes acquired 12,500 sheep to compete with the John G. Taylor operation (Edna B. Patterson – Nevada's Northeast Frontier (excerpts) Exhibit D, excerpts from UNR Special Collections re Tuscarora Justice Court, Exhibit G).
f. In August of 1900, the GLO surveyed the land in T43N R53E, allowing entrants to formally apply for this land for the first time. Predecessors to John G. Taylor began applying for parcels on the lands in the East Fork drainage where John G. Taylor and Altubes had been competing for grazing. John G. Taylor purchased these lands, and through a series of transactions between 1907 and 1925, purchased the Altube interest in the IL Ranch (Records of the GLO (BLM) Exhibit C; Elko Deed Records, Exhibit E; Nevada State Land Records, Exhibit H).
g. In 1929, John G. Taylor filed maps with the Nevada State Engineer showing the extent of the historic IL Ranch grazing use. These maps encompass the lands on the Owyhee River, both South and East Forks, that IL Ranch is utilizing today (Exhibit I, Nevada State Engineer Maps).
h. The interest of John G. Taylor was taken through receivership and sold to Reno National Bank on February 12, 1936. This portion of the Reno National Bank became Allied Land and Cattle Company (Allied). The IL Ranch was conveyed to Elko Land and Livestock Company through a series of transaction between 1936 and 2012 (Exhibit E, Elko County Deed Records).

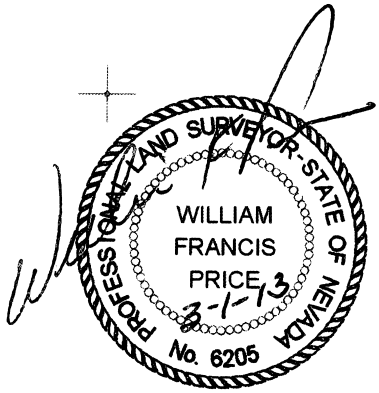
3. Summary and Conclusions

a. The IL Ranch was entered and consolidated before 1883. IL Ranch has historically involved both private lands and corresponding public lands. Since agencies of the U.S. Government began issuing Grazing Permits, the IL Ranch has continued to graze these public lands under the auspices of the respective agency permits.
b. The private lands and the U.S. Government Grazing Permits are situated on both the East Fork and the South Fork of the Owyhee River in northern Elko County, Nevada.
c. IL Ranch has been used continually for both cattle and sheep from its establishment to the present. The historic evidence is for cattle numbers up to 9,569 cattle and for sheep numbers up to 34,500.

d. At least 5,600 cattle or the equivalent number of sheep belonging to the IL Ranch drank from the natural streams as they needed along stretches of both the East Fork and The South Fork of the Owhyee River from the time the IL Ranch was established to the present time.
e. ELLCo is the present owner of the IL Ranch and the associated water rights, including stock watering rights, through a clear chain of title dating from before 1883 and continuous to the present time.

William F. Price, PLS, WRS, RPL

March 1, 2013
Date



Current Stamp Expiration Date: December 31, 2013

Addendum – List of Exhibits

Exhibit A – Map 1, General Overview and Vicinity Map – produced from sources cited
Map 2, Detail of Owyhee East Fork Area – produced from sources cited.

Exhibit B - Deed from Doby George, LLC to Elko Land and Livestock Company dated May 14, 2012, recorded as Document #655892 in the Official Records of the Elko County Recorder.

Exhibit C - BLM survey plats from 1870 to the present time, Master Title Plats and Historical Indices depicting transfers of significant portions of the Subject Lands from the Federal Government – BLM files available online blm.nv.gov or onsite at the Nevada State Office, Reno, Nevada.

Exhibit D - Excerpts from Nevada's Northeast Frontier by Edna B. Patterson, Louise A. Ulph and Victor Goodwin, 1969, reprinted 1991 – copies from manuscript.

Exhibit E - Records of the Elko County Recorder, Deeds and Miscellaneous Records – Elko County Recorder's office.

Exhibit F - Elko County Tax Records – Elko County Microfilm records available from Elko County Recorder's office.

Exhibit G - Excerpts from Tuscarora Justice Court Records – UNR Special Collections – 88-02

Exhibit H - Nevada State Land Records – available online lands.nv.gov

Exhibit I - Range Maps filed by John G. Taylor Incorporated, 1929, on file with the Nevada State Engineer water.nv.gov