Serial No. 09479

STATE OF NEVADA

# PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING OR WILDLIFE PURPOSES

(1) Name of claimant COTTONWOOD RANCH, LLC., A Nevada Limited Liability Co.

HC 62, BOX 1300 of WELLS
Street and No. or P.O. Box No. City or town

NEVADA 89835
State and Zip Code No.

(2) Source of water Gold Run Spring No. 1

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

(4) The water is diverted at the following point(s) A point within the NE¼ NE¼ of Section 32,
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.
T45N,R60E, MDM, from which the northeast corner of Section 33, T45N, R60E, MDM
Diversion over a channel reach must be described by course and distance to a section corner for both the beginning and end of such
bears N 83° 30' 14" E a distance of 6,249.83 feet.

(5) The water is impounded in A pond
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 forest reserve lands upon which claimant holds a grazing permit.
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

Elko 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 1885
Date

was 50 cattle 0 horses * sheep or wildlife(describe)
Other

The watering was conducted during each of the following months

March 1 to November 31 with the season of use varying due to weather and feed conditions

*1500 sheep intermittently

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

The number of animals watered during the first year is based upon the total number of livestock

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.

grazing the area in 1885, being at least 1000 cattle and 50 horses. Production of the source indicates the number of animals would remain near 50 cattle in subsequent years.

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

0.00156 cubic feet per second.

448.83 gallons per minute equals 1 cubic feet per second.

(12) The works are located at A pond in the NE¼ NE¼ of Section 32, T 45N, R60 E, MDM

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

Remarks

Remarks See Addendum for review of priority information

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Cottonwood Ranch, LLC., a Nevada Limited Liability Company 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

Telephone No. (_____) _____

Cottonwood Ranch, LL
a Nevada Limited Liability Company

By E Agee Smith

HC 62, BOX 130
Street and No., or P.O. Box No.

Wells, NV 89823
City, State, Zip Code No.

Telephone No. (715) 752-3135

Subscribed and sworn to before me this 21st day of April, 2005

Floyd M. Fisk
Notary Public in and for the County of Elko

My Commission expires Feb 26, 2006

FLOYD M. FISK
NOTARY PUBLIC • STATE of NEVADA
Elko County • Nevada
CERTIFICATE # 98-0770-6
APPT. EXP. FEB. 26, 2006

**$50 FILING FEE MUST ACCOMPANY PROOF**

Water/POA/Gold Run Spring No. 1

Addendum
to Proof of Appropriation of Water
for Stockwater Purposes
by
Cottonwood Ranch, LLC

The priority set forth in Section 9 is based upon the information contained in the affidavit of Walter I. Leberski, attached.

The chain of title attached to said affidavit evidences that W. T. O' Neil mortgaged 1000 head of cattle and 50 head of horses in 1885 to E. P. Hardesty. The chattel mortgage states the cattle were located in the Salmon River Range. The publication entitled "Nevada's Northeast Frontier" by Edna B. Patterson, et al, identifies the O' Neil - Capell Partnership Operation as being located at the head of the Little Salmon River (O' Neil Basin) which is the location of the claimant's operation. This publication further identifies William O' Neil, which the chain of title evidences, is a predecessor of the claimant. From this information, a priority date of 1885 is considered to be reasonable.

The mortgage to E. P. Hardesty evidences at least 1000 cattle and 50 head of horses watering from various sources within the O' Neil Basin by 1885. It is evidenced that the number of livestock grazing in the area increased by the purchase of sheep (1355 head in 1892) and by 1907, the Elko County assessor charged the O' Neil - Capell Livestock with 58 horses, 1135 cattle and 6,150 head of sheep. Further records indicate the sheep used the O' Neil Basin area only during a portion of the year.

Claimant grazes upon only a portion of the area which was historically used by the O' Neil operation. Range Maps were filed in the Office of the State Water Engineer in accordance with the 1927 Stock Water Act on behalf of Emery C. Smith, Nevada Smith and Esther Teresa Boies, who were successors to O' Neil's and predecessors to the claimant. These maps showed the grazing area of Emery C. Smith and Nevada Smith, who were predecessors, as being within T44 & 45N, R61 & 62E, T42NR61E and T46 & 47N, R61 & 62E, MDB&M. During the establishment of private allotments the area of use, was changed and the source of their claim is within the claimant's private allotment. The range maps identified above, excluded the area of use within the National Forest.

However, the claimant's predecessors historically grazed livestock upon Forest Service lands. In order to qualify for a Forest Grazing Permit, it is necessary that predecessors of the holder of such a permit grazed and claimed use upon the present Forest lands prior to the establishment or withdrawal of the Forest lands. As the claimant holds a Forest permit, it is evidenced that his predecessors made use of sources of livestock water now within the National Forest.

The number of animals making use of this source is based upon the claimant's experience in managing livestock and the production of water of this source. The number making use of the source is not continuous during the grazing season, but does represent the number which use the source during portions of the season.

The claimant uses a number of sources for livestock water and the use by each source is not additive to the total number of sources.

AFFIDAVIT

State of Nevada )
County of Elko )

I, Walter I. Leberski, do hereby swear (or affirm) under penalty of perjury that the following assertions of this affidavit are true.

1. That I am an adult and a resident of the County of Elko, State of Nevada.

2. That I searched records of the Elko County Recorder and Elko County Assessor for the evidence of livestock numbers and place of use range grazing operations prior to 1905 in the area known as O' Neil Basin, at the headwaters of the Salmon Falls Creek in North Central Elko County.

3. The purpose of the research was to determine the number of livestock and years of early grazing use which were based upon private lands in Sections 31, 32 and 33, T45NR61E and grazing allotments upon public and Forest reserve lands now owned by Cottonwood Ranch, LLC.

4. The Chain of Title, consisting of 4 pages, summarizes the results of this search.

5. Said search reveals that W. T. O' Neil operated cattle in the Salmon River Range as early as 1885 as evidenced by a Chattel Mortgage executed by W. T. O' Neil to E. P. Hardesty recorded September 12, 1885 in Book 1 of Bill of Sale at page 29, Elko County, Nevada.

6. W. T. O' Neil, as evidenced by the above described Bill of Sale owned 1000 head of cattle and 50 horses in 1885.

7. The assessment roll of Elko County, Nevada for the year 1907 assesses O' Neil - Capell Livestock for 58 horses, 1135 cattle and 6,150 sheep.

8. The publication entitled "Nevada's Northeast Frontier" by Edna B. Patterson, Louise A. Ulph and Victor Goodwin identifies the O' Neil - Capell partnership being located at the head of Little Salmon River (O' Neil Basin) and William O' Neil being one of the partners.

9. That I obtained copies of maps filed with the Nevada State Water Engineer filed on behalf of Emery C. Smith, Nevada Smith and Esther Teresa Boies which were filed in accordance with the 1927 Stock Water Act and said map depicts the area of grazing use claimed in 1927. See map filed in the office of the State Water Engineer (179-30, 180-30 & 181-30).

Walter I. Leberski

Signed and sworn to (or affirmed)
before me on April 19, 2005.
by Walter I. Leberski

Barbara Powell
Notary Public
Water\Smith\Affidavit

BARBARA POWELL
NOTARY PUBLIC • STATE of NEVADA
Elko County • Nevada
CERTIFICATE # 99-36184-6
APPT. EXP. MAY. 30, 2007

Township 45 N, Range 61E [ Section 31 ][ Section 32 ][ Section 33 ] 1

| Grantor | Grantee | Inst. | Date | Book | Page | Lot 1-2 | E½NW¼ | NE¼ | N½SE¼ | NW¼NW¼ | S½N½ N½S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| W.T. O'Neil | E.P. Hardesty | CM | 9/12/85 9/12/85 | 1 | 29 | | | | | | | | | | | 1000 cattle, 50 horses in Salmon river Range |
| Same | Same | CM | 8/24/86 8/25/86 | 1 | 85 | | | | | | | | | | | 1000 cattle, 50 horses in Salmon river range. Additional Chattel Mortgage in January & July, 1887 & May, 1889, same numbers |
| R.C. O'Neil | | Land Claim | 4/20/88 4/28/88 | 3 M | 503 | | | | | | | | | | | 160 acres on Cottonwood creek - head of Salmon River |
| W.T. O'Neil | | Affidavit | 5/28/89 5/28/89 | 3 M | 575 | | | | | | | | | | | All cattle branded RCO - owned by R.C. O'Neil, Sr., deceased |
| Pence Bros. | O'Neil Bros. | B/S | 6/22/92 12/14/15 | 2 BS | 30 | | | | | | | | | | | 1,355 stock sheep |
| O'Neil - Capell Livestock | | Tax Bill | 1907 | | | | | | | | | | | | | 58 horses, 1,135 cattle, 6,150 sheep |
| W.R. Capell | W.T. O'Neil, James P. O'Neil | B/S | 3/27/15 7/6/15 | 2 | 2 | | | | | | | | | | | All livestock and land in partnership O'Neil Capell Partnership 23 years old |

. Township 45 N, Range 61E [ Section 31 ][ Section 32 ][ Section 33 ] 

| Grantor | Grantee | Inst. | Date | Book | Page | Lot 1-2 | E½NW¼ | NE¼ | N½SE¼ | NW¼NW¼ | S½N½ N½S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mary Alice Capell, Charles S. O'Neil, William T. O'Neil, Carrie S. O'Neil, h/w, James P. O'Neil, Richard O'Neil et al | O'Neil Brothers, Inc. | GBS | 11/27/18 2/26/21 | 39 | 64 | | | | | | | | | | | All property owned |
| Mary Alice Capell | O'Neil Brothers, Inc. | GBS | 12/14/18 2/26/21 | 39 | 77 | | | | | | | | | SW¼ | W½SE¼ | |
| John H. Lehman | O'Neil Brothers, Inc. | GBS | 12/7/20 2/26/21 | 39 | 76 | Lot 2 | E½ NW¼ | SW¼NE¼ | N½SE¼ | | SW¼NW¼ NW¼SW¼ | | | | | |
| O'Neil Brothers Inc. | National Bank of Commerce in New York | CM | 8/18/22 | 8 | 358 | | | | | | | | | | | 8860 Sheep |
| J.C. Harris, Sheriff | Lloyd W. Dinkelspiel | Sheriff Deed | 11/–/25 11/5/25 | 42 | 223 | Lot 2 | E½ NW¼ | SW¼NE¼ | N½SE¼ | | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Foreclosure of O'Neil Brothers, Inc. |
| Lloyd W.Dinkelspiel Florence H. Dinkelspiel | Emery C. Smith | GBS | 11/15/27 12/31/27 | 43 | 583 | Lot 2 | E½ NW¼ | SW¼NE¼ | N½SE¼ | | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| Scott S. Kirkland | Steptoe Livestock Corp. | GBS | 11/14/29 6/15/30 | 45 | 289 | | | N½NE¼ | | NW¼NW¼ | | | | | | Patent issued BK. 8, pg. 121 |
| Sheriff, Elko County | Mark H. Greene, David Spitz, Walter C.Nebeker, P.M. Pontz & E.E. Ennon | Sheriff Deed | 3/5/37 3/15/37 | 48 | 307 | | | SE¼NE¼ N½NE¼ | | NW¼NW¼ | | | | | | Judgment vs. Stephen Livestock |
| | | | | | | | | | | | | | | | | |

| Grantor | Grantee | Inst. | Date | Book | Page | Lot 1-2 | E½NW¼ | NE¼ | N½SE¼ | NW¼NW¼ | S½N½ N½S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mark H. Greene, David Spitz, Walter C. Nebeker, P.M. Pontz, E.E. & Ruth Ennon | S.C. Weeks S.J. Weeks | QCD | 4/7/37 4/9/37 | 48 | 339 | | | SE¼NE¼ N½NE¼ | | NW¼NW¼ | | | | | | |
| S.C. Weeks S.J. Weeks | John M. Marble Robert E. Marble | QCD | 5/29/40 5/29/40 | 50 | 228 | | | SE¼NE¼ N½NE¼ | | NW¼NW¼ | | | | | | |
| John M. Marble, Marg Harwood Marble; h/w: Robert E. Marble, Julia K. Marbel; h / w | Esther Teresa Boies Oren F. Boies | QCD | 5/4/42 9/22/42 | 51 | 554 | | | N½NE¼ SE¼NE¼ | | NW¼NW¼ | | | | | | |
| Emery C. Smith Nevada Smith; h/w | Oren F. Boies Esther Teresa Boies | GBS | 9/8/42 11/23/42 | 51 | 650 | Lot 2 | E½NW¼ | NE ¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| Oren F. Boies Esther Teresa Boies, h/w | H. A. Agee Esther A.Agee; h/w | GBS | 11/17/51 11/21/51 | 60 | 401 | Lot 2 | E½NW¼ | NE ¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| Estate H.A. Agee | H. Vance Agee & Robert J. Agee, Trustees for Horace E. Smith | DEC DIST. | 6/29/56 6/29/56 | 27M | 7 | Lot 2 | E½NW¼ | NE ¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | ½ Interest |
| Esther A. Agee | Horace E. Smith Irene J. Smith; h/w | QCD | 4/8/61 4/13/61 | 13 | 282 | Lot 2 | E½NW¼ | NE ¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| Talmadge Smith Aurelie Jeanne Smith; h/w | Horace E. Smith Irene J. Smith; h/w | QCD | 4/11/61 4/13/61 | 13 | 284 | Lot 2 | E½NW¼ | NE ¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| | | | | | | | | | | | | | | | | |

| Grantor | Grantee | Inst. | Date | Book | Page | Lot 1-2 | E½NW¼ | NE¼ | N½SE¼ | NW¼NW¼ | S½N½ N½S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| First American Title Company of Nevada | O'Neil Basin Ranch | Trustees Deed | 1/15/91 1/17/91 | 744 | 141 | Lot 2 | E½NW¼ | SE¼ NE¼ SW¼ NE¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | Foreclosure against Horace E. Smith Irene J. Smith |
| Horace E. Smith Irene J.Smith. h/w | E. Agee Smith Vicki A. Smith; h/w L. Kim Smith, unmarried | QCD | 11/21/97 12/17/97 | 1024 | 351 | | Part NE¼NW¼ | Part NW¼NE¼ | | | | | | | | |
| O'Neil Basin Ranch | E. Agee Smith Vicki A. Smith; h/w L. Kim Smith, unmarried | GBS | 8/12/97 12/17/97 | 1024 | 353 | Lot 2 | E½NW¼ | SE¼ NE¼ N½ NE¼ SW¼ NE¼ | N½SE¼ | NW¼NW¼ | S½ N½ N½ S½ | SW¼SE¼ | SE¼SW¼ | SW¼ | W½SE¼ | |
| Emery Agee Smith aka E. Agee Smith Vicki A. Smith; h/w Lola Kim Smith aka L. Kim Smith, unmarried | Cottonwood Ranch, LLC | GBS | 7/13/01 7/31/01 | 1 | 23317 | Parcel A & B of O'Neil Basin Ranch, Inc. Map filed 10/3/91 as File # 311517 | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |