Serial No. 09490

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 Goat Creek No. 5

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

(4) The water is diverted at the following point(s) A point within Lot 2 of Section 4,
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.
T45NR60E, MDM from which the northwest corner of Section 16, T45NR60E, 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 S 19° 07' 22" W a distance of 9,037.79 feet.

(5) The water is impounded in Natural pools
Troughs, tanks, pools, reservoir, natural channel, etc.

(6) The construction of the ditch or other works was begun none
Date
and completed none
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 _____ 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

.0016 cubic feet per second.

448.83 gallons per minute equals 1 cubic feet per second.

(12) The works are located at none - natural pools

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/Goat Creek No. 5

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] 2

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										