06801

Serial No. 06801

THE STATE OF NEVADA

PROOF OF SUBSISTING RIGHT OF WATER FOR

STOCK WATERING PURPOSES

Pursuant to N.R.S. 533
As Amended by Chapter 473, 1993 Statutes, Sections 2, 3 and 4
Effective October 1, 1993

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(1) Name of Claimant JOSEPH B. KEY, a married man [Street and No. or P. O. Box No.] P.O. Box 818 **of** [City or town] Reno [State and Zip Code No.] Nevada 89504

(2) Source of water [Name of natural water source] MIDDLE MUD SPRING.

(3) The water is diverted by [Dam, ditch, pipe line, natural channel, spring area, etc.] stock pond.

(4) The water is diverted at the following point(s) [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.] within the SW¼SW¼, of Section 17, T 36N, R 55E, MDB&M from which point the SW corner of Section 17, T 36N, R 55E, MDB&M bears S5°19'04"W a distance of 562.71 feet.

(5) The water is impounded in [Troughs, tanks, pools, reservoir, natural channel, etc.] stock pond 10' and covering 1 acre more or less.

(6) The construction of the ditch or other works was begun [Date] Unknown **and completed** [Date] Unknown.

(7) The nature of the claimant's title to the land upon which the source of water and place of use are located is [Patented, deeded, public domain with grazing permit, etc.] Deeded land owned by Claimant

(8) The claimant's water right was not recorded in the office of the County Recorder of ___ County, at Page ___ of Book ___ of __.

(9) The items of evidence for the numbers of livestock and date of priority are Affidavit of CHARLES VAN NORMAN and Affidavit of W.I. LEBERSKI with attachments.

(10) The approximate number of animals watered by the claimant during the first year [Date] 1879 **was** unknown **cattle ___ horses __ sheep or** [Other] _____. **The watering was conducted during each**

of the following months April through November.

(11) The approximate number of animals watered by the claimant in subsequent years was as follows: [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] Minimal numbers in 1879 increasing to 50 head by 1904, and further increasing through 1935. Through land agency management, the numbers subsequently reduced to 50 head and is now stabilized.

(12) The amount of water which has been necessary to be diverted for this purpose has been [448.83 gal. per min. equals 1 cubic foot per second] .0016 **cubic feet per second.**

(13) The works are located at [Describe as being within a 40-acre subdivision, section, township and range of public survey. If on unsurveyed land, it should be stated. SW¼SW¼ of Section 17, T 36N, R 55E, MDB&M.

Remarks [Improvements, title, etc.) The date of the construction of the original improvements are unknown. In 1993 extensive maintenance was done to the end that improvements exist as listed in **Item 5.**

This claim is based upon use prior to 1905 of an open range area by three ranches. In this summary, the ranches will be referred to as the Fernald Ranch, Clubine Ranch, and the Wright Ranch.

A review of the records in the office of the County Recorder of Elko County, Nevada evidences that the following numbers of livestock were assessed to those ranches in 1889:

Fernald Ranch - 275 Cattle
Lowe (portion of Clubine Ranch) - 900 Cattle
(included other properties)
Daniel Murphy (portion of Wright Ranch) - 5,400 Cattle
(included other properties)
Wright, J. and O & R - 300 Cattle

In 1904, the following numbers are indicated:

Clubine - 125 Cattle
Fernald - 525 Cattle
Wright - 400 Cattle

By 1905, Clubine and Braun were assessed for 400 cattle. From the above, it is assumed that the three ranches had grazed on open range for a total of 1,325 cattle.

In 1925, H. Moffat Company purchased the Clubine Ranch, and the area of this source became one of the major areas of use of H. Moffat Company. This is evidenced by the Affidavit of Walter I. Leberski concerning information located in Bureau of Land Management grazing files, and the Affidavit of Charles Van Norman.

The Claimant is the immediate successor to D.C. Layton Ranches, who acquired area of open range use of the Clubine and Wright Ranches as shown on the attached chain sheet, plus the additional use established by H. Moffat Company after acquisition of the Clubine Ranch.

Through the adjudication allotment program conducted by the Bureau of Land Management, and sales or property and transfer of ownership grazing preferences upon the public land, the range area used in conjunction with this livestock water became allotted to the D.C. Layton Ranches or Priscilla Layton Limited Partnership. That entity was the successor in interest to the Clubine or Moffat property, the Wright property, and a portion of unfenced private lands owned by the Fernald Ranch. The Claimant, by acquisition of unfenced private lands previously owned by H. Moffat Company, and grazing preference which had been established by Clubine, Fernald or Wright, became a successor to those parties who had established such stockwater rights.

The area grazed by the Claimant's livestock is a portion of that used by the predecessors, and the number of livestock watering from this source is based upon a normal pattern of grazing animals, with the number using the source varying as to season of use and total number in that area.

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The season of use will vary from year to year, depending upon a rotation grazing management system and the forage growth conditions, but all use from the source is within the period shown in this proof.

The undersigned, being first duly sworn, deposes and says that he owns or controls the livestock presently watered by the Claimant, and that the facts relative to the proof of subsisting right by JOSEPH B. KEY are full and correct to the best of his knowledge and belief [If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.] _____.

CLAIMANT - JOSEPH B. KEY

Telephone No. (702) 322-3366

By _____

Telephone No. (_____) _____

Subscribed and sworn to before me this

2nd **day of** May, **19** 94.

Walter J. Leberski

Notary Public in and for the County of _____

My commission expires _____

WALTER J. LEBERSKI
Notary Public
State of Nevada
Elko County, Nevada
My appointment expires March 29, 1996.

$50 FILING FEE MUST ACCOMPANY PROOF