

THE STATE OF NEVADA
PROOF OF SUBSISTING RIGHT OF WATER FOR
STOCK WATERING PURPOSES

Pursuant to N.R.S. 533.492 and N.R.S. 533.493, Amended

- (1) **Name of Claimant** JOSEPH C. CUMMING and KRISTI A. CUMMING, Co-Trustees of the Joseph and Kristi Cumming Family Trust [Street and No. or P. O. Box No.] P. O. Box 5689 of [City or town] Elko, [State and Zip Code No.] Nevada 89801.
- (2) **Source of water** [Name of natural water source] Forest Spring
- (3) **The water is diverted by** [Dam, ditch, pipe line, natural channel, spring area, etc.] Spring Box, storage tank and pipeline.
- (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.] A point within the NE1/4NE1/4 of Section 18, Township 30 North, Range 57 East, MDB&M, from which the northeast corner of said section bears N 34°21'30" E, a distance of 1,219.37 feet, more or less
- (5) **The water is impounded in** [Troughs, tanks, pools, reservoir, natural channel, etc.] Storage tank, pipeline and trough.
- (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 lands and public domain with grazing permit.

The place of use on deeded lands owned by Claimant is within:

T30N, R57E, MDB&M

Section 18: E1/2 NE1/4

The place of use on public domain with a grazing permit is within:

T30N, R57E, MDB&M

Section 18: W1/2NE1/4; NW1/4

T30N, R56E, MDB&M

Section 11: SE1/4

Section 12: S1/2S1/2; NW1/4SW1/4

Section 13: N1/2 NE1/4

The place of use is based upon an existing pipeline with troughs. Originally this spring apparently did not flow over one-half mile from the source.

- (8) **The claimant's water right was not recorded.**
- (9) **The items of evidence for the numbers of livestock and date of priority are**
- A. Chain of title from patentees of private lands used in conjunction with public land grazing to present owners
- B. Affidavit of Delbert J. Zunino.

C. Affidavit of Walter I. Leberski.

(10) **The approximate number of animals watered by the claimant during the first year** [Date] 1890 **was** 90 **cattle, 15 horses** unknown **sheep or** [Other] . **The watering was conducted during each of the following months** April 1 to November 1.

(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] The number of livestock continued to increase with at least 200 head of cattle using the source by 1902. In addition to the cattle use, there was an undetermined amount of sheep water use as evidenced by the Affidavit of Walter I. Leberski attached. This sheep use is not included in the 200 head of cattle.

(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] .0063 **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.] SW1/4 NE1/4, of Section 18, T30N, R57E, being the location of a storage tank with a pipeline from the spring located in the SE1/4 NE1/4 of said Section 18. This storage and pipeline was constructed prior to Claimant's ownership.

Remarks [Improvements, title, etc.] The priority of 1890 is based upon a chattel mortgage executed by John Clendenning to Henderson Banking Company, recorded February 14, 1891 in Book 2 of Chattel Mortgages at page 32, Elko County, Nevada (See Walter Leberski Affidavit attached.) It is apparent the number of livestock increased and by 1902, the number of livestock using the source reached at least 200 head. This is evidenced by a Chattel Mortgage executed by Antone Zunino, et ux, recorded November 21, 1902 in Book 4 of Chattel Mortgages at Page 404, Elko County, Nevada. (See Walter Leberski Affidavit attached.)

John Clendenning and Antone Zunino are predecessors of the Claimant. (See Chain of Title attached.) Additional seasonal use of this source was made by a past owner of the source, Peter Gennette with sheep. A Bill of Sale executed by Peter Gennette to J. A. McBride, recorded November 23, 1904, was for an undivided one-half interest in 4300 sheep. At least a portion of those sheep used this source, but are not included in the total claimed numbers.

After reductions made during the administration of the public lands by the Bureau of Land Management, the present permitted use is 141 head of cattle. The Affidavit of Delbert J. Zunino approximates the number of livestock in the area at 150 head of cattle. However, the priority information substantiates at least 200 head of cattle, using this source.

This priority claim of 1890, is considered conservative based upon the Decree of the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt, entitled "In the Matter of the Determination of the Relative Rights of the Humboldt River System and Tributaries, Proof 00371, which recognizes an early irrigation priority of 1874 to 1897. Irrigation of meadow land evidences earlier livestock use than 1890 for some numbers.

This source is located within an area known as the Willow Creek Pockets in which there are other sources of livestock water. As cattle move between the waters within the area of use, the numbers on this source can vary throughout the season. The number claimed from this source is the maximum that will occur during the grazing season.

STANDARD FORM NO. 64

5010-108-01

The undersigned, being first duly sworn, deposes and says that the corporation owns or controls the livestock presently watered by the Claimant, and that the facts relative to the proof of subsisting right by Slagowski Ranches, Inc. are full and correct to the best of its 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:

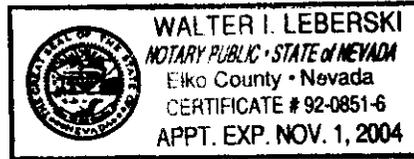
THE JOSEPH & KRISTI CUMMING FAMILY TRUST

By: Joseph C. Cumming
JOSEPH C. CUMMING, Co-Trustee

Telephone No.: (775) 738-2677

Subscribed and sworn to before me this
19th day of April, 2004.

Walter I. Leberski
NOTARY PUBLIC



\$50 FILING FEE MUST ACCOMPANY PROOF

RECORDED
INDEXED