

06676

ORIGINAL

Serial No.....

THE STATE OF NEVADA
PROOF OF APPROPRIATION OF WATER FOR
STOCK WATERING PURPOSES

(1) Name of claimant. DEAN AND SHARON RHOADS

RHOADS RANCH of TUSCARORA
Street and No. or P.O. Box No. City or town

NEVADA 89834
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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(9) The approximate number of animals watered by the claimant during the first year.....  
was.....cattle.....horses.....sheep or..... Other..... The watering  
was conducted during each of the following months.....  
Date

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.  
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(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

OF NATURAL CHANNEL.....  
land, it should be stated.  
.....  
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Remarks.....  
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Remarks.....  
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The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by...DEAN AND SHARON RHOADS .....  
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.

DEAN AND SHARON RHOADS.....  
Claimant

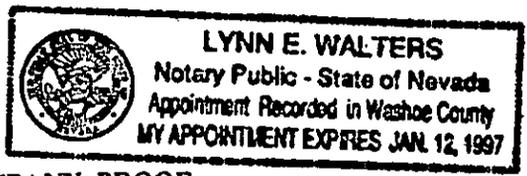
*Michael D. Buschelman*  
By..MICHAEL D. BUSCHELMAN, P. L. S.....

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*.

*Lynn E. Walters*  
Notary Public in and for the County of WASHOE, NEVADA.....

My commission expires *Jan 12, 1997*.....



**\$10 FILING FEE MUST ACCOMPANY PROOF**

2ND AMENDED  
ATTACHMENT  
SERIAL NO. 06676

**PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING PURPOSES**

**NAME OF CLAIMANT: DEAN AND SHARON RHOADS**

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

SOURCE: McCANN CREEK AND TRIBUTARIES  
McCANN CREEK IS TRIBUTARY TO SOUTH FORK OWYHEE RIVER  
POD #1: NW1/4 SE1/4 SECTION 8 T39N, R51E MDM

USGS 7.5 MINUTE QUAD: MOUNT BLITZEN

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

UNKNOWN

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

BURNS FIELD IS LOCATED WITHIN THE PRIVATE LANDS IN SECTION 18,19,20,29 AND 30, TOWNSHIP 40 NORTH, RANGE 51 EAST, AND IS A FENCED FIELD OF PRIMARILY PRIVATE LANDS. (SEE ATTACHED CHAIN SHEET.)

FROM REVIEW OF THE CHAIN OF TITLE, IT IS NOTED THAT MINOR PORTIONS OF THIS FIELD WERE PRIVATE OWNED PRIOR TO 1905. TO THE BEST INFORMATION AND BELIEF OF THE CLAIMANT, THE AREA WAS UNFENCED AND USED AS A COMMON GRAZING AREA BY A NUMBER OF THE CLAIMANT'S PREDECESSORS. A REVIEW OF THE RECORDS MAINTAINED BY THE ELKO COUNTY ASSESSOR REVEALS THAT IN 1885 PREDECESSORS OF THE CLAIMANT WERE ASSESSED FOR THE FOLLOWING NUMBERS OF "STOCK" CATTLE.

JAMES BYRNES	5 CATTLE
DAN COLL	11 CATTLE
HAWS BROTHERS	100 CATTLE
WARREN SHOECRAFT	30 HORSES
ADALINE POSTLETHWAITE	120 CATTLE

AS ALL OF THE OWNED CULTURE LANDS OF EACH OF THOSE PREDECESSORS WERE SOME DISTANCE AWAY FROM THIS SOURCE, IT NEEDS TO BE ASSUMED THAT ONLY A PORTION OF THOSE LIVESTOCK REACH THAT AREA. BASED ON THE QUALITY OF FORAGE IN THE AREA AND THE DISTANCE, IT IS ASSUMED THAT THE INITIAL USE WOULD BE IN THE TOTAL NUMBER OF 65 HEAD OF CATTLE WITH A PRIORITY OF 1885 AND AS SEASON OF USE OF APRIL 1 THROUGH NOVEMBER 30.

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

REFER TO ITEM NO. 11

ITEM NO. 11 - AMOUNT OF WATER DIVERTED

THE TOTAL VOLUME OF WATER REQUIRED TO SATISFY THE NEED OF 450 HEAD OF CATTLE IS CALCULATED AS FOLLOWS:

20 GALLONS PER DAY X 450 HEAD OF CATTLE X 244 DAYS = 2196000 GALLONS PER YEAR.

20 GALLONS PER DAY X 450 HEAD OF CATTLE = 9000 GALLONS PER DAY  
9000 GALLONS PER DAY = 0.014 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.

THIS NUMBER IS BASED UPON THE BEST INFORMATION AND BELIEF OF THE CLAIMANT.

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SECOND AMENDED  
ATTACHMENT TO  
PROOFS OF APPROPRIATION  
FOR STOCK WATERING PURPOSES

- PROOF 06668 - PACKER CANYON CREEK
- PROOF 06669 - PLEASANT VALLEY CREEK
- PROOF 06670 - SUTTLE SPRING
- PROOF 06671 - BIG COTTONWOOD CREEK
- PROOF 06672 - INDIAN CREEK
- PROOF 06673 - BRONCO CREEK
- PROOF 06674 - HAM CREEK
- PROOF 06675 - ADAMS CREEK
- PROOF 06676 - McCANN CREEK

Item 8

The claimant's water right was not recorded.

Items 9 and 10

The numbers of livestock watered by claimant's predecessors in the first year of use is very difficult to obtain. In Proofs of Appropriation of Irrigation Nos. 06558, 06559, 06560, 06561, 06562 and 06563, priority for irrigation is from 1876 to 1895. As the lands covered in those irrigation proofs were used in conjunction with open range grazing, it appears that stockwater use off the lands used for hay and pasture production would closely coincide to the original diversion of water for irrigation. A search of available records does not provide documentation for this proof. The source which provides the greatest amount of information as to livestock numbers are the records maintained by the Elko County Assessor. Up until 1885, there is limited information as to range livestock numbers. The claimant's existing ranch property was assembled by acquisition of a number of smaller ranch properties by predecessors of claimant. In reviewing tax records of these predecessors, it is apparent that the smaller ranch properties had minimal numbers of livestock in years prior to 1886. However, by 1888, numbers had increased.

In 1885, the Elko County Assessor made an assessment for "stock cattle" for predecessors of interest as follows:

James Byrnes	5 cattle
Dan Coll	11 cattle
Haws Bros.	100 cattle
Warren Shoecraft	30 horses
Adaline Postlethwaite	<u>120 cattle</u>
	266 cattle

As these livestock would have used the open waters prior to the year of assessment, a priority of 1883 is claimed.

By 1888, the numbers and owners who are predecessors had increased to the following:

<u>Owner</u>	<u>No. of Livestock</u>
H. W. Brown	250 cattle and horses
James Byrnes	30 cattle
Dan Coll	33 cattle
O. L. C. Fairchild	40 cattle
Haws Bros.	230 cattle
Humboldt Land & Cattle Co.	650 cattle and horses
John Jack	20 horses
Homer Warren	75 horses
Adaline Postlethwait	<u>160 cattle and horses</u>
	1,488 total

In addition to those numbers, Warren W. Williams owned portions of the lands presently vested in the claimant and ran as high as 60,000 head of sheep through the area for a short period of time by 1891. (See publication entitled "Nevada's Northeast Frontier" by Edna Patterson, et al., pages 415, 416 and 417.) (See chain of title submitted with Proofs 06558 through 06563, inclusive, for the period of time the above-named predecessors were in title.)

T. T. Fairchild was a predecessor of the claimant for a major portion of the meadow and pasture lands of the claimant. James Powers, an employee of the Taylor Grazing Service, prepared a summary of that operation dated December 7, 1936 (copy attached). In this, he stated the normal year-round operation included 2,000 cattle and that Fairchild had used the range referred to as "the head of Owyhee River" for 50 years. This corroborates the priority date set forth above of 1883, as Fairchild did not acquire lands of the claimant until past 1883. The total use prior to 1905 is considered to be conservative at 2,000 head.

In summary, a priority for each of the sources is claimed as 1883. To the best information and belief of the claimant, the numbers using the source during the first year and subsequent years were as follows:

<u>Proof No.</u>	<u>Source</u>	<u>First Year of Use</u>	<u>Subsequent Years</u>
06668	Packer Canyon	50	300
06669	Pleasant Valley Co.	50	300
06670	Suttle Spring	10	200
06671	Big Cottonwood Creek	20	275
06672	Indian Creek	100	400
06673	Bronco Creek	75	400
06674	Ham Creek	75	400
06675	Adams Creek	75	300
06676	McCann Creek	100	350

06676

The season of use claimed is March 15 to December 1, which was customary use prior to 1905.

The numbers and season of use will vary dependent upon management requirements of the federal land-administering agency, Bureau of Land Management, natural movement of livestock, annual forage and water fluctuations and management decisions. However, the numbers as shown for subsequent years is an average number for a grazing season.