

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

HAPPY CREEK, INC.,

Respondent.

Case No. 74266

JOINT APPENDIX

Volume IV of XVII
(Pages JT APP 233-240)

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03/16/17	Supplemental Record on Appeal and Documents SROA 1-670	III-XVI	213-891
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RESPECTFULLY SUBMITTED this 6th day of March, 2018.

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CERTIFICATE OF SERVICE

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Jackson Mountains and the Bilk Creek Range, and is almost completely separated from the main valley by a north-trending ridge along the west edge of T. 43 N., R. 32 E. This part of the valley trends northwest and is 10 miles long and about 4 miles wide.

Numbering System for Wells and Springs

The well-numbering system used in this report indicates the location of the wells within the rectangular subdivisions of the public lands referenced to the Mount Diablo meridian and base line. The first two segments of a well number designate the township and range; the third segment is the number of the section followed by a letter which designates the quarter section in which the well or spring is located. Following the letter a number indicates the order in which the well or spring was recorded within the subdivision. The letters A, B, C, and D designate, respectively, the northeast, northwest, southwest, and southeast quarters of the section. For example, well number 46/30-13A1 designates the first well recorded in the NE 1/4 sec. 13, T. 46 N., R. 30 E., Mount Diablo base and meridian.

Plate I shows the location of wells and springs in the valley. The available data on the wells and springs are listed in table 2. The results of chemical analyses of water from the thermal springs and selected wells are in table 3.

GEOGRAPHIC FEATURES

Landforms and Drainage

Pine Forest Valley is in the Great Basin section of the Basin and Range physiographic province. The Great Basin is an area of alternating mountain ranges and valleys which generally trend nearly north. The mountain ranges commonly are 50 to 70 miles long and 6 to 15 miles wide. The valleys have approximately the same dimensions. The crests of the mountain ranges ordinarily are 3,000 to 5,000 feet above the valley floors and 7,000 to 10,000 feet above sea level. Typically, a range is a faulted and tilted block.

The intermontane valleys are characteristically closed alluvium-filled basins, although some valleys are interconnected by drainage channels. Playas, or "dry lakes", are present in most of the valleys and receive runoff from the mountain ranges. Pine Forest Valley differs from the typical valley of the Great Basin in that it is not closed and has no playa. Runoff from the valley discharges into the Quinn River, which in turn flows southwestward to the playas of the Black Rock Desert where it evaporates.

Mountains

The Bilk Creek Range, which borders the east side of the valley, consists mostly of lava flows of Tertiary age to which a gentle eastward dip of 10° to 15° has been imparted by faulting and tilting of the mountain block. The crest

ranges from about 1,000 feet above the valley floor at the southern end of the valley to about 3,000 feet above the floor near the northern end.

Along the west side of the valley, the Pine Forest Range rises rather abruptly above the valley floor. At both the southern and northern ends the crest is about 3,000 feet above the valley floor but near the middle of the range at Duffer Peak, altitude 9,500 feet, the crest is about 5,400 feet above the valley floor. This range is composed predominantly of granodiorite but also contains some volcanic and sedimentary rocks, especially at the southern end.

The Jackson Mountains, a complex of metamorphic and volcanic rocks, rise to about 4,500 feet above the valley floor at their northern end in a north-facing amphitheater whose west limb extends as a low spur toward the center of the valley.

Piedmont Slopes and Valley Floor

Piedmont slopes consist of coalescing alluvial fans that form a continuous apron around the mountain ranges and merge almost imperceptibly into the valley floor. These slopes range in width from less than half a mile at the south end of the valley to several miles at the north end.

The valley floor is the relatively flat area downslope from the alluvial fans. It has an area of approximately 200 square miles, or about 70 percent of the total area of alluvium. The gradient of the main part of the valley is generally southward and ranges from more than 50 feet per mile at the north end of the valley to about 8 feet per mile at the south end. That part of the valley floor which lies in the gap between the Jackson Mountains and the Bilk Creek Range is nearly level.

Streams

Many of the streams that drain the mountain ranges are ephemeral. Most of the smaller stream courses carry water only during and after storms, but some also carry water for a few months during late winter and spring.

Meager flow characterizes most of the streams draining the Bilk Creek Range. This range is composed largely of volcanic rocks that are jointed and broken to form a porous surface, and thus most of the precipitation on the range infiltrates to the ground-water reservoir rather than moving overland.

The Bilk Creek-Quinn River drainageway is the major stream system in the valley. Bilk Creek, which drains about 50 square miles, is incised deeply into the Bilk Creek Range. The flow of this stream is perennial but flashy in nature and, reportedly, during the spring runoff it overflows the 2,000 acre-foot capacity reservoir in sec. 4, T. 43 N., R. 32 E., which is used by the Quinn River Crossing Ranch to control the flow of Bilk Creek below the reservoir for irrigation.

The canyons along the east flank of the Pine Forest Range broaden into alluvial basins in their upper reaches. The streams in this area are fed by seepage from the mantle of alluvium which acts as a regulator, absorbing water from snowmelt and rain and discharging it into the canyons as seeps and springs. Most of these streams, therefore, are perennial in their upper reaches, but the water sinks into the alluvium of the piedmont slope and few of the streams reach the valley floor except during periods of high runoff.

Several stream channels are incised in the main valley floor. Most notable of these is the channel of the Quinn River which is dry throughout most of the year. In the winter, however, when evapotranspiration requirements are less and precipitation is somewhat greater, the water table rises and the Quinn River drains the valley southwestward to the Black Rock Desert at a gradient of about 8 feet per mile. The gradient of the Quinn River above the confluence with Bilk Creek is less than 2 feet per mile. The flow of water is negligible in this reach of the river, except during periods of extremely high runoff.

Climate

The climate of the valley ranges from arid to semiarid. The precipitation and humidity are low and summer temperatures and evaporation rates are high. Precipitation is irregular in areal distribution but generally is least on the valley floor and greatest on the highest parts of the mountains. The range in temperature is large, both daily and seasonally. The growing season is short.

Figure 2, based on records from the U. S. Weather Bureau station at Quinn River Crossing Ranch, shows the average monthly precipitation and average monthly temperatures for a 26-year period ending in 1950, and the average of the monthly high and of the monthly low temperatures for a 5-year period ending 1950.

Recorded temperatures range from a maximum of 105°F to a minimum of -34°F. Although freezing temperatures have been recorded every month of the year, the average date of the last killing frost in the spring is June 20, and that of the first killing frost in the fall is September 5; thus the average growing season has 77 days (U. S. Department of Agriculture, 1941, p. 979). However, the U.S. Weather Bureau station (altitude 4,087 feet) is only 50 feet above the lowest part of the valley and, because cold air commonly flows into the low parts of a valley during periods of little or no wind movement, the station records probably show somewhat lower temperatures than generally occur in other parts of the valley. Thus, a somewhat longer growing season may prevail along the piedmont slopes and the higher parts of the valley floor.

The average annual precipitation for the 26-year period of record is 5.6 inches. Most of this occurs during the winter as snow. Ordinarily the snow on the valley floor melts in a few days, but at the higher elevations it may remain for several weeks or months. The summers are notably dry. Usually, precipitation is only a small fraction of an inch during July and August, the driest

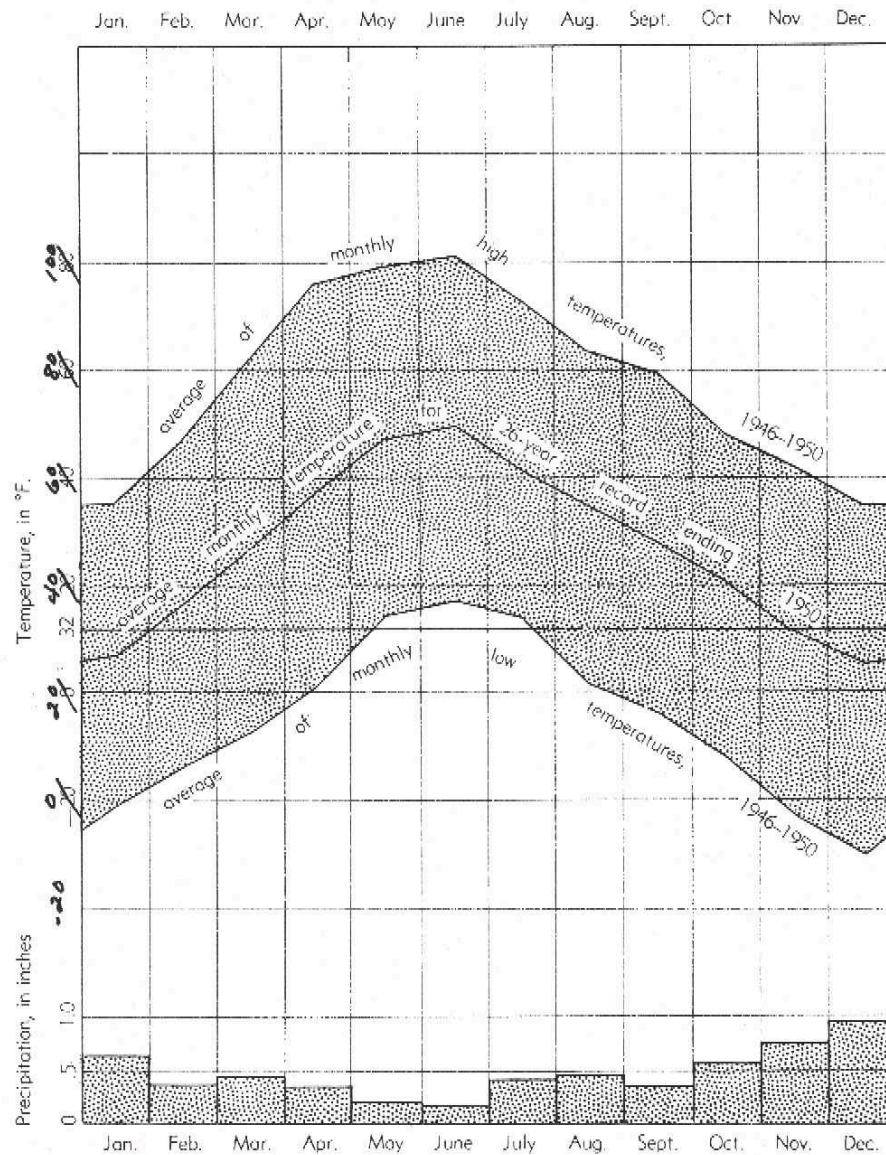


Figure 2. Average monthly precipitation and temperature for a 26-year period ending 1950, and average of the monthly high and the monthly low temperatures for a 5-year period ending 1950 at the U. S. Weather Bureau station at Quinn River Crossing Ranch.

months, and in some years there is no precipitation during these months. The evaporation rate from a free-water surface, based on data from Weather Bureau records in the State, is estimated to be about 4 feet per year, or more than 8 times the precipitation.

GEOLOGY

Previous Investigations

The geology of Humboldt County has been mapped by Ronald Willden (1961). The bedrock-alluvium contact and the distribution of the younger and the older alluvium, as shown on figure 2, are taken from Willden's map.

Summary of Late Cenozoic History

The present topography of Pine Forest Valley and the surrounding mountain ranges began to take form during the latter part of the Tertiary period. At that time, the country rock, composed of granodiorite of Cretaceous and Tertiary age and various volcanic rocks of Tertiary age, was broken and tilted by extensive faulting which continued into the Pleistocene epoch.

Erosion of the uplifted mountain blocks has partly filled the valley with alluvium. The maximum thickness of the alluvium is unknown, but on the basis of the log of well 43/32-20C1, the alluvium is at least 700 feet thick and in the central parts of the valley is composed, in large part, of lake sediments.

The Quinn River probably has occupied its present course, perhaps intermittently, since late Tertiary time. The present course may have been determined by the regional faulting or the river may have existed before the mountain ranges were uplifted to their present form. If the river predates the mountain ranges, downcutting by the river kept pace with the uplifting of the mountains, carving the gaps through which the river now flows. In either sequence of events alternating uplift and downcutting imply the formation of lakes behind the temporary barriers and alternate drowning and rejuvenation of the river. The types of sediments would vary in response to the changes in environment.

The climatic fluctuations of the Pleistocene epoch resulted in a series of lakes which intermittently covered a large part of western Nevada. The most recent of these, Lake Lahontan, attained a maximum depth of about 350 feet in Pine Forest Valley. To a large extent, the present valley floor is underlain by lake sediments and represents the configuration of the ancient lake bottom. Many stages and fluctuations of Lake Lahontan are recorded in these sediments and in the shoreline features, such as beaches and spits, which terrace the surrounding hillsides.

The processes of erosion and deposition have resulted only in minor changes since the last withdrawal of Lake Lahontan.

PHYSICAL CHARACTER AND WATER-BEARING PROPERTIES OF THE ROCKS

Bedrock

The volcanic rocks are mainly basalt and andesite and are characterized by closely spaced columnar jointing. Weathering causes the columns to break down into cobble-size pieces. Much of the surface of the Bilk Creek Range is littered with the resulting coarse rubble which permits much of the precipitation to infiltrate rapidly to considerable depths below the land surface and, eventually, to the ground-water reservoir.

Joints in the granodiorite of the Pine Forest Range, on the other hand, are generally quite widely spaced, and the rock is dense and impermeable. Deep infiltration is thus negligible. However, the granodiorite is mantled by the products of its own weathering which are capable of retaining a considerable volume of water. The available snowmelt and rainfall runs off only after the mantle becomes saturated.

Movement of ground water in the consolidated rocks of the mountain ranges is largely through joints and other secondary openings and in porous zones between lava flows. Although the total volume of water moving through bedrock may be quite large, as it is assumed to be in the Bilk Creek Range, the success of a well penetrating the bedrock is dependent on its tapping enough of the secondary water-bearing zones to yield the required amount of water. The chances of intercepting a sufficient number of water-bearing zones are generally so poor that the consolidated bedrock, whether in the mountains or buried beneath the valley fill, probably will not yield large amounts of water to wells.

Valley Fill

The valley fill is composed of rock debris which has been eroded from the surrounding mountains. It includes an unknown thickness of unconsolidated material, comprising the older and younger alluvium, which are composed mainly of stream deposits and lake sediments. These alluvial deposits form the principal source of ground water in the valley. Alluvium is unconsolidated water-laid rock debris ranging in size from boulders to clay. Where it contains well-sorted sand or gravel it may yield moderate to large amounts of water to wells.

Older Alluvium

Deposits of older alluvium form the piedmont slopes along the flanks of the mountains and the low divide at the northern end of the valley (plate 1). Also it underlies younger alluvium beneath much of the floor of the valley where it is composed principally of lake sediments.

During periods between high lake stages, some of the alluvium was

deposited in the lower parts of the valley. These deposits, to some extent, were reworked and sorted by the advancing waters of a later highwater stage which subsequently covered them with silt and clay. These reworked layers of alluvium are generally moderately permeable, and may yield moderate to large amounts of water to properly constructed wells.

The major streams probably have followed their present courses throughout much of the history of the valley; thus, stream-laid deposits of permeable sand and gravel may be present at various depth within the valley fill.

Well 42/31-11B1 on the bank of the Quinn River was drilled to a depth of 352 feet. Although no log is available, this well, which flows 170 gpm (gallons per minute) at the surface and has been pumped at a rate of 2,400 gpm with a drawdown of 52 feet, probably taps permeable material of older river deposits. Overlying deposits of lake clay may form the confining layer responsible for the artesian condition.

Younger Alluvium

The younger alluvium is composed mainly of lake sediments which were deposited in Lake Lahontan and some stream deposits of post-Lahontan age. The contact between the older and younger alluvium shown on plate 1 is drawn at the highest shoreline of Lake Lahontan. The younger alluvium is predominantly silt and clay, which are deep-lake deposits, separated by layers of sand and gravel, which are principally stream deposits and reworked alluvium that accumulated during shallow stages of the lakes and periods of emergence of the land surface. The sand and gravel strata are the most important aquifers in the section of lake sediments. Their occurrence, although probably widespread, generally is obscured by overlying sediments. One exception is the large gravel spit which trends north through secs. 30 and 31, T. 43 N., R. 32 E. Well 43/32-30A2, which was drilled near the toe of this spit, yielded 1,600 gpm with a drawdown of 40 feet (table 1), indicating a specific capacity of about 40 gpm/ft. The confluence of Bilk Creek and the Quinn River nearby suggests that stream, as well as lake currents, may have had a part in depositing and reworking the sand and gravel now underlying the area.

GROUND WATER

Occurrence and Movement

Most of the available ground water in Pine Forest Valley occurs in the unconsolidated sediments of the valley fill. Where the valley fill consists of fine-grained material, such as silt and clay, or of poorly sorted alluvium, the permeability is low and only small yields can be expected from wells. In contrast, strata of well-sorted sand and gravel have moderate to high permeabilities and will yield water readily to wells.

Ground water occurs in the valley either under water-table or artesian conditions. Under water-table conditions the water stands in the well at about the same altitude at which it was first found. Under artesian conditions, the

water is under pressure and rises in wells to above the bottom of the relatively impermeable stratum that acts as the confining bed. If the water is under sufficient pressure to flow at the land surface, as at well 42/31-11B1, the well is called a flowing artesian well.

The lake sediments of the valley fill form an excellent environment for artesian conditions because they are composed of alternating layers of permeable and relatively impermeable materials and because the recharge to them is from the margins of the valley, which are at slightly higher elevations than most of the valley floor. However, none of the wells drilled to date have high artesian heads, and the only flowing well in the valley, 42/31-11B1, is below the average level of the valley floor.

Ground water flows in the direction of lower head just as surface water does. The movement, however, is much slower. Ground water generally moves from recharge areas in the mountains and piedmont slopes toward the axis of the valley where a considerable part of it is discharged by evapotranspiration. That which is not discharged within the valley moves southwestward as underflow toward the Black Rock Desert.

The gradient of the water table in the main part of the valley is southwestward at about 8 feet per mile, whereas the gradient of the water table in that part of the valley between the Jackson Mountains and the Bilk Creek Range is northward at less than 2 feet per mile. The latter gradient is reduced and possibly even locally reversed during the summer by the spreading of irrigation water in the vicinity of the Quinn River Crossing Ranch.

Recharge

The ultimate source of recharge to the ground-water reservoir of Pine Forest Valley, except for a minor amount of underflow from the upper reaches of the Quinn River, is the precipitation on the alluvial fans and the mountains that border the valley.

The average annual precipitation within the drainage area can be estimated from a map showing precipitation zones in Nevada (Hardman, 1936). The total annual precipitation within the Pine Forest Valley drainage basin, on the basis of Hardman's map, as modified by subsequent data, is about 260,000 acre-feet. This figure was derived by subdividing the drainage basin of the valley into precipitation zones and multiplying the area of each zone by the average precipitation within the zone, as tabulated below:

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DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

* * *

HAPPY CREEK INC., a Nevada Corporation,)
Petitioner,)
vs.)
JASON KING, P.E., Nevada State)
Engineer, DIVISION OF WATER RESOURCES,)
DEPARTMENT OF CONSERVATION AND)
NATURAL RESOURCES,)
Respondent.)

CASE NO.: CV 20, 869

DEPT. NO.: 2

HAPPY CREEK'S OPENING BRIEF

Petitioner, HAPPY CREEK INC., a Nevada Corporation, ("Happy Creek"), by and through its attorneys of record, PAUL G. TAGGART, ESQ., and TIMOTHY D. O'CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD., hereby files this Opening Brief (the "Opening Brief"). This Opening Brief is based on all the papers and pleadings that are on file with the Court relating to this matter.

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	88 Nev. 424, 498 P.2d 1329 (1972).....	passim
7	<i>Vogel v. Minnesota Canal & Reservoir Co.,</i>	
	47 Colo. 534, 107 P. 1108 (Colo. 1910).....	18
8	<i>Whitmore v. Murray City,</i>	
	107 Utah 445 (1944).....	18
9	<i>Willard v. Tayloe,</i>	
	75 U.S. 557 (1869).....	14
10		
11		
12	Statutes	
	1913 Nev. Stat. § 67	12
13	Nev. Const. art VI.....	13, 14
	Nev. Const. art. I, § 8.....	27
14	Nev. Const. art. III, § 1	13
	NRS 533.040.....	19
15	NRS 533.070.....	19
	NRS 533.325.....	11
16	NRS 533.370.....	11, 23
	NRS 533.380.....	11
17	NRS 533.390.....	11
	NRS 533.395.....	passim
18	NRS 533.410.....	9, 12, 17
	NRS 533.425.....	11
19	NRS 534.010.....	25
	NRS 534.110.....	18, 19, 22, 24
20	NRS 534.120.....	18, 22, 23
	NRS 534.190.....	25
21	NRS 534.193.....	22
	NRS 534.195.....	22
22	U.S. Const. amend. V	27
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STATEMENT OF THE FACTS

I. Happy Creek Ranch

Happy Creek is a family owned ranching and farming company. Four brothers, Daniel B. May, Thomas R. May, James J. May, and Stephen G. May are the owners and provide senior management.¹ These four brothers have been exclusively engaged in farming, ranching, and cattle operations for their entire lives.

Happy Creek operates Happy Creek Ranch which is located between Winnemucca, Nevada, and Denio, Nevada, and nestled to the northeast of the Jackson Mountain Range. Happy Creek Ranch is in the Pine Forest Valley groundwater basin (Basin 029) in northern Humboldt County.² Happy Creek Ranch has a cattle operation and produces alfalfa and grain crops and currently employs five full-time employees, one part-time employee, and two seasonal employees, to run a cattle operation and produce alfalfa and grain crops. There are 600 cow-calf pairs in the ranching operation on the Happy Creek Ranch.³ The alfalfa produced on the land is either fed to Happy Creek's cattle as winter feed or sold as a cash crop. Small grain crops are planted for rotation with alfalfa and are harvested as hay. That hay is either fed to cattle as feed supplement, or sold as a cash crop.

Happy Creek Ranch has 1,399 acres of deeded land that includes 855 irrigated acres. Approximately 765 of Happy Creek's irrigated acres are irrigated with the underground water rights that are the subject of this proceeding. The alfalfa produced on those 765 acres is essential to the economic viability of Happy Creek Ranch.⁴ Additionally, Happy Creek has the right to graze 95,126 acres of public land in the Happy Creek Grazing Allotment administered by the Bureau of Land Management, and 6,054 acres of public land in the Hog John Grazing Allotment administered by the Bureau of Indian Affairs.⁵

¹ SROA 654-657; SROA 652-653.

² Happy Creek Ranch is approximately 60 miles northwest of Winnemucca, Nevada, and about 40 miles southeast of Denio, Nevada.

³ SROA 654-657; SROA 635-638.

⁴ SROA 654-657; SROA 652-653.

⁵ SROA 635-638.

1 **II. Water Rights for Happy Creek Ranch Prior to 2007**

2 Settlers arrived in and around Happy Creek Ranch as early as 1865.⁶ Roads and corrals
3 depicted on the 1874 General Land Office ("GLO") survey maps indicate that Happy Creek Ranch
4 was used as part of a livestock operation prior to 1873.⁷ Development of the waters at Happy Creek
5 Ranch for irrigation purposes was initiated on or before 1886, and irrigation on the ranch has been
6 continually developed and improved since that date.⁸ Throughout the past 150 years, several proofs
7 were filed to document pre-statutory appropriation of water rights and multiple applications for water
8 were filed to appropriate additional water for Happy Creek for use on the ranch. Happy Creek has
9 operated the Happy Creek Ranch since 1992.⁹

10 This action involves the removal of the senior priorities from Happy Creek's water rights.
11 Permits 76237 through 76244 (the "Permits") represent change applications on Happy Creek's senior
12 groundwater rights. These eight groundwater rights represent 3,063 acre feet of water used by Happy
13 Creek Ranch for irrigation purposes. Happy Creek expended significant effort and beneficially used
14 these water rights long before Happy Creek filed the applications for Permits 76237 through 76244. In
15 fact, before the Permits were issued, the water rights were already certificated by the State Engineer
16 for irrigation on the much of the same land.¹⁰ This fact is illustrated by several overlay maps from the
17 state water rights files that Happy Creek has included in a supplemental record on appeal. The maps
18 show that the place of use identified in the Permits includes lands that already had certificated,
19 appurtenant water rights.¹¹

20 ///

21 ///

22 ///

23 ⁶ See "History of Use for Jackson Creek Ranch, Trout Creek Ranch, and Surrounding Area" on file with the Nevada
24 Division of Water Resources."

25 ⁷ SROA 1.

26 ⁸ In September, 1911, Albert A. Stock filed Proof of Appropriation of Water for Irrigation at Happy Creek Ranch under
27 Proof No. V01331 ("Proof") with a reference priority date of 1886.

28 ⁹ SROA 654-657.

¹⁰ *Id.*

¹¹ SROA 668-670; SROA 658-659.

The priority dates for Happy Creek's eight water rights were as follows:

Permit Number	Co-Mingled Base Right	Base Right	Original Priority
76237	Permit 60059 (Certificate 16214)	Permit 23550 (Certificate 7981)	12/15/1966
76238	Permit 60060 (Certificate 16215)	Permit 24928 (Certificate 8376)	03/03/1969
76239	Permit 60061 (Certificate 16216)	Permit 24927 (Certificate 8375)	03/03/1969
76240	Permit 60063 (Certificate 16217)	Permit 15824 (Certificate 4841)	10/08/1954
76241	Permit 60064 (Certificate 16218)	Permit 38957	11/06/1990
76242	Permit 60065 (Certificate 16219)	Permit 44504	09/25/1981
76243	Permit 60064 (Certificate 16220)	Permit 21317 (Certificate 6711)	06/05/1963
72444	Permit 60062 (71784)	Permit 24126 (Certificate 7950)	09/18/1967

A. Permit 76237

The application for Permit 76237 was filed on September 7, 2007, to change the place of use of a water right that was originally applied for on December 15, 1966 (Permit 23550), and was certificated on January 9, 1973 (Certificate 7981). Permit 23550 (Certificate 7981) was granted for the irrigation of 230.7 acres with 922 afa. The place of use of this perfected water right was then changed by Permit 60059. Permit 60059 was applied for on May 10, 1994, and was certificated on September 25, 2003 (Certificate 16214).¹² The priority date for this water right was December 15, 1966.

B. Permit 76238

The application for Permit 76238 was filed on September 7, 2007, to change the place of use for a water right that was originally applied for on March 3, 1969 (Permit 24928), and certificated on November 11, 1974 (Certificate 8376). Permit 24928 (Certificate 8376) was granted for the irrigation

¹² Permits 60059 through 60066 were filed to change the place of use of all of Happy Creek's groundwater irrigation rights in order to comingle all the groundwater water rights on the entire ranch to allow for more efficient and flexible use of the groundwater rights on the ranch property.

1 of 228.4 acres with 913 afa. The place of use of this perfected water right was then changed by Permit
2 60060. Permit 60060 was filed on May 10, 1994, and certificated on September 25, 2003 (Certificate
3 16215). The priority date of this water right was March 3, 1969.

4 **C. Permit 76239**

5 The application for Permit 76239 was filed on September 7, 2007 to change the place of use of
6 a water right that was originally applied for on March 3, 1969 (Permit 24927), and certificated on
7 November 19, 1974 (Certificate 8375). Permit 24927 (Certificate 8375) was granted for the irrigation
8 of 219.8 acres with 879 afa. The place of use of this perfected water right was then changed by Permit
9 60061. Permit 60061 was applied for on May 10, 1994, and certificated on September 25, 2003
10 (Certificate 16216). The priority date for this water right was March 3, 1969.

11 **D. Permit 76240**

12 The application for Permit 76240 was filed on September 7, 2007, to change the place of use of
13 a water right that was originally applied for on October 8, 1954 (Permit 15824), and certificated on
14 January 5, 1959 (Certificate 4841). Permit 15824 (Certificate 4841) was granted for the irrigation of
15 147.6 acres with 590 afa. An application for Permit 22866 was filed on November 24, 1965 to change
16 the point of diversion of Permit 15824 (Certificate 4841) and was certificated on April 25, 1968
17 (Certificate 6626) to irrigate of 135.8 acres with 543 afa. The place of use and period of use of this
18 perfected water right was then changed by Permit 60063 to irrigate different fields on the same ranch,
19 and was comingled with the water rights that were changed by Permits 60059 through 60066. Permit
20 60063 was applied for on May 10, 1994, and was certificated on September 25, 2003 (Certificate
21 16217). The priority for this water right was October 8, 1954.

22 **E. Permit 76241**

23 The application for Permit 76241 was filed on September 7, 2007, to change the place of use of
24 a supplemental water right that was originally applied for on September 5, 1979 (Permit 38957).
25 Permit 38957 was granted for the irrigation of 640 acres with 2,560 afa. The place of use of this
26 supplemental water right was changed by Permit 60064. Permit 60064 was applied for on May 10,

1 1994, and was certificated on September 25, 2003 (Certificate 16218). The priority date of this water
2 right was November 6, 1990.

3 **F. Permit 76242**

4 The application for Permit 76242 was filed on September 7, 2007, to change the place of use of
5 a water right that was originally applied for on September 25, 1981 (Permit 44504). Permit 44504 was
6 granted for the irrigation of 362.85 acres with 1,451 afa. Permit 44504 was then changed by Permit
7 60065. Permit 60065 was applied for on May 10, 1994, and was certificated on September 25, 2003
8 (Certificate 16219). The priority of this water right was September 25, 1981.

9 **G. Permit 76243**

10 The application for Permit 76243 was filed on September 7, 2007, to change the place of use of
11 a water right that was originally applied for on June 5, 1963 (Permit 21317), and was certificated on
12 July 17, 1968 (Certificate 6711). Permit 21317 (Certificate 6711) was granted for the irrigation of
13 40.7 acres with 162 afa. The place of use and period of use of this perfected water right was changed
14 by Permit 60066 to move the place of use to different fields and was comingled with the water rights
15 changed by Permits 60059 through 60066. Permit 60066 was applied for on May 10, 1994, and was
16 certificated on September 25, 2003 (Certificate 16220). The priority date for this water right was June
17 5, 1963.

18 **H. Permit 76244**

19 The application for Permit 76244 was filed on September 7, 2007 to change the place of use of
20 a water right that was originally applied for on September 18, 1967 (Permit 24126), and was
21 certificated on October 2, 1972 (Certificate 7950). Permit 24126 (Certificate 7950) was granted for
22 the irrigation of 119.0 acres with 476 acre feet. The place of use of this perfected water right was
23 changed by Permit 60062. Permit 60062 was applied for on May 10, 1994. Permit 60062 was
24 beneficially used along with the other comingled water rights at Happy Creek Ranch; however, a
25 change application was filed before the right could be certificated. Permit 71784 was applied for on
26 October 19, 2004, to correct the point of diversion of Permit 60062. The priority date for this water
27 right was September 18, 1967.

1 **III. Over-appropriation in Pine Forest Valley**

2 The Pine Forest Valley groundwater basin (Basin 029) is over-appropriated by 25,828.31 afa.
3 The perennial yield of Pine Forest Valley is 11,000 afa.¹³ On May 1, 1978, the State Engineer issued
4 Order 711 and designated portions of Pine Forest Valley pursuant to NRS 534.010 to NRS 534.190.¹⁴
5 On December 1, 1983, the State Engineer issued a curtailment order (Order 831) to deny any future
6 ground water applications for irrigation in the basin.¹⁵ In Order 831, the State Engineer noted that his
7 office's crop and pumpage inventories indicate that groundwater withdrawals in Pine Forest Valley are
8 in excess of the estimated recharge to the basin. The crop inventory for the 2015 irrigation season
9 indicates that 22,326 afa of groundwater was pumped to irrigate 6,446 acres.¹⁶ Since the perennial
10 yield of the basin is 11,000 acre feet per year, at least half of the water rights that are used in Pine
11 Forest Valley would be curtailed if the basin were regulated by priority.

12 **IV. Happy Creek's Water Rights Professional**

13 In 1994, Happy Creek hired John H. Milton III of Desert Mountain Surveying to prepare and
14 file water rights applications, permits, and all related items with the Nevada Division of Water
15 Resources. Additionally, Happy Creek utilized Mr. Milton's expertise for consultation concerning the
16 development and preservation of water rights, surveying services, water rights maps, change
17 applications, proofs of completion, proofs of beneficial use, and requests for extension of time
18 regarding those water rights filings. Mr. Milton routinely prepared and signed all the documents filed
19 with the DWR on behalf of Happy Creek.¹⁷

20 Mr. Milton has been a licensed Professional Land Surveyor ("PLS"), license number 005271,
21 since February 9, 1980.¹⁸ During his licensure he also spent twelve years as a Humboldt County
22

23 ¹³ SROA 667.

24 ¹⁴ SROA 38-40.

24 ¹⁵ SROA 62.

25 ¹⁶ The 2015 irrigation seasons is within a drought year and is representative of a high amount of groundwater pumping
since surface water sources were limited and supplemental groundwater was used to replace the unavailable surface water
rights.

26 ¹⁷ SROA 654-657.

27 ¹⁸ SROA 602.

1 Commissioner and has served as the Humboldt County Commission Chair out of Winnemucca,
2 Nevada.

3 When Mr. Milton was hired, Happy Creek owned the original base rights that were used to
4 flood irrigate Happy Creek Ranch. One of the first things Milton did for Happy Creek Ranch was to
5 file the 1994 applications for Permits 60059 through 60066 to comingle the water on Happy Creek
6 Ranch. Since 1994, Mr. Milton has made many filings with the DWR as agent for Happy Creek, and
7 Mr. Milton never missed a filing deadline prior to June 2016.¹⁹

8 **V. Ranch Improvements at Happy Creek**

9 In 2007, Happy Creek began a project to further improve the efficiency of its irrigation system.
10 Happy Creek planned the addition of three center-pivot irrigation systems which, when combined with
11 its existing two center-pivot irrigation systems, would converted most of the irrigated acres to center-
12 pivots. Pivot irrigation provides a more effective method for farming. First, pivot irrigation reduces
13 the amount of water needed on the land. Second, it allows a farmer to irrigate more acreage uniformly
14 with less work. Third, pivot irrigation allows more crop development than flood irrigation. Overall,
15 pivot irrigation results in a more efficient operation while reducing water use.

16 As part of the improvement project, Mr. Milton recommended that Happy Creek change the
17 place of use with respect to all of Happy Creek's water rights on its 765 acres of irrigated land.²⁰ To
18 do so, Happy Creek filed change applications to change Permits 60059 through 60066. These change
19 applications were granted as Permits 76237 through 76244. Mr. Milton prepared, signed, and filed
20 each of the change applications as the agent for Happy Creek, and did not miss a filing deadline with
21 respect to Permits 76237 through 76244 until the one that is at issue here.

22 The initial phase of improving the water system involved the removal of fences, the leveling of
23 dirt ditches, the removal of the risers for gated pipes that were used in the flood irrigation practices on
24 the fields, trench work to install pipelines and powerlines, and ultimately the purchase and installation
25

26 ¹⁹ *Id.*

27 ²⁰ SROA 654-657; SROA 639-651.
28

1 of center-pivot systems.²¹ The second phase of the improvements required the relocation of a ranch-
2 house trailer and hay stack yard, the removal of the septic system, bottomless watering tank, and trees,
3 and the purchase and installation of additional center-pivot systems.²²

4 Additionally, all of the six wells that are used in conjunction with the Permits for the irrigation
5 of the crops require maintenance, repair and improvements in the ordinary course.²³ Two irrigation
6 wells were replaced, one in 2006 and one in 2014, with newly re-drilled wells and new pumps and
7 related equipment. Another well required extensive reworking in order to maintain pumping
8 efficiencies.

9 Happy Creek spent over seven hundred thousand dollars (\$700,000.00) on maintenance and
10 improvements of water diversions.²⁴ These moneys were spent so Happy Creek could use its
11 groundwater pursuant to Permits 76237 through 76244.²⁵ In addition, Happy Creek paid Mr. Milton
12 \$53,000.00 since 1996 for his services to maintain the entirety of its water rights.²⁶ Happy Creek also
13 has paid all statutory filing fees, permit fees, and other fees as required by the State Engineer.

14 **VI. Required filings for Permits 76237 through 76244**

15 Happy Creek diligently sought to obtain and document the data needed to prepare and file the
16 Proofs of Beneficial Use ("PBUs") with the State Engineer's Office.²⁷ The PBUs for the Permits
17 required meter readings for the six wells for a minimum of 12 consecutive months.²⁸ Happy Creek
18 developed a procedure to record on a monthly basis the readings from the totalizing flow meters on its
19 irrigation wells.²⁹ One or more of the totalizing flow meters on the six irrigation wells failed during
20 the course of each irrigation season from 2012 through 2016. Less than a complete set of data for all
21 of the wells was available during any one 12 month period. As a result, Mr. Milton filed Extensions of

22 _____
23 ²¹ SROA 636-637.

24 ²² *Id.*

25 ²³ *Id.*

26 ²⁴ SROA 654-657; SROA 652-653.

27 ²⁵ SROA 652-653.

28 ²⁶ *Id.*

²⁷ SROA 635-638.

²⁸ SROA 660-666, Question 10; SROA 635-638.

²⁹ SROA 635-638.

1 Time ("EOTs") for filing the proofs in order to obtain the required 12 consecutive months of meter
2 readings.

3 From when he was hired in 1994 through 2016, Mr. Milton filed all of the required paperwork
4 to keep all of Happy Creek's water rights in good standing.³⁰ However, in 2016, Mr. Milton missed
5 the deadline for filing a PBU or EOT for the Permits. In 2010 Proofs of Completion of the works of
6 diversion were prepared, signed and timely filed by Mr. Milton with respect to these permits. In 2012,
7 2013, 2014, and 2015, PBUs for Permits 76237 through 76244 were due on the same date, April 29.
8 In each of those four years, Mr. Milton prepared, signed, and filed timely requests for extensions of
9 time for each of these permits on behalf of Happy Creek.³¹

10 On May 19, 2016, the State Engineer mailed, via certified mailing, the final notice for the
11 Permits to Happy Creek ("Final Notice").³² This notice informed Happy Creek that the PBUs, or
12 EOTs, must be filed within 30 days of May 19, 2016. Otherwise, Happy Creek's Permits would be
13 cancelled.³³ This notice was also e-mailed to Mr. Milton by the State Engineer.³⁴ Happy Creek
14 received the notice on approximately May 23, 2016.³⁵ On May 23, 2016, Happy Creek e-mailed the
15 Final Notice to Mr. Milton.³⁶ Mr. Milton did not timely file the required paperwork for the Permits
16 with the State Engineer. He did, however, on June 13, 2016, timely file the appropriate paperwork for
17 three stockwater rights that are owned by Happy Creek.³⁷

18 **VII. State Engineer's Cancellation of the Permits and Removal Of Senior Priority**

19 On July 8, 2016, Mr. Milton realized that he had missed the deadline for filing PBUs or
20 EOTs.³⁸ On behalf of Happy Creek, Mr. Milton petitioned the State Engineer to reinstate the Permits

21
22 ³⁰ SROA 317-325; SROA 331-338; SROA 344-351; SROA 355-358; SROA 364-371; SROA 377-384; SROA 390-397;
SROA 403-417; SROA 474-480; SROA 481; SROA 491; SROA 494; SROA 499-505; SROA 506; SROA 511-518;
SROA 519; SROA 523-530; SROA 531; SROA 555-562; SROA 563.

23 ³¹ SROA 499-505; SROA 511-518; SROA 523-530; SROA 555-562.

24 ³² SE ROA 6.

25 ³³ NRS 533.395; NRS 533.410.

26 ³⁴ SE ROA 6.

27 ³⁵ SE ROA 7.

28 ³⁶ SE ROA 19; SROA 617-626.

³⁷ SROA 595-599.

³⁸ SROA 600.

1 on July 11, 2016.³⁹ At that time, the State Engineer had not officially cancelled the Permits. On July
2 19, 2016, the State Engineer issued a Notice of Cancellation of the Permits.⁴⁰ On September 9, 2016,
3 the State Engineer confirmed receipt of the written petition requesting the reinstatement of the Permits
4 and scheduled a hearing for October 12, 2016.⁴¹

5 The State Engineer held the reinstatement hearing regarding the Permits on October 12, 2016.
6 Mr. Milton and Happy Creek's General Manager, Glen Thiede, appeared at the reinstatement
7 hearing.⁴² When Mr. Milton was questioned about the cancellation of Happy Creek's Permits, he
8 responded that he failed to make timely filings because the notices were sent to him when he was
9 updating his computer to the new Windows operating program, and he claimed he lost quite a few
10 emails during that update.⁴³ He stated that these problems interfered with his ability to receive e-
11 mails, including the email from DWR with the final notice letter.⁴⁴

12 At the reinstatement hearing, the State Engineer ruled that the cancellation of the Permits
13 would be rescinded contingent on the filing of PBUs or EOTs.⁴⁵ Mr. Milton promptly filed EOTs on
14 October 17, 2016.⁴⁶ In the EOTs, Mr. Milton recognized that "at least 2400 acre feet" of Happy
15 Creek's water rights under the Permits were placed to beneficial use in the 2015 irrigation season.⁴⁷
16 Based upon this information, the State Engineer granted Happy Creek's EOTs.⁴⁸

17 On November 1, 2016, the State Engineer issued a written disposition regarding the Permits
18 and their reinstatement.⁴⁹ The State Engineer reinstated the permits, but changed the priority date of
19 the water rights to the date that Happy Creek filed its written petition for reinstatement.⁵⁰ As such, the
20 priority date for all eight Permits was changed to July 11, 2016. This appeal followed.

21 ³⁹ SE ROA 8-9.

22 ⁴⁰ SE ROA 11.

23 ⁴¹ SE ROA 13.

24 ⁴² SROA 635-638.

25 ⁴³ *Id.*

26 ⁴⁴ *Id.*

27 ⁴⁵ SE ROA 23; SE ROA 52.

28 ⁴⁶ SE ROA 23; SE ROA 21.

⁴⁷ SE ROA 21.

⁴⁸ SE ROA 24.

⁴⁹ SE ROA 23.

⁵⁰ NRS 533.395(3).

STANDARD OF REVIEW

A party aggrieved by an order or decision of the State Engineer is entitled to have the order or decision reviewed, in the nature of an appeal, pursuant to NRS 533.450(1). The role of the reviewing court is to determine if the decision was arbitrary or capricious and thus an abuse of discretion, or if it was otherwise affected by prejudicial legal error.⁵¹ A decision is arbitrary and capricious if it is contrary to law. With regard to factual findings, the court must determine whether substantial evidence exists in the record to support the State Engineer's decision.⁵² With regard to purely legal questions, the standard of review is de novo.⁵³ Although a statute restricts the actions of the State Engineer, this does not affect the power of the district court to grant equitable relief to the petitioner when warranted.⁵⁴

LEGAL BACKGROUND

An application must be filed with the State Engineer to appropriate water or to change the point of diversion, manner of use, or place of use of an existing water right.⁵⁵ The State Engineer may issue a permit to authorize the requested beneficial use of water.⁵⁶ Permit conditions include deadlines for filing a proof of completion of the proposed works of diversion (a "POC") and for placing the water to beneficial use (a "PBU").⁵⁷ The State Engineer then reviews the proof of beneficial use, and if it is satisfactory, he issues a certificate.⁵⁸ A water right that is certificated is considered to be perfected property right and can only be lost by forfeiture.⁵⁹

Nevada adopted the basis for its current water law in the early 1900s, and that water law did not provide the State Engineer with any discretion regarding the cancellation of water permits when

⁵¹ *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 751, 918 P.2d 667, 702 (1996), citing *Shetakis Dist. v. State, Dep't Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992).

⁵² *Id.*; *State Eng'r v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991); *Revert v Ray*, 95 Nev. at 786, 603 P.2d at 264.

⁵³ *In re Nevada State Eng'r Ruling No. 5823*, 128 Nev. Adv. Op. 22, 9-10, 277 P.3d 449, 453 (2012).

⁵⁴ *State Eng'r v. Am. Nat. Ins. Co.*, 88 Nev. 424, 426, 498 P.2d 1329, 1330 (1972) citing *Donoghue v. Tonopah Oriental Mining Co.*, 45 Nev. 110, 198 P. 553, 555 (1921).

⁵⁵ NRS 533.325.

⁵⁶ NRS 533.370.

⁵⁷ NRS 533.380; NRS 533.390; NRS 533.425.

⁵⁸ NRS 533.425.

⁵⁹ *Id.*

1 neither a POC, PBU, nor EOT is filed.⁶⁰ From 1913 until 1981, the only remedy from cancelation was
2 to appeal the State Engineer's decision to district court, or file an application for a new appropriation
3 of water.

4 The Nevada Supreme Court ruled that this remedy was not fair or equitable. In *American*
5 *National*, the State Engineer canceled a permit for a water right that had been used to cultivate land.⁶¹
6 The permit was canceled because the permittee failed to timely file the required PBU. In that case, the
7 water was being used, land was being cultivated, and even though all prior proofs were filed on time,
8 the proof in question "simply was not filed with the State Engineer."⁶² The State Engineer argued that
9 the mandatory language contained within NRS 533.410 required him to cancel the permit even though
10 no other person would be damaged if the permittee was allowed to use the water. The Court agreed
11 with the State Engineer that the statute's mandatory language required him to cancel the permit. But
12 the Court held that the district court properly exercised its equitable power and overturned the State
13 Engineer's decision. In doing so the Court remarked that when the State Engineer is placed "in an
14 awkward and unenviable position" that requires the strict enforcement of mandatory provisions of
15 state water law, his determinations are subject to reversal by a court's exercise of equitable power.⁶³

16 After *American National*, the State Engineer proposed a change to NRS 533.395 in 1981. The
17 State Engineer's 1981 proposal was adopted and remains the law today. Now, if a water right holder
18 fails to file a required POC or PBU, and does not file a request for an EOT, the water right is subject to
19 cancellation. If a permit is cancelled, the holder of the permit may file a written petition with the State
20 Engineer requesting a review of the cancellation. After receiving and considering evidence, the State
21 Engineer may affirm, modify, or rescind the cancellation. If the State Engineer modifies or rescinds
22 the cancellation of the permit, NRS 533.395(3) states, "the effective date of the appropriation under

23
24 ⁶⁰ 1913 Nev. Stat. § 67 ("[s]hould any applicant fail, prior to the date set for such filing in his permit to file with the state
25 engineer, proof of commencement of work, or should the said applicant fail to file within thirty (30) days of the date set
prior to which proof of completion of the work must be made, said proof of completion of work, as hereinbefore provided .
... the said permit shall be canceled and no further proceedings shall be had thereunder . . .")

26 ⁶¹ *State Eng'r v. Am. Nat. Ins. Co.*, 88 Nev. 424, 498 P.2d 1329 (1972).

27 ⁶² *Id.* at 426.

28 ⁶³ *Id.*

1 the permit is vacated and replaced by the date of the filing of the written petition with the State
2 Engineer.”

3 This removal of the senior priority date by the State Engineer of a cancelled permit was
4 recently challenged in *Benson v. State Engineer*.⁶⁴ In *Benson*, as in this case, the permittee sought
5 equitable relief from the removal of its priority date.⁶⁵ The Court refused to grant equitable relief
6 because the Bensons failed to exhaust the administrative remedies provided in NRS 533.395(2)-(3)
7 which allows the filing of a written petition with the State Engineer to reinstate their permits.⁶⁶
8 Unlike *Benson*, Happy Creek exhausted the administrative requirements of NRS 533.395. While the
9 cancellation of the Permits was rescinded by the State Engineer, Happy Creek lost the senior priority
10 of its water rights and now faces the complete loss of its water rights in a future curtailment action or
11 conflicts analysis.

12 ARGUMENT

13 I. Equitable Relief Should Be Granted.

14 A. The Equitable Power of Courts

15 Judicial power is the authority to hear and determine justiciable controversies and includes the
16 authority to enforce any valid judgment, decree or order.⁶⁷ The judicial function of district judges and
17 district courts is the exercise of judicial authority to hear and determine questions in controversy. This
18 is expressly authorized in the jurisdictional provision of district courts in the Nevada Constitution, art.
19 VI, § 6. District courts are granted the authority to exercise powers that are reasonably incidental to
20 the fulfillment of, and are inherent in, the much broader judicial powers in the Constitution.⁶⁸ The
21 judiciary's inherent power is derived from at least three sources: (1) the separation of powers doctrine
22 (2) the state constitution, and (3) the common law.

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24
25 ⁶⁴ *Benson v. State Eng'r*, 131 Nev. Adv. Op. 78, 358 P.3d 221 (2015).

26 ⁶⁵ *Id.* at 227.

27 ⁶⁶ *Id.* at 228.

28 ⁶⁷ *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967); Nev. Const. art. 6 §1, 6.

⁶⁸ *Id.*; Nev. Const. art. III, § 1; *Id.* at art. VI, § 1; *Id.* at art. III, § 1; *Id.* at art. VI, §§ 1, 5, 6.

1 The doctrine of separation of powers holds that each branch of government is independent
2 from the others and cannot exercise the powers of the two other branches. Regarding such discord
3 between the legislative and judicial branches of government, it is well settled that the judiciary retains
4 the authority to “hear and determine justiciable controversies,” as a coequal power to the legislature’s
5 broad authority to enact, amend, and repeal legislation.⁶⁹ And as one commentator aptly explained
6 this distinction, “[t]o declare what the law *is or has been* is judicial power; to declare what the
7 law *shall be* is legislative.”⁷⁰

8 The Constitution mandates that the inherent powers of the judiciary are out of the reach for any
9 amendment by the legislature.⁷¹ The Nevada Constitution ensures that procedural laws enacted by the
10 legislature may not unreasonably inhibit the powers reserved to the people in the articles of the State
11 Constitution. The district court’s power to act in equity is also clearly demonstrated in Nev. Const. art
12 VI, § 6, which provides:

13 The district courts in the several judicial districts of this state shall
14 have *original jurisdiction in all cases in equity*; also, in all cases at law,
15 which involve the title of the right of possession to, or the possession of
16 real property. They shall also have final appellate jurisdiction in cases
arising in justices’ courts, and such other inferior tribunals as may be
established by law.⁷²

17 Finally, the right to act in equity is a long standing right of the district courts.⁷³ This is
18 demonstrated through the merging of the court of chancellors with the district courts,⁷⁴ whereby the
19 equitable powers of the court of chancellors was transferred to the district courts.⁷⁵ In this case, Happy
20 Creek requests that the Court exercise this equitable power to restore the senior priority of its water
21 rights.

22 ///

23 ⁶⁹ *Halverson*, 123 Nev. at 260, 163 P.3d at 439 (quoting *Galloway*, 83 Nev. at 20, 422 P.2d at 242).

24 ⁷⁰ Thomas M. Cooley, *Constitutional Limitations* 191 (8th ed.1927).

24 ⁷¹ Nev. Const. art. VI, § 6; *Berkson v. LePome*, 126 Nev. 492, 500, 245 P.3d 560, 565 (2010).

25 ⁷² Emphasis added.

25 ⁷³ *Willard v. Tayloe*, 75 U.S. 557, 560 (1869) (*holding* “[w]here specific execution which would work hardship when
26 unconditionally performed, would work equity when decreed on conditions, it will be decreed conditionally.”).

26 ⁷⁴ *Chicago, B. & Q.R. Co. v. Reno*, 113 Ill. 39, 40 (1885).

27 ⁷⁵ *Id.*

1 **B. Equitable Relief in Water Cases**

2 The Nevada Supreme Court has continuously held that the “district court’s power to grant
3 equitable relief is not affected by a determination of the State Engineer that a water rights permit was
4 correctly cancelled.”⁷⁶ In *Curtis Park*, the Nevada Supreme Court set a bright line rule that makes it
5 clear that equitable relief is available from a State Engineer decision when the action of the State
6 Engineer is mandatory.⁷⁷

7 **1. American National**

8 In *American National*, the Nevada Supreme Court held that the district court properly granted
9 equitable relief even though the water right holder failed to file a timely proof of beneficial use.⁷⁸ The
10 Court reinstated the water right with its original priority date. The Court upheld the district court’s
11 grant of equitable relief, in part based on the permittee’s expenditure of \$35,000 to improve the land
12 because this demonstrated diligent protection of the water right.⁷⁹ The Court further analyzed the
13 following factors: (1) The State Engineer does not plan to grant new permits in the near future, (2) no
14 other person would be damaged, (3) tax revenues to Humboldt County would increase if the land was
15 cultivated, and (4) cancellation of the permit would forfeit the permittee’s water rights.⁸⁰

16 **2. Bailey**

17 In *Bailey*, the State Engineer sent a notice to the Baileys stating that proof of beneficial use
18 must be received by the State Engineer within 30 days or the Baileys’ water rights permit would be
19 cancelled.⁸¹ The notice was returned to the State Engineer marked “[u]nclaimed,”⁸² and the State
20 Engineer cancelled the Bailey’s water rights permit. But the State Engineer did not send a notice of
21 cancellation to the Baileys.⁸³ The Baileys learned of the cancellation of their water right permit

22
23 ⁷⁶ *State v. Morris DeLee Revocable Trust*, 281 P.3d 1221 (Nev. 2009) citing *Bailey v. State of Nevada*, 95 Nev. 378, 381-2,
594 P.2d 734, 736 (1979); *State Engineer v. American Nat’l Ins. Co.*, 88 Nev. 424, 426, 498 P.2d 1329, 1330 (1972).

24 ⁷⁷ *Las Vegas Water Valley Dist. v. Curtis Park Manor Water Users Ass’n*, 98 Nev. 275, 277-78, 646 P.2d 549 (1982).

25 ⁷⁸ *State Eng’r v. American Nat’l Ins. Co.*, 88 Nev. 424, 498 P.2d 1329 (1972).

26 ⁷⁹ *Id.*

27 ⁸⁰ *Id.*

28 ⁸¹ *Id.* at 380, 594 P.2d at 736.

⁸² *Id.*

⁸³ *Id.*

1 shortly after it was cancelled and asked the State Engineer if the right could be reinstated.⁸⁴ Upon
2 advice of the office of the State Engineer, the Baileys filed an application for a new water rights
3 permit.⁸⁵ The State Engineer denied the Baileys' application, and the office engineer who had advised
4 the Baileys testified that he knew no new permits were being issued at the time he advised the Baileys
5 to submit a new application.⁸⁶ Based on these facts, the district court disallowed the challenge of the
6 cancellation of the original permit, but ordered that the new application be approved.⁸⁷ This decision
7 resulted in the water rights being reinstated with the priority date of the new application. The Baileys
8 appealed this decision to the Supreme Court. Ultimately, the Supreme Court fully reinstated the
9 Baileys' original water right with its original priority date.⁸⁸

10 3. Engelmann

11 In *Engelmann*, the Nevada Supreme Court held that although the water statute stated permits
12 "shall" be cancelled by the Nevada State Engineer, that directive did not affect the power of the
13 district court to grant equitable relief to a permittee when warranted.⁸⁹ In *Engelmann*, the permittee
14 was aware of the requirement to file for an extension of time or proof of beneficial use within one year
15 of the State Engineer issuing his permits.⁹⁰ Subsequently, the State Engineer informed the permittee
16 by certified letter that he had 30 days to file a PBU or EOT on his water rights.⁹¹ A second notice was
17 returned to the State Engineer as undeliverable.⁹² Although permittee had knowledge that a document
18 was due a year from the first notice and did not file one, the Nevada Supreme Court held that the lower
19 court should consider whether the permittee failed to exercise diligence in the protection of his water
20 rights.⁹³ A permittee's prior knowledge of a future filing requirement with the State Engineer was not
21 dispositive to whether equitable relief could be granted if other evidence showed a permittee diligently

22 ⁸⁴ *Id.*

23 ⁸⁵ *Id.* at 380, 594 P.2d at 736.

24 ⁸⁶ *Id.*

25 ⁸⁷ *Id.* at 379.

26 ⁸⁸ *Id.* at 385-86.

27 ⁸⁹ *Engelmann v. Westergard*, 98 Nev. 348, 351, 647 P.2d 385, 387 (1982).

28 ⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Engelmann v. Westergard*, 98 Nev. 348, 352, 647 P.2d 385, 388 (1982).

1 protected their water rights.⁹⁴ Based on these facts, the Supreme Court reinstated the Englemanns'
2 water right with its original priority date.

3 **4. Principles for exercising equitable relief in water cases**

4 **a. Mandatory Duty of State Engineer**

5 The Supreme Court has held that equitable relief is appropriate when the State Engineer has no
6 discretion under a statute because he has been assigned a mandatory duty by the legislature. In *Curtis*
7 *Park*, the Supreme Court determined the State Engineer was applying a discretionary act.⁹⁵ When the
8 State Engineer is acting in a discretionary manner, the district court is without authority to grant
9 equitable relief. In this case, however, NRS 533.395 places a mandatory duty on the State Engineer
10 and he has no discretion under the terms of the statute. When the Legislature uses mandatory
11 language, the language must be strictly adhered to.⁹⁶ The mandatory language in NRS 533.410
12 provides that a permit 'shall' be cancelled by the State Engineer when the permittee fails to file proof
13 of application of water to beneficial use. The State Engineer is authorized to rescind such a
14 cancellation under NRS 533.395(2); however, he is required to vacate the priority date of the
15 reinstated water right and replace it with the date of filing of the written petition that requested review
16 of the cancellation of the water right under NRS 533.395(3).

17 The statutory directives involving cancelation do not affect the power of the district court to
18 grant equitable relief to the permittee when warranted.⁹⁷ Due to the mandatory nature of NRS 533.395
19 and NRS 533.410, this Court can award equitable relief to Happy Creek.

20 **b. Factors supporting equitable relief**

21 The Supreme Court has considered certain factors when considering whether to grant equitable
22 relief and reinstate cancelled permits with their original priorities. Those factors include: (1) the
23

24 ⁹⁴ *Id.*

25 ⁹⁵ *Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass'n.*, 98 Nev. 275, 646 P.2d 549 (1982).

26 ⁹⁶ *American Nat'l Ins. Co.*, 88 Nev. at 426, 498 P.2d at 1330 (referring to NRS 533.410 which requires the State Engineer
27 "to summarily cancel a permit if the provisions of that statute have not been strictly adhered to").

28 ⁹⁷ *State Eng'r v. American Nat'l Ins. Co.*, 88 Nev. 424, 426, 498 P.2d 1329, 1330 (1972). (referring to NRS 533.410 which
requires the State Engineer "to summarily cancel a permit if the provisions of that statute have not been strictly adhered to").

beneficial use of the water, (2) improvements paid for and constructed, (3) timely filing of other filings by the permittee, (4) a professional being hired and entrusted with the task, (5) no harm, and (6) benefit to the community.

C. Importance of senior priority

1. Priority of water rights are an important real property interest.

In Nevada, water rights are constitutionally protected property rights.⁹⁸ These rights consist of a quantity of water that may be appropriated from a particular source and the priority date assigned to the water right.⁹⁹ Each water right permit is issued subject to all existing senior rights to the same source of water.¹⁰⁰ The most basic tenant of prior appropriation is that the one who is first in time is first in right. The one who first appropriates water has the sole right to use that water to the exclusion of any subsequent appropriator “to the full extent of his appropriation.”¹⁰¹ Junior water right users are subject to curtailment of their water rights.¹⁰² A senior appropriator may lawfully demand from junior appropriators that “he have at his headgate” water needed to supply his water right.¹⁰³ Junior appropriators are only allowed to divert water at such times as when all prior appropriations are being met, as those conditions existed when the junior appropriations began.¹⁰⁴

These principles are codified in Nevada law by NRS 534.110. This statute allows the State Engineer to grant a junior groundwater right, but such right can only be granted as “long as the rights

⁹⁸ *Application of Filippini*, 66 Nev. 17, 21-22, 202 P.2d 535, 537 (1949)(a right to use water “will be regarded and protected as real property.”); *Nenzel v. Rochester Silver Corp.*, 50 Nev. 352, 259 P. 632, 634 (1927) (stating, “[i]t is well settled that a water right is realty).

⁹⁹ *Kobobel v. State, Dept. of Natural Resources*, 249 P.3d 1127, 1130 (Colo. 2011)(“well owners neither hold title to the water in their wells, nor do they have an unlimited right to use water from their wells. *What they possess is a legally vested priority date* that entitles them to pump a certain amount of tributary groundwater from their wells for beneficial use.”)(emphasis added); *Whitmore v. Murray City*, 107 Utah 445 (1944)(“[p]roperty rights in water consist not alone in the amount of the appropriation, but, also, in the priority of the appropriation. It often happens that *the chief value of an appropriation consists in its priority over other appropriators from the same natural stream.*”)(internal quotations and citations omitted, emphasis added).

¹⁰⁰ *Kobobel v. State, Dept. of Natural Resources*, 249 P.3d 1127, 1130 (Colo. 2011) (“well owners hold no compensable right to use water outside the priority system”).

¹⁰¹ *Senior v. Anderson*, 130 Cal. 290, 62 P. 563 (Cal. 1900).

¹⁰² NRS 534.110(6); NRS 534.120(1).

¹⁰³ *Ryan v. Gallio*, 52 Nev. 330, 286 P. 963, 964 (1930), *Vogel v. Minnesota Canal & Reservoir Co.*, 47 Colo. 534, 107 P. 1108 (Colo. 1910).

¹⁰⁴ *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

1 of holders of existing appropriations can be satisfied.”¹⁰⁵ For instance, an explicit condition of the
2 junior permits granted for groundwater pumping in Pine Forest Valley is that each right is issued
3 “subject to existing rights on the source.”¹⁰⁶

4 **2. The State Engineer is required to protect senior water rights.**

5 Prior appropriation requires the State Engineer to protect senior water rights. Across the
6 western states, a senior water right holder is protected against a subsequent appropriator. A senior
7 water right holder is entitled to the specific quantity of water that was actually diverted and applied to
8 a beneficial use.¹⁰⁷ This principle was made clear when the Oregon Supreme Court determined that
9 removal of priority is an impairment of a senior water right.¹⁰⁸

10 **D. Happy Creek is entitled to equitable relief.**

11 In *American National*, the Supreme Court recognized the necessity to grant equitable relief
12 when the permittee had expended a large amount of money in maintaining the water rights. In *Bailey*,
13 equitable relief was granted to the permittee when no new water rights would be issued in the basin.
14 In *Engelmann*, the Supreme Court remanded the case to the District Court to determine whether the
15 permittee had exercised due diligence in protection of his water right, and thus, whether an equitable
16 remedy would apply. All three factors from these cases are present in Happy Creek’s case.

17 First, Happy Creek has expended more than \$700,000.00 on maintenance and improvements of
18 its water rights.¹⁰⁹ This amount does not include the funds in excess of \$52,000.00 that Happy Creek
19 paid its agent, Mr. Milton, to maintain its water rights.¹¹⁰ Both the improvements to the diversion
20 structures and the payment to a water rights surveyor to maintain the water rights demonstrate Happy
21 Creek’s diligence in maintaining its water rights. Furthermore, but for the change applications filed by
22

23 ¹⁰⁵ NRS 534.110(1).

24 ¹⁰⁶ See NRS 533.040; *Salmon River Canal Co., Ltd. v. Bell Brand Ranches*, 564 F.2d 1244 (9th Cir. 1977).

25 ¹⁰⁷ *Ortel v. Stone*, 119 Wash. 500, 205 P. 1055 (Wash. 1922); see NRS 533.070(1) (quantity of water right determined by
beneficial use).

26 ¹⁰⁸ *In re Alhouse Creek*, 85 Or. 224, 162 P. 1072 (Or. 1917).

27 ¹⁰⁹ SROA 654-657; SROA 652-653.

28 ¹¹⁰ SROA 652-653.

1 Mr. Milton in 2007, Happy Creek's water rights would have remained certificated and would not have
2 been subject to cancellation.

3 Second, similar to the *American National* and *Bailey* factors, the State Engineer will not issue
4 new permits in the future for irrigation water rights.¹¹¹ Any curtailment by priority by the State
5 Engineer will effectively forfeit Happy Creek's water rights. Prior to the removal of its senior priority,
6 Happy Creek's Permit No. 76240 was the oldest priority groundwater permit in the basin. Happy
7 Creek's once senior water rights are now the most junior rights in the basin.¹¹² This means that Happy
8 Creek's Permit 76240 went from the last water right that could have been cut in a curtailment action
9 (if *all* pumping in the basin were to be ordered to cease) to the first water right that would be cut in a
10 curtailment action (if *any* pumping in the basin is ordered to be reduced). By losing its senior priority
11 status, Happy Creek has lost any and all protection its senior water rights would receive in a priority
12 analysis.

13 The third factor reviewed by the Nevada Supreme Court is the water user's exercise of
14 diligence in maintaining the water resource. Happy Creek spent over 20 years building water
15 diversions, drilling wells, and maintaining their water right.¹¹³ The 2007 change applications were
16 applied for to more efficiently develop the land.¹¹⁴ Happy Creek placed all the water under the
17 permits to beneficial use and has produced crops on its 765 acres of irrigated land continuously since
18 1992.¹¹⁵ Happy Creek was advised by Mr. Milton that the proofs of beneficial use for Permits 76237
19 through 76244 would need to be filed simultaneously and would need to cover the identical 12 month
20 period of use.¹¹⁶ Despite its continual efforts to record the necessary data, one or more totalizing flow
21 meters on the six irrigation wells did not work from 2012 through 2016, and less than a complete set
22 of data for all of the permits was available.¹¹⁷ For that reason, instead of filing PBUs, on behalf of

23 ¹¹¹ SROA 62.

24 ¹¹² SROA 535-549.

25 ¹¹³ SROA 654-657.

26 ¹¹⁴ *Id.*

27 ¹¹⁵ *Id.*

28 ¹¹⁶ SROA 635-638; SROA 639-651.

¹¹⁷ SROA 635-638.

1 Happy Creek, Mr. Milton timely filed EOTs in 2012 through 2015. The meters were promptly
2 replaced when substantial work was performed on two wells in recent years.¹¹⁸ Instead of filing
3 PBU, however, Happy Creek filed EOTs because accurate well readings for pumpage were not
4 available.

5 All of these actions demonstrate diligent maintenance of Happy Creek's water rights.
6 Additionally, Happy Creek has spent a large amount of money to hire a professional to maintain its
7 water rights. The hiring of Mr. Milton, a licensed professional, demonstrates that Happy Creek
8 intended to diligently maintain its water rights. Happy Creek has demonstrated every factor that
9 requires the granting of equitable relief in this instance, including the following.

10 **1. Happy Creek's water rights were previously certificated**

11 All of Happy Creek's Permits have previously been certificated under the base rights. Since
12 the first appropriation of groundwater irrigation rights in 1954, Happy Creek and its predecessors in
13 interest have been diligently applying its acquired groundwater rights to beneficial use. The
14 groundwater irrigation rights on Happy Creek Ranch were originally appropriated and certificated in
15 stages on various portions of the ranch in the 1950s through the 1970s. In 1994, change applications
16 60059 through 60066 were filed against the original appropriations to comingle the groundwater rights
17 on Happy Creek Ranch "in order to achieve the most efficient methods of irrigation."¹¹⁹ Permits
18 60059 through 60066 were fully beneficially used, and the majority of the comingled rights were again
19 certificated in 2003.

20 The only reason these Permits were subjected to the possibility of cancellation was due to the
21 filing of change applications against the certificated base rights that was advised by Mr. Milton to
22 allow for the installation of additional pivots to replace flood irrigation.¹²⁰ The Permits are changes of

23 ¹¹⁸ *Id.*

24 ¹¹⁹ SROA 312-314; SROA 326-328; SROA 339-341; SROA 352-354; SROA 359-361; SROA 372-374; SROA 385-387;
SROA 398-400.

25 ¹²⁰ SROA 419. Base rights to Permits 76243, 76245-76243 were certificated water rights. The base right to Permit 76244
26 was not certificated because the change application was filed on the base right before its Proof of Beneficial Use was due;
27 however, the acreage of that base right was included in the culture map for the certificated water rights as being fully
28 beneficially used. SROA 315-316; SROA 329-330; SROA 342-343; SROA 362-363; SROA 375-376; SROA 388-389;
SROA 401-402.

1 existing perfected water rights within the same general place of use to irrigate 765.9 acres.¹²¹ While
2 the majority of the place of use of the base rights remained unchanged, change applications were filed
3 against the whole of the base rights. This all-encompassing change allowed for easy mapping and
4 clean paperwork, but did not involve any large change in the historic use of the water rights. Yet, the
5 change applications burdened Happy Creek with the need to file new proofs to re-perfect its previously
6 perfected base rights. This non-perfected status created the circumstance in which Happy Creek's
7 agent Mr. Milton could fail to timely file the necessary paperwork with the State Engineer. That
8 failure put Happy Creek's water rights in jeopardy, despite the fact that the water has continually and
9 diligently been put to beneficial use for decades.¹²²

10
11 **2. Junior water rights are subject to non-protection, curtailment, and reduced value.**

12 The State Engineer has authority to require junior appropriators to curtail or cease pumping.
13 First, the State Engineer has implied authority that is incident to the State Engineer's authority to
14 administer the public waters of the state pursuant to NRS chapters 533 and 534. Second, the State
15 Engineer has express statutory authority to force junior appropriators to cease pumping that violates
16 Nevada water law, or the terms of permits and certificates, pursuant to NRS 534.193 and NRS
17 534.195. Further, under NRS 534.110(6) and NRS 534.120(1), the State Engineer may issue orders to
18 curtail or cease pumping in order to regulate the use of water on a priority basis.

19 In basins where State Engineer investigations and findings indicate that "the average annual
20 replenishment to the groundwater supply may not be adequate for the needs of all permittees and all
21 vested-right claimants," the State Engineer has express authority to order that "withdrawals ... be
22 restricted to conform to priority rights."¹²³ In areas that have been identified by the State Engineer as

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26 ¹²¹ SROA 668-670.

27 ¹²² SROA 654-657.

28 ¹²³ NRS 534.110(6).

1 basins that are being depleted, the State Engineer has express authority to issue orders to curtail or
2 cease pumping if deemed essential for the welfare of the area involved.¹²⁴

3 The removal of Happy Creek's original priority dates has caused irrefutable harm to Happy
4 Creek's real property rights and has reduced the value of its water rights. As described by real
5 property appraiser, Mr. Hardung, there is a monetary value attached to the relative priority of a permit
6 or certificated water right.¹²⁵ The loss of priority to Happy Creek affects the worth of their water
7 rights, which should be remedied.

8 Happy Creek held eight permitted water rights with a duty of 3,063 afa. The original priority
9 dates of those eight permitted water rights ranged from 1954 to 1990. Except for one permit, all of
10 Happy Creek's permits pre-dated the State Engineer's 1983 curtailment order. Six of Happy Creek's
11 permits pre-dated the State Engineer's 1978 designation order. Happy Creek formerly held the oldest
12 groundwater rights in the basin. Now, Happy Creek has lost the protection and value of the seniority
13 of its water rights.

14 **a. Protection from Conflicts**

15 NRS 533.370(2) sets the test the State Engineer is required to perform prior to granting an
16 application to appropriate water as follows:

17 [W]here there is no unappropriated water in the proposed source of
18 supply, or where its proposed use or change conflicts with existing
rights¹²⁶

19 If the State Engineer issues any permits or applications that violate the conflict language of
20 NRS 533.370(2), he has violated a mandatory statutory duty.¹²⁷ The State Engineer cannot allow a
21 new or changed appropriation to conflict with another's pre-existing water right. Allowing conflicting
22 water use violates both Nevada statutory law and the prior appropriation doctrine.¹²⁸

23
24 ¹²⁴ NRS 534.120(1).

25 ¹²⁵ SROA 604-616.

¹²⁶ *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 254 P.3d 641, 647 (2011).

26 ¹²⁷ *Great Basin Water Network v. State Engineer*, 126 Nev. 187, 234 P.3d 912 (2010).

27 ¹²⁸ In 1885, the Supreme Court of Nevada firmly repudiated the common law riparian doctrine and confirmed that prior
28 appropriation is the law in Nevada. *Jones v. Adams*, 19 Nev. 78, 84-88, 6 P. 442 (1885).

As recently as 2015, the Nevada Supreme Court has reversed a State Engineer decision regarding the issuance of permits and applications when there is a conflict with existing water rights.¹²⁹ In *Eureka County*, the Supreme Court again emphasized the importance of the protection of senior water rights.¹³⁰ In *Eureka County*, the applicant was unable to demonstrate that its water rights would not conflict with the senior water rights in the basin.¹³¹ Due to this, the decision was remanded for further conflict analysis.¹³² Similarly, since its senior priority has been removed, Happy Creek's water use can now conflict with other use of water are now considered senior. If there is a conflict between Happy Creek's water rights and those rights, then Happy Creek may lose its water rights and its ability to run its operations.

b. Subject to Curtailment

The State Engineer has an ongoing obligation to manage the permits he issues to protect existing rights. These principles were specifically applied to groundwater in NRS 534.110. That statute allows the State Engineer to grant a junior groundwater right, but such right can only be granted as "long as the rights of holders of existing appropriations can be satisfied." But when the State Engineer determines that "the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants," the State Engineer may order that withdrawals "be restricted to conform to priority rights." Even though the State Engineer granted junior groundwater rights in Pine Forest Valley Basin (029), if the State Engineer becomes aware that junior pumping conflicts with existing rights, the State Engineer must curtail pumping.

Curtailment is a real threat. In 2015 and in again in 2016, the State Engineer attempted curtailment actions in Smith and Mason Valley where he sought to curtail supplemental groundwater rights.¹³³ In 2015, the Pershing County Water Conservation District ("PCWCD") filed a Petition for Writ of Mandamus or in the Alternative, Writ of Prohibition with the Eleventh Judicial District Court

¹²⁹ *Eureka Cnty v. State Eng'r*, 131 Nev. Adv. Op. 84, 359 P.3d 1114, 1115 (2015).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ SROA 550-553; SROA 582-593.

1 (“PCWCD’s Writ”). The purpose of PCWCD’s Writ was to (1) bring all over-appropriated
2 groundwater basins surrounding the Humboldt River back to their perennial annual yield; (2) eliminate
3 the cone of depression caused by over-allocation of groundwater pumping causing interference with
4 surface water flows in the Humboldt River; and (3) to regulate water used for mining and milling
5 purposes pursuant to Nevada statutory code. PCWCD’s Writ is currently being reviewed by the
6 district court. In 2015, Sadler Ranch, LLC filed a Petition for Curtailment in Diamond Valley due to
7 the impact caused by junior water right pumpers on senior water rights. These are all incidents of
8 curtailment that will impact junior water rights.

9 Pine Forest Valley Basin is over appropriated by 25,828.31afa. On May 1, 1978, the State
10 Engineer designated portions of ground water appropriation in the Pine Forest Valley Basin pursuant
11 to NRS 534.010 to NRS 534.190. On December 1, 1983, the State Engineer issued a curtailment order
12 that denied all future issuances of all ground water irrigation applications in the basin. Essentially,
13 there is not enough water in Pine Forest Valley Basin to support the ongoing underground pumping in
14 the valley. When that happens in Pine Forest Valley Basin, Happy Creek’s Permits will be the first
15 rights curtailed. Given these considerations, justice and fairness demand that Happy Creek’s senior
16 priority be reinstated.

17 **3. Happy Creek’s water was beneficially used.**

18 Happy Creek has diligently used its water rights on its land pursuant to the Permit terms.¹³⁴
19 Mr. Milton’s most recent EOT recognized that “at least 2400 acre feet” of Happy Creek’s water rights
20 under the Permits were placed to beneficial use in the 2015 irrigation season. Glen Thiede, Happy
21 Creek’s General Manager, compiled monthly meter reading reports that prove the beneficial use of the
22 underground water associated with these permits.¹³⁵ The water rights in the Permits have continually
23 and beneficially been used by Happy Creek.¹³⁶

24 ///

25 _____
26 ¹³⁴ SROA 654-657; SROA 635-638.

27 ¹³⁵ SROA 635-638; SROA 639-651.

28 ¹³⁶ SROA 654-657.

1 4. **Improvements made to the ranch**

2 In September 2007, acting on the advice of Mr. Milton, Happy Creek filed change applications
3 signed by Mr. Milton, which changed Permits 60059 through 60061 and 60063 through 60066
4 (Certificates 16214 through 16220) and Permit 71784, and which resulted in the issuance of Permits
5 76237 through 76244.¹³⁷ Following the filing of the change applications in 2007, Happy Creek
6 diligently undertook the necessary work and completed the irrigation system improvements which it
7 had contemplated.

8 Happy Creek has spent in excess of \$700,000 for the improvement of its underground
9 irrigation water systems for use of the irrigation water under Permits 76237 through 76244. That sum
10 includes the purchase and installation of three center-pivot irrigation systems and the refurbishing of
11 irrigation wells.

12 Proofs of completion for Permits 76237 through 76244 were filed with the State Engineer in
13 2010. Following the filing of the proofs of completion for Permits 76237 through 76244 in 2010, Mr.
14 Milton advised Happy Creek that because the irrigation water under those Permits was co-mingled, the
15 PBUs for Permits 76237 through 76244 would need to be filed simultaneously and, in addition, would
16 need to cover the same 12 month period of beneficial use for each of the six wells associated with
17 those Permits. Happy Creek developed procedures under which readings from the totalizing flow
18 meters on the irrigation wells were recorded and reported monthly.

19 5. **Happy Creek hired a professional and timely filed other filings.**

20 Happy Creek hired a professional to maintain all of its Permits. For twenty years, Mr. Milton
21 consistently maintained Happy Creek's water rights in good standing without missing a filing
22 deadline. In 2012, 2013, 2014, and 2015, the proofs of beneficial use for Permits 76237 through
23 76244 were due on the same date, April 29. In each of those four years, Mr. Milton prepared, signed,
24 and filed a timely request for an EOT on behalf of Happy Creek.¹³⁸ Additionally, when Happy Creek
25

26 ¹³⁷ SROA 639-651.

27 ¹³⁸ *Id.*

received the Notice of Cancellation in May 2016, it promptly provided notice to Mr. Milton and justifiably relied on Mr. Milton to timely file the EOTs as required by NRS 533.395.¹³⁹ Additionally, Happy Creek has paid Mr. Milton \$53,000 for his services.¹⁴⁰ At about the same time that Mr. Milton received the notice for the Permits, he also received notice that the PBU for stockwater rights under Permits 83008, 83009, and 83012 were due.¹⁴¹ The PBUs for those stockwater rights were timely filed on June 13, 2016.¹⁴²

6. Community benefit and no harm to other parties

There can be no harm if Happy Creek is allowed to maintain the status quo which existed prior to June 2016. There was no harm when Happy Creek was operating under its true priority dates. There is no way harm will be caused by allowing Happy Creek to have its prior priority dates and the community will benefit from Happy Creek keeping its priority.

II. The Removal of Happy Creek's Senior Priority is an Unconstitutional Taking.

The right to just compensation for private property taken for public use is guaranteed by both the United States and the Nevada Constitutions.¹⁴³

Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.¹⁴⁴

The Legislature cannot authorize an unconstitutional taking. Under Nevada law, to state a cause of action for inverse condemnation, an owner of a property right needs to show there was an invasion or an appropriation of some valuable property right which the property owner possessed and the invasion or appropriation must directly and specifically affect the property owner to his injury.¹⁴⁵

¹³⁹ SROA 617-626.

¹⁴⁰ SROA 652-653.

¹⁴¹ SROA 594.

¹⁴² SROA 595.

¹⁴³ U.S. Const. amend. V; Nev. Const. art. I, § 8.

¹⁴⁴ *Id.*

¹⁴⁵ *Sproul Homes v. State Ex. Rel Dept. Hwys*, 96 Nev. 441, 443-44, 611 P.2d 620, 621-22 (1980) (citing *Selby Realty Co., v. City of San Buenaventura*, 10 Cal. 3d 110, 514 P.2d 111, 114-115 (Ca. 1973)).

1 The district court's power to act in equity can protect against the potential claim of an
2 unconstitutional taking of Happy Creek's property. The taking here is the removal of the priority dates
3 that Happy Creek has diligently maintained until its agent failed to file the proper documents. The
4 priority dates of water rights are a separate "stick" in a bundle of rights attendant to real property. As
5 identified by Mr. Hardung, there is monetary value attached to the priority of a permit or certificated
6 water right.¹⁴⁶ The loss of priority to Happy Creek affects the worth of their rights, which should be
7 remedied. Without resetting Happy Creek's Permits back to their original dates, a cause of action for
8 inverse condemnation will lie against a government agency to recover the value of property taken by
9 the agency.¹⁴⁷

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25 ¹⁴⁶ SROA 604-616.

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
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1 **CONCLUSION**

2 For the foregoing reasons, Happy Creek requests this Court to apply equitable relief and return
3 the original priority dates for Happy Creek's Permits.

4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document does not contain the social
7 security number of any persons.

8 DATED this 15 day of March, 2017.

9 TAGGART & TAGGART, LTD.
10 108 North Minnesota Street
11 Carson City, Nevada 89703
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14 By: 

15 PAUL G. TAGGART, ESQ.
16 Nevada State Bar No. 6136
17 TIMOTHY D. O'CONNOR, ESQ.
18 Nevada State Bar No. 14098
19 Attorneys for Petitioner
20
21
22
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28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing, as follows:

[X] By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Justina A. Caviglia, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

DATED this 15 day of March, 2017.



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DIST. COURT CLERK

1 PAUL G. TAGGART, ESQ.
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8

9 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF HUMBOLDT

* * *

11 HAPPY CREEK, INC., a Nevada Corporation,)
12 Petitioner,)
13 vs.)
14 JASON KING, P.E., Nevada State)
Engineer, DIVISION OF WATER RESOURCES,)
15 DEPARTMENT OF CONSERVATION AND)
NATURAL RESOURCES,)
16 Respondent.)
17

CASE NO.: CV 20, 869

DEPT. NO.: 2

18 SUPPLEMENTAL RECORD ON APPEAL

19 PETITIONER, HAPPY CREEK INC. a Nevada Corporation, by and through its counsel of
20 record, PAUL G. TAGGART, ESQ. and TIMOTHY D. O'CONNOR, ESQ. of the law firm of
21 TAGGART & TAGGART, LTD., hereby respectfully submits the attached documents representing
22 supplemental records on appeal in this matter. The Supplemental Record on Appeal documents are
23 bate-stamped pages SROA1 - SROA670.

24 ///

25 ///

26 ///

27 ///

28 ///

	DOCUMENT	DATE	BATES	
1.	General Land Office, Cadastral Survey Map, Township 41 North, Range 32 East, MDB&M, November 6, 1873.	11/6/1873	SROA1	SROA1
2.	Proof of Beneficial Use Map for Permit 15824	10/15/58	SROA2	SROA2
3.	Sinclair, William, 1962, Ground-water Resources of Pine Forest Valley, Humboldt County, Nevada: Nevada Department of Conservation and Natural Resources, Ground-water Resources – Reconnaissance Series Report 4	01/62	SROA3	SROA34
4.	PBU Map for Permits 22866 and 21317	12/26/67	SROA35	SROA35
5.	PBU Map for Permits 24126 and 23550	03/06/72	SROA36	SROA36
6.	PBU Map for Permits 24928 and 24927	05/29/74	SROA37	SROA37
7.	State Engineer Order 711	05/01/78	SROA38	SROA40
8.	Assembly Bill No. 27	01/23/81	SROA41	SROA61
9.	State Engineer Order 831	12/01/83	SROA62	SROA62
10.	Nowlin, Jon O., 1986, Ground-water Quality in Nevada—a Proposed Monitoring Program: U.S. Geological Survey Open-File Report 78-768	1986	SROA63	SROA310
11.	Application Map for Permit 60059	05/10/94	SROA311	SROA311
12.	Permit 60059	05/10/94	SROA312	SROA314
13.	Certificate 16214 (Permit 60059)	09/25/03	SROA315	SROA316
14.	State Engineer Documents for Permit 60059		SROA317	SROA325
15.	Permit 60060	05/10/94	SROA326	SROA328
16.	Certificate 16215 (Permit 60060)	09/25/03	SROA329	SROA330
17.	State Engineer Documents for Permit 60060		SROA331	SROA338
18.	Permit 60061	05/10/94	SROA339	SROA341

19.	Certificate 16216 (Permit 60061)	09/25/03	SROA342	SROA343
20.	State Engineer Documents for Permit 60061		SROA344	SROA351
21.	Permit 60062	05/10/94	SROA352	SROA354
22.	State Engineer Documents for Permit 60062		SROA355	SROA358
23.	Permit 60063	05/10/94	SROA359	SROA361
24.	Certificate 16217 (Permit 60063)	09/25/03	SROA362	SROA363
25.	State Engineer Documents for Permit 60063		SROA364	SROA371
26.	Permit 60064	05/10/94	SROA372	SROA374
27.	Certificate 16218 (Permit 60064)	09/25/03	SROA375	SROA376
28.	State Engineer Documents for Permit 60064		SROA377	SROA384
29.	Permit 60065	05/10/94	SROA385	SROA387
30.	Certificate 16219 (Permit 60065)	09/25/03	SROA388	SROA389
31.	State Engineer Documents for Permit 60065		SROA390	SROA397
32.	Permit 60066	05/10/94	SROA398	SROA400
33.	Certificate 16220 (Permit 60066)	09/25/03	SROA401	SROA402
34.	State Engineer Documents for Permit 60066		SROA403	SROA417
35.	Google Earth Aerial Image	09/10/99	SROA418	SROA418
36.	Proof of Beneficial Use Map for Permits 60059 - 60066	10/10/02	SROA419	SROA419
37.	Permit 71784	10/19/04	SROA420	SROA423
38.	Google Earth Aerial Image	10/12/06	SROA424	SROA424
39.	Letter from DWR regarding filing of Applications 76237 through 76244 for permission to change water	09/13/07	SROA425	SROA425
40.	Letter from DWR regarding corrections to Applications 76237 through 76244	09/14/07	SROA426	SROA427
41.	Amended Application Map 76237	09/24/07	SROA428	SROA428

1	42.	Humboldt Sun Payment Voucher	11/15/07	SROA429	SROA429
2	43.	Letter from DWR regarding Permit fees for	05/21/08	SROA430	SROA430
3		Applications 76237 through 76244			
4	44.	Letter from DWR regarding Phone Conversation	03/06/09	SROA431	SROA431
5		with John H. Milton III regarding Applications			
6		76237 through 76244			
7	45.	Letter from DWR regarding Permits 76237	04/29/09	SROA432	SROA432
8		through 76244			
9	46.	Permit 76237	04/29/09	SROA433	SROA437
10	47.	Permit 76238	04/29/09	SROA438	SROA442
11	48.	Permit 76239	04/29/09	SROA443	SROA447
12	49.	Permit 76240	04/29/09	SROA448	SROA452
13	50.	Permit 76241	04/29/09	SROA453	SROA457
14	51.	Permit 76242	04/29/09	SROA458	SROA462
15	52.	Permit 76243	04/29/09	SROA463	SROA467
16	53.	Permit 76244	04/29/09	SROA468	SROA472
17	54.	Final Notice for Permits 76237 through 76244	05/10/10	SROA473	SROA473
18	55.	Proofs of Completion of Work for Permits 76237,	06/04/10	SROA474	SROA480
19		76239 through 76244			
20	56.	Receipt from DWR to John H. Milton III for	06/04/10	SROA481	SROA481
21		Proofs of Completion for Permits 76237, 76239			
22		through 76244 and 76928			
23	57.	Well Driller's Reports for Permits 76237, 76239-	06/04/10	SROA482	SROA490
24		76244			
25	58.	Application for Extension of Time for Permit	06/04/10	SROA491	SROA491
26		76238			
27	59.	Letter from DWR granting Extension of Time for	06/15/10	SROA492	SROA492
28					

1		Permit 76238			
2	60.	Letter from DWR confirming filing of Proofs of	06/18/10	SROA493	SROA493
3		Completion for Permits 76237, 76239 through			
4		76244			
5	61.	Proof of Completion for Permit 76238	07/29/10	SROA494	SROA494
6	62.	Well Driller's Report for Permit 76238	07/29/10	SROA495	SROA495
7	63.	Letter from DWR confirming filing of Proofs of	08/19/10	SROA496	SROA496
8		Completion for Permit 76238			
9	64.	Google Earth Aerial Image	09/11/10	SROA497	SROA497
10	65.	Final Notice for Permits 76237 through 76244	05/03/12	SROA498	SROA498
11	66.	Applications for Extensions of Time for Permits	05/10/12	SROA499	SROA505
12		76237 through 76242, 76244			
13	67.	Receipt from DWR for Applications for	05/10/12	SROA506	SROA506
14		Extensions of Time for Permits 76237 through			
15		76244			
16	68.	Letter from DWR granting Extensions of Time	05/17/12	SROA507	SROA507
17		for Permits 76237 through 76244			
18	69.	Letter from Phil Chambers to DWR Regarding	10/23/12	SROA508	SROA508
19		Correction to Point of Diversion for Permit 76240			
20	70.	Google Earth Aerial Image	04/26/13	SROA509	SROA509
21	71.	Final Notice for Permits 76237 through 76244	05/02/13	SROA510	SROA510
22	72.	Applications for Extensions of Time for Permits	05/21/13	SROA511	SROA518
23		76237 through 76244			
24	73.	Receipt from DWR for Applications for	05/21/13	SROA519	SROA519
25		Extensions of Time for Permits 76237 through			
26		76244			
27	74.	Letter from DWR granting Extensions of Time	05/30/13	SROA520	SROA520

	for Permits 76237 through 76244			
75.	Google Earth Aerial Image	07/20/13	SROA521	SROA521
76.	Final Notice for Permits 76237 through 76244	05/02/14	SROA522	SROA522
77.	Applications for Extensions of Time for Permits 76237 through 76244	05/22/14	SROA523	SROA530
78.	Receipt from DWR for Applications for Extensions of Time for Permits 76237 through 76244	05/22/14	SROA531	SROA531
79.	Letter from DWR granting Extensions of Time for Permits 76237 through 76244	06/12/14	SROA532	SROA532
80.	Notice of Intent Permit 76244	07/29/14	SROA533	SROA533
81.	Waiver P14-04 for a one-year delay of the plugging of a well under Permit 76244	08/04/14	SROA534	SROA534
82.	Pine Forest Valley Hydrographic Basin 2-029 Crop Inventory Calendar Year 2015	2015	SROA535	SROA549
83.	State Engineer Order 1250	02/03/15	SROA550	SROA553
84.	Final Notice for Permits 76237 through 76244	05/05/15	SROA554	SROA554
85.	Applications for Extensions of Time for Permits 76237 through 76244	05/29/15	SROA555	SROA562
86.	Receipt from DWR for Applications for Extensions of Time for Permits 76237 through 76244	05/29/15	SROA563	SROA563
87.	State Engineer Order 1264	08/25/15	SROA564	SROA568
88.	Google Earth Aerial Image	09/07/15	SROA569	SROA569
89.	State Engineer Order 1267	10/28/15	SROA570	SROA581
90.	State Engineer Order 1268	10/28/15	SROA582	SROA593
91.	Final Notice for Permits 83008, 83009, and	05/24/16	SROA594	SROA594

1		83012			
2	92.	Receipt and Proof of Beneficial Use for Permits	06/13/16	SROA595	SROA599
3		83008, 83009, 83012			
4	93.	Email from John Milton to Phil Chambers	07/08/16	SROA600	SROA600
5		regarding Permit 76237 (Exhibit 3 to the Petition			
6		for Judicial Review)			
7	94.	PE/PLS Roster 1935-2016	2016	SROA601	SROA603
8	95.	Kurt Hardung Water Rights Priority Consultation	02/14/17	SROA604	SROA616
9		Report			
10	96.	Affidavit of Ronald S. Fickler in Support of	02/28/17	SROA617	SROA626
11		Happy Creek, Inc.'s Opening Brief			
12	97.	DWR Hydrographic Summary for Pine Forest	03/01/17	SROA627	SROA634
13		Valley, Basin 029			
14	98.	Affidavit of Glen Thiede in Support of Happy	03/08/17	SROA635	SROA638
15		Creek, Inc.'s Opening Brief			
16	99.	Affidavit of Phillip A. Chambers in Support of	03/08/17	SROA639	SROA651
17		Happy Creek, Inc.'s Opening Brief			
18	100.	Affidavit of Becky S. May in Support of Happy	03/09/17	SROA652	SROA653
19		Creek, Inc.'s Opening Brief			
20	101.	Affidavit of Daniel B. May in Support of Happy	03/09/17	SROA654	SROA657
21		Creek, Inc.'s Opening Brief			
22	102.	DWR Aerial Image for Permit 60059	03/13/17	SROA658	SROA658
23	103.	DWR Aerial Image for Permit 76237	03/13/17	SROA659	SROA659
24	104.	DWR Instructions for Completing the Proof of		SROA660	SROA666
25		Application of Water to Beneficial Use Form			
26	105.	DWR Hydrographic Summary for Pine Forest		SROA667	SROA667
27		Valley			
28					

106.	Place of Use Overlay Maps from DWR files for Permits 76237-76244		SROA668	SROA670
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any persons.

DATED this 15 day of March, 2017.

TAGGART & TAGGART, LTD.
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Carson City, Nevada 89703
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By: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of
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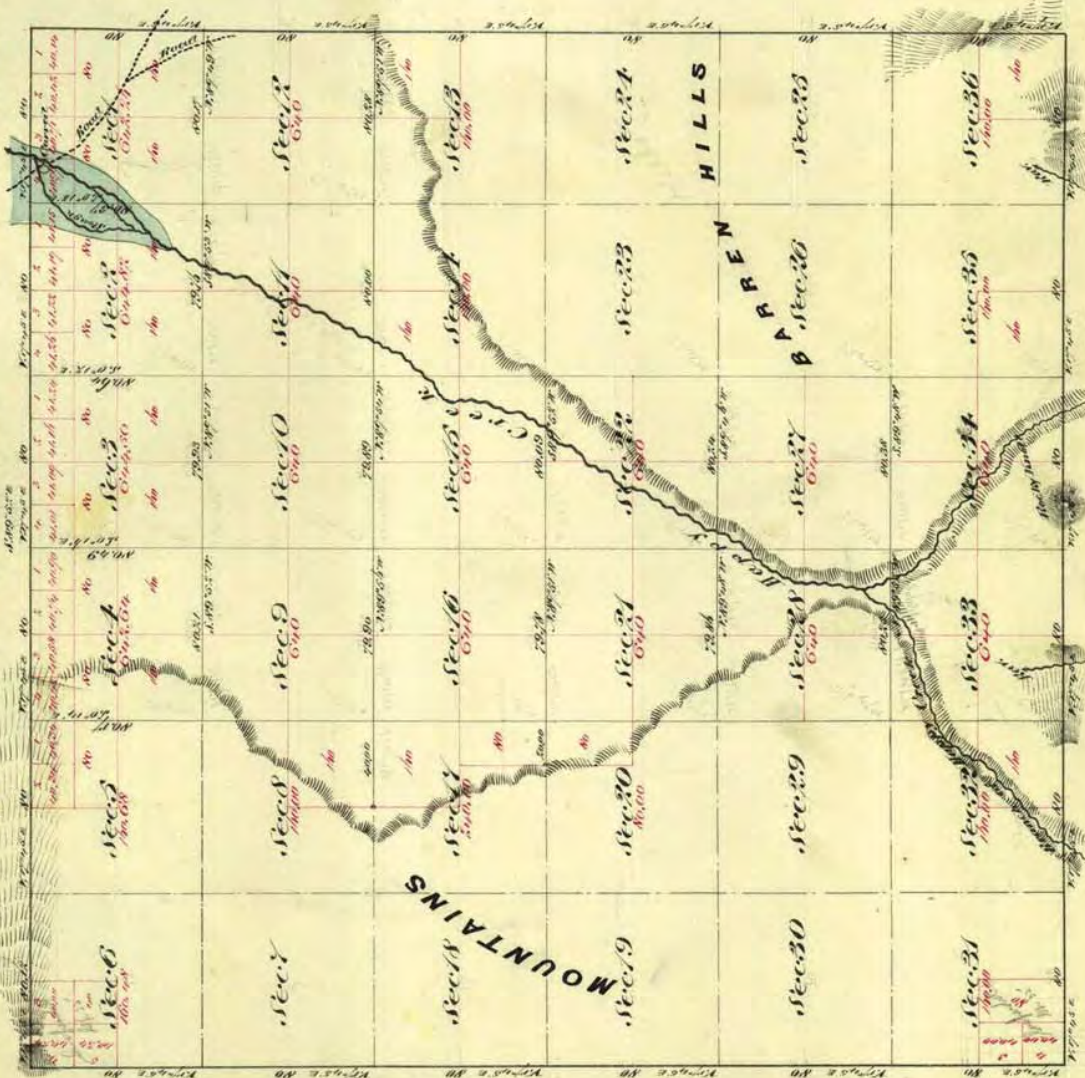
Justina A. Caviglia, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

DATED this 15th day of March, 2017.



Employee of TAGGART & TAGGART, LTD.

Mount Diablo Meridian



Aggregate Area of Public Land (shaded)	12,015.38 Acres
Estimated " " " " " "	11,042.72 " "
Aggregate	23,058.10 "

Commenced September 18th 1873
Completed " 22nd "

Salvinia lives not otherwise water runs with a variation of 100 ft

The above Map of Louisiana, page 10th Range, Post Road Survey, District No. 10, is hereby confirmed to the first and 2^d of the Range thereof in this Office which has been examined and approved.

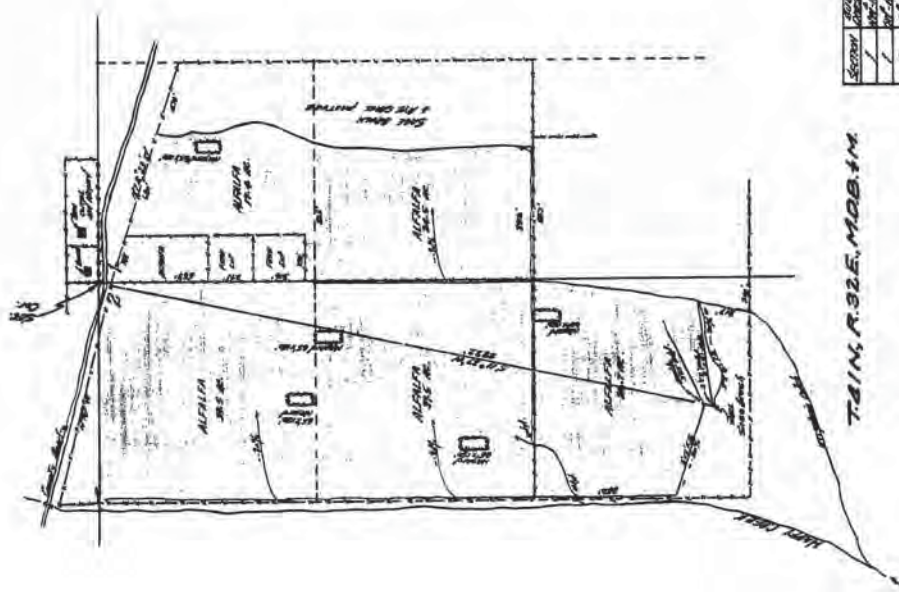
Post Survey General Office
Virginia City, Nevada
December 26th 1879

E. S. Davis
M. S. Sawyer General. Am.

T 41 N. R 32 E

1680

Where Surveyed	By	When Surveyed	Kind of Boundary	Ref. of Survey, etc.	When Surveyed
North Boundary	W. J. Hatch	17th Oct. 1873		6 00 00	1873
East of Church-st. line	W. J. Hatch	17th Oct. 1873		18 00 00	"
South-western line	W. J. Hatch	17th Oct. 1873		34 55 46	September 1873



Section	Roll Call	Form	Quiz	Homework	Classroom Activities
1	100-100	411	70.0	100.0	100.0
1	100-100	411	70.0	100.0	100.0
2	100-100	411	70.0	100.0	100.0
2	100-100	411	70.0	100.0	100.0
2	100-100	411	70.0	100.0	100.0

T: 41N R: 32E M: 08 + M.

[illegible]

Richard M. Black
JAMES EARL RAY, ACCUSED

Edison had and seems to before me this 14th day of October, 1938.

Donnelly, Dwight
Voluntary public in and for Humboldt County, Nevada.
My Comm. Exp. 9/19/61.

SCALE: 1 IN. = 20 FT.

1200

FILED
Oct. 15/1958

MAP TO ACCOMPANY
PROOF OF BENEFICIAL USE
UNDER APPLICATION NO. 15824
IRRIGATION
FOR
JULIE AND ELIZABETH DELONG
FROM
UNDERGROUND

CERTIFICATE NO. 4441 ISSUED Jan. 5, 1959

15824

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Carson City

PLEASE DO NOT REMOVE FROM THIS OFFICE

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GROUND-WATER RESOURCES – RECONNAISSANCE SERIES
REPORT 4

GROUND-WATER RESOURCES OF PINE FOREST VALLEY,
HUMBOLDT COUNTY

By
WILLIAM C. SINCLAIR,
Geologist

Price \$1.00

Prepared cooperatively by the
Geological Survey, U. S. Department of the Interior

JANUARY 1962

JT APP 224

GROUND-WATER RESOURCES--RECONNAISSANCE SERIES

Report 4

GROUND-WATER RESOURCES OF PINE FOREST VALLEY,
HUMBOLDT COUNTY, NEVADA

By William C. Sinclair,

Geologist

Prepared cooperatively by the

Geological Survey

U. S. Department of Interior

January 1962

JT APP 225

FOREWORD

This reconnaissance report on the ground-water resources of Pine Forest Valley in Humboldt County, is the fourth report in a series of such reports authorized by the 1960 Legislature. The preceeding reports cover Newark Valley, White Pine County; Pine Valley, Eureka and Elko Counties; and Long Valley in White Pine and Elko Counties. Several other such reports are now in process of review including Diamond Valley, Eureka County; Gabbs Valley, Mineral County; Independence Valley, Elko County; Imlay Area, Humboldt River Basin in Pershing County; and Desert Valley in Humboldt and Pershing Counties, all of which should be in printed form by July 1, 1962.

During 1961 the first report under an information series was issued. This report by O. J. Loeltz, Engineer, and G. T. Malmberg, Geologist, covered the ground-water situation in Nevada in 1960.

The reconnaissance ground-water surveys are conducted under a cooperative program between the State Department of Conservation and Natural Resources and the United States Geological Survey. They are designed to give information on the ground-water resources in areas where there is a lack of such information. They are not intended to take the place of the more detailed cooperative ground-water surveys under the regular ground-water program which has been in progress since 1946.

It is intended to continue these studies until all of the major basins in the State have been covered, either by detailed, semi-detailed, or reconnaissance studies.

Hugh A. Shamberger, Director
Department of Conservation
and Natural Resources

January 3, 1962.

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GROUND-WATER RESOURCES OF PINE FOREST VALLEY

HUMBOLDT COUNTY, NEVADA

By William C. Sinclair

ABSTRACT

Pine Forest Valley is an intermontane valley in the Great Basin section of the Basin and Range physiographic province. The valley is drained by the Quinn River. The climate is arid to semiarid; precipitation on the floor of the valley is less than 6 inches annually.

The valley is bordered by mountain ranges composed principally of granodiorite and volcanic rocks. The mountains were uplifted by faulting and tilting during the latter part of the Tertiary period. Material eroded from the uplands has filled the intermontane basin of the valley with at least 700 feet of alluvium, including lake and stream sediments. The amount of ground water stored in the upper few hundred feet of valley fill is estimated at about 18,000 acre-feet per foot of thickness of saturated sediments.

The ground-water reservoir is recharged by streams that drain the bordering mountain ranges. Ground water moves from the areas of recharge toward the axis of the valley and thence southwestward. About 2,700 acre-feet of ground water is discharged by underflow each year to the Black Rock Desert, but under natural conditions most of the ground-water discharge, about 11,000 acre-feet per year, is transpired by plants that send their roots to the water table or to the capillary fringe above it. A minor amount of ground water, about 200 acre-feet per year, is discharged by thermal springs. The total average annual ground-water discharge, under natural conditions, is equal to the average annual recharge and is estimated to range from 10,000 to 15,000 acre-feet per year.

The ground water is generally suitable for irrigation and domestic use. The principal exception is water from thermal springs which is unsuitable for irrigating most crops because of the high sodium content.

Although desirable, it may not be practical to intercept by wells and use consumptively all the ground water that is now being discharged by evapotranspiration. The perennial yield, the amount of natural discharge by phreatophytes, and underflow that can be salvaged for beneficial use probably does not exceed 10,000 to 15,000 acre-feet. Gross pumpage in 1960 was only about 3,000 acre-feet.

INTRODUCTION

This report is one of a series of reconnaissance studies of the valleys of northwestern Nevada (fig. 1). These studies are made by the U. S. Geological Survey in cooperation with the Department of Conservation and Natural Resources, State of Nevada, and are part of a statewide study to evaluate the ground-water resources of Nevada.

The purposes of this study of Pine Forest Valley are: (1) To determine the nature and extent of the aquifers; (2) to evaluate the occurrence and movement of ground water, including the sources of recharge and areas of discharge; (3) to estimate the average annual recharge to the aquifers; (4) to estimate the quantity of ground water that can be developed perennially; and (5) to determine the chemical quality of the ground water and its suitability for irrigation and domestic use.

Pine Forest Valley is only sparsely populated. The nearest communities are Winnemucca, about 60 miles to the southeast, and Denio, about 10 miles to the north. Winnemucca has a population of 3,453 according to the 1960 census. Denio is a local supply center for the ranches in the area. The economy of the valley is based on ranching and the irrigation of about 3,000 acres of cultivated land.

The valley is traversed by Nevada Highway 8A which connects Winnemucca with Denio and northwestern Nevada.

The fieldwork for this report was done during parts of October and November 1960. It consists of a study of the physiographic features of the area and of the water-bearing character of the geologic units, an inventory of the wells and springs, and the mapping of vegetation that consumes ground water.

The assistance provided by residents of the area in the form of information regarding wells, springs, and local irrigation practices is gratefully acknowledged.

Location and Extent of the Area

Pine Forest Valley is in north-central Humboldt County. The valley is the northernmost extension of the Black Rock Desert and is bounded by the Pine Forest Range on the west and the Bilk Creek Range on the east. The coalescence of the two ranges in a low alluvial saddle forms the northern boundary of the valley. The Quinn River enters the valley from the southeast through a gap between the Jackson Mountains and the Bilk Creek Range. It flows northwest toward the center of the valley, then swings southwestward along the west side of the Jackson Mountains, into the Black Rock Desert.

Pine Forest Valley has an area of about 500 square miles. The main part of the valley floor trends south, principally in R. 31 E., and is about 25 miles long and 6 miles wide. A smaller part lies within the gap between the

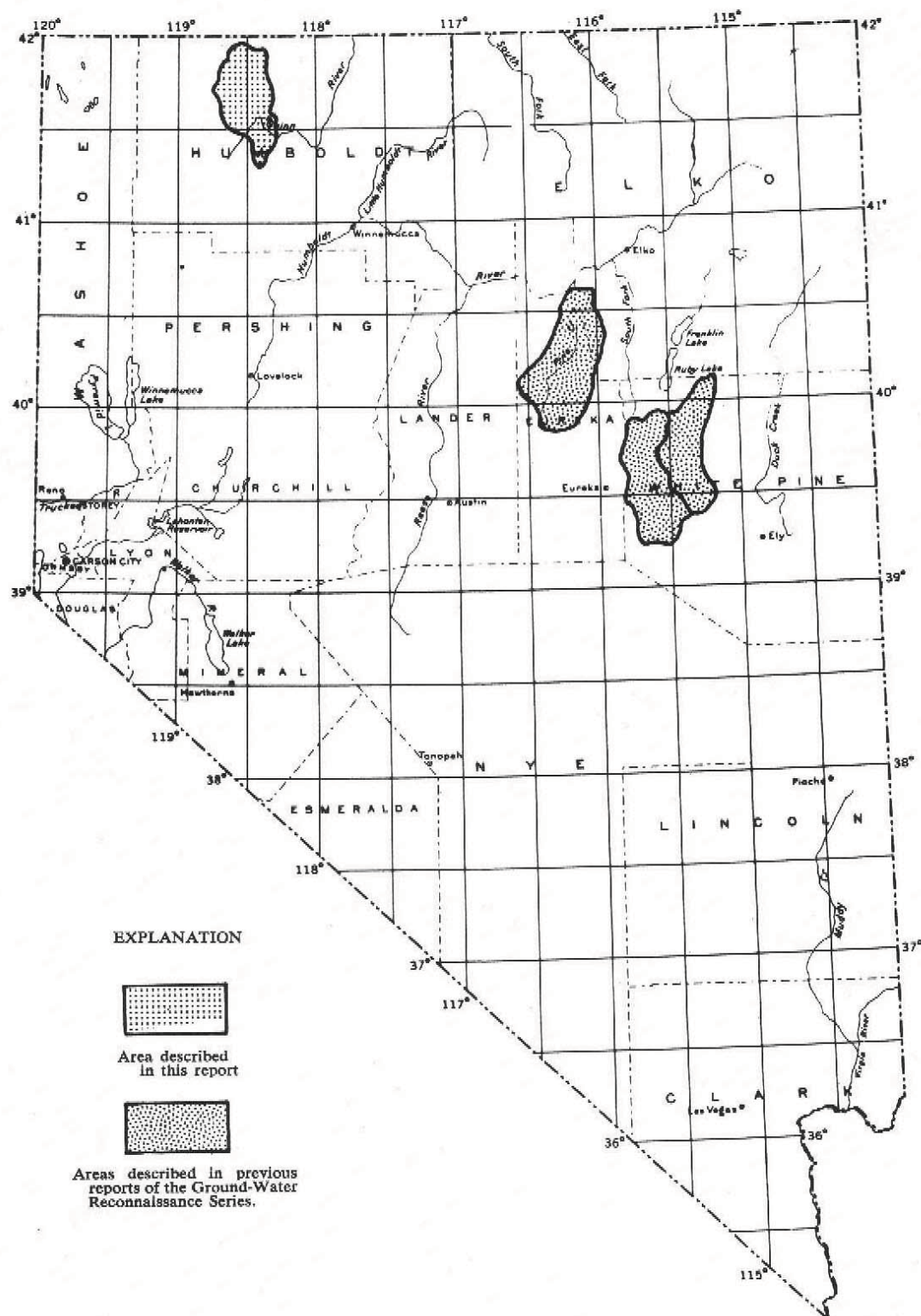


Figure 1.—Map of Nevada showing areas described in previous reports of the Ground-Water Reconnaissance Series and in this report.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

HAPPY CREEK, INC.,

Respondent.

Case No. 74266

JOINT APPENDIX

Volume II of XVII
(Pages JT APP 87-177)

DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
04/19/17	Answering Brief (Respondent's)	XVI	892-913
08/08/17	Hearing Statement (Happy Creek's)	XVI	971-977
08/07/17	Hearing Statement (State Engineer's)	XVI	941-970
06/20/17	Memo as to Court Date	XVI	940
12/08/16	Memorandum of Temporary Assignment	I	25-26
11/18/16	Notice of Appeal	I	1-6
12/02/16	Notice of Appearance for Respondent	I	21-22
09/29/17	Notice of Entry of Order reinstating original priority dates of Happy Creek's water rights permits	XVII	1173-1183
12/02/16	Notice of Intent to Defend	I	23-24
03/16/17	Opening Brief (Happy Creek's)	III	178-212
11/18/16	Petition for Judicial Review	I	7-20
08/14/17	PowerPoint Presentation at Oral Argument (Happy Creek's)	XVI	978-996
08/14/17	PowerPoint Presentation at Oral Argument (State Engineer's)	XVI	997-1042
05/18/17	Reply Brief (Happy Creek's)	XVI	914-936

DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
06/12/17	Request for Submission and Oral Argument	XVI	937-934
12/19/16	Stipulation and Order Regarding Briefing Schedule	I	27-29
03/02/17	Stipulation and Order to Extend Briefing Schedule	II	175-177
12/28/16	Summary of Record on Appeal and Documents SE ROA 1-137	I	30-174
03/16/17	Supplemental Record on Appeal and Documents SROA 1-670	III-XVI	213-891
08/14/17	Transcript of Oral Argument	XVI-XVII	1043-1172

RESPECTFULLY SUBMITTED this 6th day of March, 2018.

ADAM PAUL LAXALT
Attorney General

By: /s/ Justina A. Caviglia
JUSTINA A. CAVIGLIA
Deputy Attorney General
Nevada Bar No. 9999
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1222
Fax: (775) 684-1108
Email: jcaviglia@ag.nv.gov

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 6th day of March, 2018, I served a copy of the foregoing JOINT APPENDIX (Volumes I-XVII, Pages JT APP 1-1183), by electronic service to:

Paul G. Taggart, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

/s/ Dorene A. Wright

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

**JT APP 87
SE ROA 50**

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76239

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

Karl Eitons

DATE

NO CHANGE

Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME
(See instructions on back)

FILED

OCT 17 2016

A. NDWR's Owner(s) of Record Happy Creek, Inc.

B. IN THE MATTER OF PERMIT NO. 76239 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III

, the ☐ Permittee ☒ Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year
5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00+
6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)

☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of Humboldt

Subscribed and sworn to before me on October 14th, 2016

by John H. Milton III

Print name of Permittee or Agent signing form

Signed

John H. Milton III
Permittee or Agent

Address 146 West Second Street

Street Address or PO Box

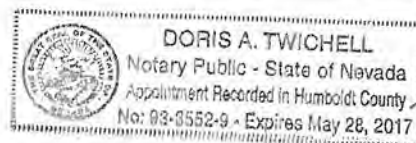
Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414

E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76239		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

10/18/2016

55

JT APP 92
SE ROA 55

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

Malcolm J. Wilson, P.E.

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

**JT APP 93
SE ROA 56**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink that reads "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr

cc: Desert Mountain Surveying (email)

No. 76240

Date Filed SEP 07 2007

Well Log 9922A

Indexed under

Name of applicant

Map

Basin 2 - 29

Stream

PINE FOREST VALLEY

Township 41N Range 32E

County HUMBOLDT

Point of diversion SE 1/4 NE 1/4 Section 02

Applicant HAPPY CREEK, INC.

Source of Water UNDERGROUND

Returned for correction SEP 14 2007

Abrogated by

Corrected application received SEP 24 2007

Map filed POD & Prop. POU under 76237 filed 9/24/07; Exist. POU under PBU for 60059 filed 10/17/02

Sent for publication OCT 05 2007

Proof of publication filed NOV 01 2007

Investigated on ground by

Protested

Ready for action NOV 29 2007

Approved April 29, 2009

2.785 CFS

Diversion

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			12/15/17	12/15/17
2nd extension				
Date filed		JUN 04 2010		

Filed under map

CERTIFICATE NO.		ISSUED		AMOUNT				
Use								
COMPUTER CHECK	File Entry	<input checked="" type="checkbox"/>	Publication	<input checked="" type="checkbox"/>	Permit	<input checked="" type="checkbox"/>	Certificate	

ADDRESS

JUL 19 2016
 CANCELLED BECAUSE OF
 FAILURE OF APPLICANT TO COMPLY WITH
 THE PROVISIONS OF PERMIT

James K. P.E. STATE ENGINEER
 Can. Rescinded 10-17-2016

B



Permit No. 76240

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: **HAPPY CREEK, INC.**
Source: **UNDERGROUND**
Basin: **PINE FOREST VALLEY**
Manner of Use: **IRRIGATION**
Period of Use: **January 1st to December 31st**
Priority Date: **10/08/1954**

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60063, Certificate 16217, is issued subject to the terms and conditions imposed in said Permit 60063, Certificate 16217 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 96
SE ROA 59

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 2.785 cubic feet per second or 228.66 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

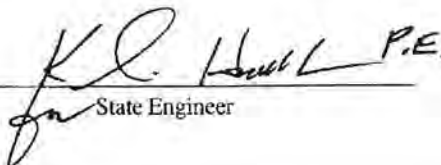
April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009



State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl

cc: Desert Mountain Surveying, email

JT APP 98
SE ROA 61

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa
cc: Desert Mountain Surveying (Email)

Schedule of Fees:
Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 99
SE ROA 62**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76240

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

Permittee or Agent

Address

146 West Second Street

Street No. or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76240		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244
					CHECK TOTAL \$2,880.00



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

**JT APP 102
SE ROA 65**

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

JT APP 103
SE ROA 66

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76240

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

DATE

Haack Exterior

NO ALTERNATE

DATE: NO CHANGE

DATE: Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

FILED

OCT 17 2016

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76240 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III

the

☐ Permittee☒ Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00±6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed John H. Milton III

Permittee or Agent

Address 146 West Second Street

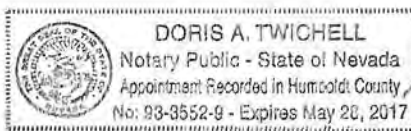
Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76240		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

JT APP 109
SE ROA 72



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>
November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr
cc: Desert Mountain Surveying (email)

No. 76241

Date Filed SEP 07 2007

NEW PRIORITY DATE: JUL 11, 2016

Indexed under		Well Log 44797
Name of applicant		
Map		Basin 2 - 29
Stream		PINE FOREST VALLEY
Township 42N Range 32E		County HUMBOLDT
Point of diversion SE 1/4 SE 1/4 Section 35		
Applicant HAPPY CREEK, INC.		
Source of Water UNDERGROUND		
Returned for correction SEP 14 2007	Abrogated by	
Corrected application received		
Map filed PoD + Prop. POU under 76237 filed 9/24/07; Exst. POU under PBU for 60064 filed 10/1		
Sent for publication OCT 05 2007		
Proof of publication filed NOV 01 2007		
Investigated on ground by		
Protested		

Ready for action NOV 29 2007

Approved April 29, 2009

2,339 cfs

Irrigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			EX 15 17	EX 15 17
2nd extension				
Date filed		JUN 04 2010		
				Filed under map
CERTIFICATE NO.		ISSUED		AMOUNT
Use				
COMPUTER CHECK	File Entry	Publication	Permit	Certificate

ADDRESS

JUL 19 2016
 CANCELLED BECAUSE OF
 FAILURE OF APPLICANT TO COMPLY WITH
 THE PROVISIONS OF PERMIT
 P.E. STATE ENGINEER
 Can. Rescinded 10-17-2016



Permit No. 76241

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 11/06/1990

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60064, Certificate 16218, is issued subject to the terms and conditions imposed in said Permit 60064, Certificate 16218 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 112
SE ROA 75

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 2.339 cubic feet per second or 483.60 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009


State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl

cc: Desert Mountain Surveying, email

**JT APP 114
SE ROA 77**

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map on or before April 29, 2016.**

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa

cc: Desert Mountain Surveying (Email)

Schedule of Fees:

Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 115
SE ROA 78**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76241

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

Permittee or Agent

Address

146 West Second Street

Street No. or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76241		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

**JT APP 118
SE ROA 81**

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

JT APP 119
SE ROA 82

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76241

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

Karl Esterich

DATE

CANCELLATION
PERMIT REINSTATED

NEW PROOF FILING DATE: NO CHANGE

RE-ENTRY DATE: Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

FILED

OCT 17 2016

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76241 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III, the ☐ Permittee ☒ Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year
5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00±
6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)

☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed John H. Milton III

Permittee or Agent

Address 146 West Second Street

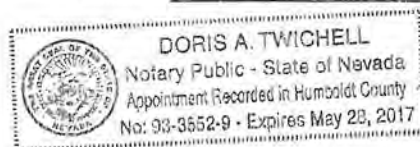
Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76241		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

**JT APP 125
SE ROA 88**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>
November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr

cc: Desert Mountain Surveying (email)

No. 76242

Date Filed SEP 07 2007

NEW PRIORITY DATE: JUL 11, 2016

Indexed under

Well Log 30602

Name of applicant

Map

Basin 2 - 29

Stream

PINE FOREST VALLEY

Township 41N Range 32E

County HUMBOLDT

Point of diversion SW 1/4 NW 1/4 Section 1

Applicant HAPPY CREEK, INC.

Source of Water UNDERGROUND

Returned for correction SEP 14 2007

Abrogated by

Corrected application received SEP 24 2007

Map filed 9-24-2007 under 76237 Prop POD+POU ; 10-17-2002 under 60059 Exit+POD+POU

Sent for publication OCT 05 2007

Proof of publication filed NOV 01 2007

Investigated on ground by

Protested

Ready for action NOV 29 2007

Approved April 29, 2009 3.565 cfs Irrigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2015
1st extension			AS 12 15 17	AS 12 15 17
2nd extension				
Date filed		JUN 04 2010		

Filed under map

CERTIFICATE NO.

ISSUED

AMOUNT

Use

COMPUTER
CHECK

File Entry

Publication

Permit

Certificate

ADDRESS

JUL 19 2016
CANCELLED BECAUSE OF
FAILURE OF APPLICANT TO COMPLY WITH
THE PROVISIONS OF PERMIT

P.E. STATE ENGINEER
Can. Rescinded 10-17-2016

B

15716

JT APP 127
SE ROA 90



Permit No. 76242

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 09/25/1981

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60065, Certificate 16219, is issued subject to the terms and conditions imposed in said Permit 60065, Certificate 16219 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 128
SE ROA 91

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 3.565 cubic feet per second or 772.59 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009



for State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl

cc: Desert Mountain Surveying, email

JT APP 130
SE ROA 93

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa
cc: Desert Mountain Surveying (Email)

Schedule of Fees:
Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 131
SE ROA 94**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76242

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

John H. Milton II
Permittee or Agent

Address

146 West Second Street

Street No. or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76242		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

JT APP 134
SE ROA 97

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

JT APP 135
SE ROA 98

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76242

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

Karl Eitenwiller

DATE

PERMIT REINSTATED

NO CHANGE

Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME
(See instructions on back)A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76242 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III, the ☐ Permittee ☒ Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00±6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed John H. Milton III

Permittee or Agent

Address 146 West Second Street

Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76242		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

**JT APP 141
SE ROA 104**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr

cc: Desert Mountain Surveying (email)

APPLICATION TO CHANGE THE P.O.U. of 60066

No. 76243

Date Filed SEP 07 2007

NEW PRIORITY DATE: JUL 11, 20




Indexed under		Well Log 99224
Name of applicant		
Map		Basin 2 - 29
Stream		PINE FOREST VALLEY
Township 41N Range 32E		County HUMBOLDT
Point of diversion SE 1/4 NE 1/4 Section 2		
Applicant HAPPY CREEK, INC.		
Source of Water UNDERGROUND		
Returned for correction SEP 14 2007	Abrogated by	
Corrected application received		
Map filed 9-24-2007 under 76237 Prop Pod+POU; 10-17-2002 under 60059 Exist P		
Sent for publication OCT 05 2007		
Proof of publication filed NOV 01 2007		
Investigated on ground by		
Protested		

Ready for action NOV 29 2007

Approved April 29, 2009 2.7 CFS Divigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			15 17	15 17
2nd extension				
Date filed		JUN 04 2010		
				Filed under map

CERTIFICATE NO.		ISSUED		AMOUNT				
Use								
COMPUTER CHECK	File Entry		Publication		Permit		Certificate	

ADDRESS

JUL 19 2016
 CANCELLED BECAUSE OF
 FAILURE OF APPLICANT TO COMPLY WITH
 THE PROVISIONS OF PERMIT

P.E. STATE ENGINEER
 Can. Rescinded 10-17-2016

B



Permit No. 76243

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 06/05/1963

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60066, Certificate 16220, is issued subject to the terms and conditions imposed in said Permit 60066, Certificate 16220 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 144
SE ROA 107

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 2.7 cubic feet per second or 162.80 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009


for State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl
cc: Desert Mountain Surveying, email

JT APP 146
SE ROA 109

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa
cc: Desert Mountain Surveying (Email)

Schedule of Fees:
Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 147
SE ROA 110**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA
PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT No. 76243

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

John H. Milton II
Permittee or Agent

Address

146 West Second Street
Street No. or PO Box
Winnemucca, Nevada, 89445
City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76243		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244
					CHECK TOTAL \$2,880.00

7/12/2016

34

**JT APP 149
SE ROA 112**

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script that reads "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

**JT APP 150
SE ROA 113**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for **12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada.** Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76243

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

DATE

Karl Eitenmiller

PERMIT REINSTATED

NO CHANGE

Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76243 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III, the ☐ Permittee ☒ Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00+6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed John H. Milton III

Permittee or Agent

Address 146 West Second Street

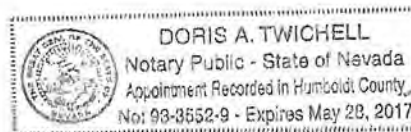
Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

Revised 10/16 - ext_app

JT APP 155
SE ROA 118

NOV 29, 2017
2:11b



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76243		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

**JT APP 157
SE ROA 120**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>
November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time **has been granted to April 29, 2017**, with the provision that no further extensions will be granted for filing **Proof of Beneficial Use and Cultural Map** except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr
cc: Desert Mountain Surveying (email)

APPLICATION TO CHANGE THE

P.O.U. OF 71784

No. 76244

Date Filed SEP 07 2007

NEW PRIORITY DATE JUL 11, 2016

Well Log 23268

Indexed under

Name of applicant

Map

Basin 2 - 29

Stream

PINE FOREST VALLEY

Township 41N Range 32E

County HUMBOLDT

Point of diversion NE 1/4 SE 1/4 Section 2

Applicant HAPPY CREEK, INC.

Source of Water UNDERGROUND

Returned for correction SEP 14 2007

Abrogated by

Corrected application received SEP 24 2007

Map filed 9-24-2007 under 76237 Prop POD+POU; 10-17-2002 under 60059 Exist POD

Sent for publication OCT 05 2007

5-10-1994 under 60059 Exist POD

Proof of publication filed NOV 01 2007

Investigated on ground by

Protested

Ready for action NOV 29 2007

Approved April 29, 2009

1.0 cfs

Irrigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Sept 15, 2009	Apr. 29, 2012	Apr. 29, 2012
1st extension			12/15/12	12/15/12
2nd extension				
Date filed		JUN 04 2010		
				Filed under map

CERTIFICATE NO.	ISSUED	AMOUNT
Use		
COMPUTER CHECK	File Entry <input checked="" type="checkbox"/>	Publication <input checked="" type="checkbox"/>
	Permit <input checked="" type="checkbox"/>	Certificate <input checked="" type="checkbox"/>

ADDRESS

~~CANCELLED~~ JUL 19 2016
 BECAUSE OF
 FAILURE OF APPLICANT TO COMPLY WITH
 THE PROVISIONS OF PERMIT

~~Can. Rescinded~~ P.E. STATE ENGINEER
 10-17-2016

B

15716

JT APP 159
 SE ROA 122



Permit No. 76244

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 09/18/1967

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 71784 is issued subject to the terms and conditions imposed in said Permit 71784 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 160
SE ROA 123

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 1.0 cubic feet per second or 476.0 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

September 15, 2009

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009

K.D. Hull P.E.
for State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl

cc: Desert Mountain Surveying, email

JT APP 162
SE ROA 125

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa

cc: Desert Mountain Surveying (Email)

Schedule of Fees:

Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 163
SE ROA 126**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76244

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

Permittee or Agent

Address

146 West Second Street

Street No. or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76244		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

JT APP 166
SE ROA 129

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

JT APP 167
SE ROA 130

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76244

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

DATE

Karl Esterwill

NO CHANGE

Oct. 12, 2016

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76244 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III

, the



Permittee



Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00+6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed

John H. Milton III
Permittee or Agent

Address

146 West Second Street

Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

775-623-4414

E-mail

dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76244		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244
					CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III. Desert Mountain Surveying, E-mail

**JT APP 173
SE ROA 136**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr

cc: Desert Mountain Surveying (email)

**JT APP 174
SE ROA 137**

1 CASE NO.: CV 20, 869

2 DEPT. NO.: 2

FILED
2017 MAR -2 PM 3:33
TAMARA SPERO
DIST. COURT CLERK

3
4
5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF HUMBOLDT

7 * * *

8 HAPPY CREEK, INC., a Nevada Corporation,)

9 Petitioner,)

10 vs.)

11 JASON KING, P.E., Nevada State)
12 Engineer, DIVISION OF WATER RESOURCES,)
13 DEPARTMENT OF CONSERVATION AND)
14 NATURAL RESOURCES,)

Respondent.)

STIPULATION AND ORDER

EXTENDING BRIEFING SCHEDULE

15 COMES NOW, Petitioner, HAPPY CREEK, INC., a Nevada Corporation (hereinafter "Happy
16 Creek"), by and through its attorneys of record, PAUL G. TAGGART, Esq., and RACHEL L. WISE,
17 Esq., of the law firm of TAGGART & TAGGART, LTD., and Respondent, JASON KING, P.E.,
18 Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF
19 CONSERVATION AND NATURAL RESOURCES (hereinafter "State Engineer") by and through his
20 attorneys of record, ADAM P. LAXALT, Esq. Attorney General and JUSTINA A. CAVIGLIA, Esq.,
21 Deputy Attorney General of the Nevada Attorney General's Office, and hereby stipulate to amend the
22 briefing schedule for this matter and respectfully request that the Court enter an Order accordingly:

23 1. Happy Creek shall have up to and including **MARCH 17, 2017**, in which to file its
24 Opening Brief;

25 2. The State Engineer shall have up to and including **APRIL 18, 2017**, in which to file
26 his Answering Brief; and

27 3. Happy Creek shall have up to and including **MAY 18, 2017**, in which to file its Reply
28 Brief.

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 - Telephone
(775) 883-9900 - Facsimile

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned do hereby affirm that the preceding document does not contain the social security number of any persons.

DATED this 21st day of February, 2017.

DATED this 21st day of February, 2017.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 - Telephone
(775) 883-9900 - Facsimile

NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1208 - Telephone
(775) 684-1108 - Facsimile

By: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
RACHEL L. WISE, ESQ.
Nevada State Bar No. 12303
Attorneys for Petitioner

By: 

JUSTINA CAVIGLIA, ESQ.
Senior Deputy Attorney General
Nevada State Bar No. 9999
Attorney for Respondent

The Court, having reviewed and considered all the pleadings and documents on file, and the arguments therein, the Court finds the following:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the above-captioned Stipulation and Order regarding Briefing Schedule is granted.

IT IS SO ORDERED.

DATED this 27 day of February, 2017.


DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of
3 TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and
4 correct copy of the foregoing, as follows:

5 [X] By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with
6 postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the
7 ordinary course of business, addressed as follows:

8 Justina A. Caviglia, Esq.
9 Nevada Attorney General's Office
10 100 N. Carson St.
11 Carson City, NV 89701

12 DATED this 21st day of February, 2017.

13 

14 Employee of TAGGART & TAGGART, LTD.

15 Taggart & Taggart, Ltd.
16 108 North Minnesota Street
17 Carson City, Nevada 89703
18 (775)882-9900 - Telephone
19 (775)883-9900 - Facsimile

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

HAPPY CREEK, INC.,

Respondent.

Electronically Filed
Mar 06 2018 04:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 74266

JOINT APPENDIX

Volume I of XVII
(Pages JT APP 1-86)

DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
04/19/17	Answering Brief (Respondent's)	XVI	892-913
08/08/17	Hearing Statement (Happy Creek's)	XVI	971-977
08/07/17	Hearing Statement (State Engineer's)	XVI	941-970
06/20/17	Memo as to Court Date	XVI	940
12/08/16	Memorandum of Temporary Assignment	I	25-26
11/18/16	Notice of Appeal	I	1-6
12/02/16	Notice of Appearance for Respondent	I	21-22
09/29/17	Notice of Entry of Order reinstating original priority dates of Happy Creek's water rights permits	XVII	1173-1183
12/02/16	Notice of Intent to Defend	I	23-24
03/16/17	Opening Brief (Happy Creek's)	III	178-212
11/18/16	Petition for Judicial Review	I	7-20
08/14/17	PowerPoint Presentation at Oral Argument (Happy Creek's)	XVI	978-996
08/14/17	PowerPoint Presentation at Oral Argument (State Engineer's)	XVI	997-1042
05/18/17	Reply Brief (Happy Creek's)	XVI	914-936

DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
06/12/17	Request for Submission and Oral Argument	XVI	937-934
12/19/16	Stipulation and Order Regarding Briefing Schedule	I	27-29
03/02/17	Stipulation and Order to Extend Briefing Schedule	II	175-177
12/28/16	Summary of Record on Appeal and Documents SE ROA 1-137	I	30-174
03/16/17	Supplemental Record on Appeal and Documents SROA 1-670	III-XVI	213-891
08/14/17	Transcript of Oral Argument	XVI-XVII	1043-1172

RESPECTFULLY SUBMITTED this 6th day of March, 2018.

ADAM PAUL LAXALT
Attorney General

By: /s/ Justina A. Caviglia
JUSTINA A. CAVIGLIA
Deputy Attorney General
Nevada Bar No. 9999
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1222
Fax: (775) 684-1108
Email: jcaviglia@ag.nv.gov

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 6th day of March, 2018, I served a copy of the foregoing JOINT APPENDIX (Volumes I-XVII, Pages JT APP 1-1183), by electronic service to:

Paul G. Taggart, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

/s/ Dorene A. Wright

FILED

2016 NOV 18 AM 8:44

THOMAS RAE SPERO
DIST. COURT CLERK

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
RACHEL L. WISE, ESQ.
Nevada State Bar No. 12303
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 – Telephone
(775)883-9900 – Facsimile
Attorneys for Petitioner

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

* * *

HAPPY CREEK, INC.

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondent.

CASE NO.: CV 20,867

DEPT. NO.: 2

NOTICE OF APPEAL

COMES NOW, Petitioner, HAPPY CREEK, INC. ("Happy Creek"), by and through their attorneys of record, PAUL G. TAGGART, Esq., and RACHEL L. WISE, Esq., of the law firm of TAGGART & TAGGART, LTD., and hereby petitions this Court to reverse the State Engineer's decision as it relates to the change in priority date for Permits 76237 through 76244, issued by Respondent, Jason King, P.E., Nevada State Engineer on November 1, 2016.¹

///

¹ Exhibit 1.

1 This Notice of Appeal and the related Petition for Judicial Review are filed pursuant to NRS
2 533.450. The State Engineer's decision is an appealable decision under NRS 533.450(1) when the
3 State Engineer's decision (1) involves a water right, (2) affects a person's interests, (3) relate to the
4 administration of determined rights, and (4) is a final written determination on the issue.²

5 Through the Petition for Judicial Review, Petitioner has respectfully requested that this Court
6 reinstate Happy Creek's priority date on Permits 76237 through 76244 to their original priority dates
7 and to award any other relief this Court deems appropriate.

8 **AFFIRMATION**
9 **Pursuant to NRS 239B.030**

10 The undersigned does hereby affirm that the preceding document does not contain the social
11 security number of any persons.

12 DATED this 14th day of November, 2016.

13 TAGGART & TAGGART, LTD.
14 108 North Minnesota Street
15 Carson City, Nevada 89703
16 (775)882-9900 – Telephone
17 (775)883-9900 – Facsimile

18 By: 

19 PAUL G. TAGGART, ESQ.
20 Nevada State Bar No. 6136
21 RACHEL L. WISE, ESQ.
22 Nevada State Bar No. 12303
23 Attorneys for Petitioner
24
25
26
27

28 ² NRS 533.450(1); *Howell v. Ricci*, 124 Nev. 1222, 1228, 197 P.3d 1044, 1048 (2008).

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing, as follows:

☒ **BY HAND-DELIVERY VIA INTEROFFICE-TYPE MESSENGER**, by placing a true and correct copy of the above-identified document in an envelope, addressed as follows:

Jason King, P.E.
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

DATED this 14th day of November, 2016.



Employee of TAGGART & TAGGART, LTD.

INDEX OF EXHIBITS

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Exhibit Number

Document

1.

November 1, 2016 State Engineer Decision

EXHIBIT 1

EXHIBIT 1

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 – Telephone
(775)883-9900 – Facsimile

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
RACHEL L. WISE, ESQ.
Nevada State Bar No. 12303
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 – Telephone
(775)883-9900 – Facsimile
Attorneys for Petitioner

FILED

2016 NOV 18 AM 8:44

TEH RAE SPERO
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

* * *

HAPPY CREEK, INC.

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES,

Respondent.

CASE NO.: CV 20,869

DEPT. NO.: 2

PETITION FOR JUDICIAL REVIEW

COMES NOW, Petitioner, HAPPY CREEK, INC. ("Happy Creek"), by and through their attorneys of record, PAUL G. TAGGART, Esq., and RACHEL L. WISE, Esq., of the law firm of TAGGART & TAGGART, LTD., and hereby files this Petition requesting that this Court reverse or amend the decision that changed the priority dates for Permits 76237 through 76244 to July 11, 2016. That decision was issued by Malcolm J. Wilson, P.E., an employee for Jason King, P.E., Nevada State Engineer ("State Engineer").¹ This Petition for Judicial Review and the accompanying Notice of Appeal are filed with this Court in accordance with NRS 533.450.

¹ Exhibit 1.

1 **I. JURISDICTIONAL STATEMENT**

2 Pursuant to NRS 533.450(1), decisions of the State Engineer are subject to judicial review “in
3 the proper court of the county in which the matters affected or a portion thereof are situated.” The real
4 property relative to this action is within Humboldt County. Therefore, the Sixth Judicial District Court
5 of the State of Nevada in and for Humboldt County is the proper venue for judicial review of the State
6 Engineer’s November 1, 2016, decision regarding cancelled permit nos. 76237 through 76244
7 (“Permits”), inclusive (“Reinstatement Letter”).

8 Pursuant to *Howell v. Ricci*, the Nevada Supreme Court held that a letter from the State
9 Engineer that: (1) affects a property interest, (2) relates to the administration of determined rights, and
10 (3) constitutes a final written determination on the issue is a decision that an aggrieved party may
11 properly challenge through a petition for judicial review.² On November 1, 2016, the State Engineer
12 issued a Reinstatement Letter to Petitioner that reinstated Petitioner’s Permits from cancellation status,
13 but changed the priority dates of all the Permits to July 11, 2016.

14 **II. BACKGROUND**

15 Petitioner, Happy Creek, holds eight water permits for irrigation of land located in the Pine
16 Forest Valley Basin in Humboldt County. The perennial yield for Pine Forest Valley Basin is 11,000.
17 Currently, 39,757.97 underground water rights in Pine Forest Valley Basin have been appropriated.
18 Happy Creek’s eight water permits were of varying priority dates. Permit No. 76240 held a priority
19 date of October 8, 1954. Permit No. 76243, held a priority date of June 5, 1963. Permit No. 76237
20 held a priority date of December 15, 1966. Permit No. 76244 held a priority date of September 18,
21 1967. Permit Nos. 76238 – 39 held a priority date of March 3, 1969. Permit No. 76242 held a priority
22 date of September 25, 1981. Permit No. 76241 held a priority date of November 6, 1990 (collectively,
23 “Permits”). Permit No. 76240 was the oldest priority permit in the basin, challenged only by vested
24 water rights.

25 The preservation of the Permits was entrusted by Happy Creek to Mr. John Milton of Desert
26 Mountain Surveying. Mr. Milton is a Nevada Professional Land Surveyor, license no. 5271. Mr.

27
28 ² *Howell v. Ricci*, 124 Nev. 1222, 1228, 197 P.3d 1044, 1048 (2008).

1 Milton is an engineer operating as an agent for Happy Creek for over a decade. Mr. Milton has
2 consistently maintained Happy Creek’s water rights in good standing until the current action.

3 On May 19, 2016, the State Engineer mailed, via certified mailing, the final notice for permits
4 76237-44 to Happy Creek (“Final Notice”). This notice informed Happy Creek that a proof of
5 beneficial use and cultural map (“PBU”) or a request for an extension of time (“EOT”) must be filed
6 on or before April 29, 2016, or Happy Creek’s Permits would be cancelled.³ This same notice was e-
7 mailed to Desert Mountain Surveying. On May 23, 2016, Happy Creek e-mailed the Final Notice to
8 John Milton, of Desert Mountain Surveying.⁴

9 On July 11, 2016, Mr. Milton petitioned the Nevada State Engineer to reinstate the Permits. On
10 July 19, 2016, the State Engineer issued the Notice of Cancellation of Permits 76237-44. On July 8,
11 2016, Mr. Milton recognized that he may have confused the Final Notice for the Permits with different
12 responsibilities with his office.⁵ The State Engineer held the reinstatement hearing on October 12,
13 2016. On November 1, 2016, the State Engineer issued his written disposition regarding the Permits
14 and their reinstatement. The State Engineer does not possess equitable powers and is required to
15 reinstate the priority date as “the date of the filing of the written petition” for reinstatement.⁶ And
16 therefore, the priority date for all eight Permits was changed to July 11, 2016.

17 **III. GROUND FOR PETITION**

18 **A. Water rights are unique real property**

19 Nevada has always recognized that water rights are unique real property rights.⁷ The bundle of
20 property rights includes “all rights inherent to ownership, including the inalienable right to possess,
21 use, and enjoy the property.”⁸ Parts of the sticks in the bundle of Nevada water rights are the date of

22 ³ NRS 533.395, NRS 533.410.

23 ⁴ Exhibit 2.

24 ⁵ Exhibit 3.

⁶ NRS 533.395(3).

25 ⁷ *Nenzel v. Rochester Silver Corp.*, 50 Nev. 352, 259 P. 632, 634 (1927) (stating, “[i]t is well settled that a water right is realty.”)
26 *citing* 2 Kinney on Irrigation (2d Ed.) at 1328; Weil, Water Rights (2d Ed.) at 129; Long on Irrigation, at 132, *Indep. Asphalt*
27 *Consultants, Inc. v. Studebaker*, 126 Nev. 722, 367 P.3d 781 (2010), *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029,
1030 (1987), *See Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction issued
to preserve view); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to
stop foreclosure reversed because legal remedy inadequate), *Locken v. Locken*, 98 Nev. 369, 650 P.2d 803 (1982).

28 ⁸ *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647, 173 P.3d 734, 740 (2007), *see* NEV. CONST. ART. 1, § 1 (granting the
inalienable constitutional right to “[p]rotect[]” property).

1 priority.⁹ Under the prior appropriation doctrine, water rights are acquired by diverting water and
2 applying it for a beneficial purpose; a distinctive feature of the prior appropriation doctrine is the rule
3 of priority under which relative rights of water users are ranked in the order of their seniority.¹⁰

4 **B. Equitable Relief may be afforded to the Petitioner.**

5 Nevada water law supports the contention that equity is appropriate to limit the harsh
6 consequences of Nevada law where circumstances justify protecting individual landowners from unjust
7 outcomes.¹¹ *State Engineer v. American National Insurance Co.*, *Bailey v. State of Nevada*,
8 and *Engelmann v. Westergard*, are all examples of the Nevada Supreme Court embracing the principle
9 that the district court may grant equitable relief regarding cancelled water rights.¹²

10 Similar to other petitioners who have received equitable relief from Nevada courts, Happy
11 Creek has diligently complied with the beneficial use requirements of Nevada water law.¹³ Further,
12 Happy Creek informed and instructed their agent to file the appropriate documents to protect their
13 Permits. Happy Creek is currently using the water associated with the Permits on their ranch in
14 Humboldt County. Happy Creek has never received a four year forfeiture letter, and has assigned a
15 ranch manager to place the water to beneficial use on their Humboldt County Ranch.¹⁴

16 Similar to *Great Basin Water Network v. State Eng'r*, voiding the priority dates of the Permits
17 is inequitable to the applicant.¹⁵ Just as the Nevada Supreme Court held that applicants cannot be
18 punished for the State Engineer's failure to follow his statutory duties, Happy Creek should not be

21 ⁹ *Colorado v. New Mexico*, 459 U.S. 179, 179 (1982).

22 ¹⁰ *Id.*

23 ¹¹ *United States v. Alpine Land & Reservoir Co.*, 291 F.3d 1062, 1076 (9th Cir. 2002) (applying equity to intrafirm transfers of
24 water rights when the individual land owners previously relied on the federal government's assertions regarding the necessity of
25 change applications), *Bailey v. State*, 95 Nev. 378, 594 P.2d 734, 737-39 (1979) (concluding that an underground water
26 permittee who had not timely filed proof of beneficial use was entitled to equitable relief from cancellation of water rights
27 where she had continuously worked on land during the period in question), *Town of Eureka v. Office of State Eng'r*, 108 Nev.
28 163, 826 P.2d 948, 951-52 (1992) (holding it appropriate to waive application of a forfeiture statute where the holder of water
rights resumed use after the statutory period of non-use).

¹² *Am. Natl. Ins. Co.*, 88 Nev. at 426, 498 P.2d at 1330 (1972), *Bailey*, 95 Nev. at 382, 594 P.2d at 736-37, *Engelmann*, 98 Nev.
at 352, 647 P.2d at 388 (1982).

¹³ See also *State v. Morris DeLee Revocable Trust*, 2009 WL 1491012, 281 P.3d 1221 (2009)(unpublished disposition, and this
cite is provided in conformity with SCR 123 as persuasive authority only).

¹⁴ NRS 534.090.

¹⁵ *Great Basin*, 126 Nev. 187, 199, 234 P.3d 912, 920 (2010).

1 punished for the failure of its agent.¹⁶ In *Great Basin*, the Nevada Supreme Court pursued the course
2 of action that was “the proper and most equitable remedy.”¹⁷

3 If Pine Forest Valley Basin is curtailed, Happy Creek is subject to losing use of their once
4 senior water rights.¹⁸ Further, the State Engineer has already ordered that he will not issue any
5 additional irrigation water rights in the Pine Forrest Valley Basin.¹⁹

6 **C. Other grounds.**

7 Other grounds exists for the petition that Petitioner reserves the right to present in the briefs and
8 argument in this matter.

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26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

28 ¹⁸ See Order 831 curtailing and denying any and all applications to appropriate underground water to irrigate land within the Pine Forest Valley Basin, *see also* Order 711 designating portions of the Pine Forest Valley Basin.

¹⁹ *Id.*

1 **IV. CONCLUSION**


2 For the reasons explained above, and others that may be discovered during the pendency of this
3 appeal, Petitioners respectfully request this Court reinstate Happy Creek's priority date on Permits
4 76237 through 76244 to their original priority dates and to award any other relief this Court deems
5 appropriate.

6 **AFFIRMATION**
7 **Pursuant to NRS 239B.030**

8 The undersigned does hereby affirm that the preceding document does not contain the social
9 security number of any persons.

10 DATED this 14th day of November, 2016.

11 TAGGART & TAGGART, LTD.
12 108 North Minnesota Street
13 Carson City, Nevada 89703
14 (775) 882-9900 – Telephone
15 (775) 883-9900 – Facsimile

16 
17 By: PAUL G. TAGGART, ESQ.
18 Nevada State Bar No. 6136
19 RACHEL L. WISE, ESQ.
20 Nevada State Bar No. 12303
21 Attorneys for Petitioners
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing, as follows:

[X] BY HAND-DELIVERY VIA INTEROFFICE-TYPE MESSENGER, by placing a true and correct cope of the above-identified document in an envelope, addressed as follows:

Jason King, P.E.
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

DATED this 14th day of November, 2016.



Employee of TAGGART & TAGGART, LTD.

INDEX OF EXHIBITS

Exhibit Number	Document
1.	November 1, 2016, Cancellation Letter
2.	May 23, 2016 Email from Ron Fickler to John Milton
3.	July 8, 2016 Email from John Milton to Phil Chambers

EXHIBIT 1

EXHIBIT 1

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

Malcolm J. Wilson, P.E.

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

JT APP 16

EXHIBIT 2

EXHIBIT 2

Sarah Hope

From: Ron Fickler <RFickler@lavacacattle.com>
Sent: Monday, May 23, 2016 11:29 AM
To: John Milton
Cc: Phil A. Chambers
Subject: Happy Creek Final Notice
Attachments: scan4051.pdf

Hi John

Just wanted to make sure you received this.

Thanks Ron

Ronald S Fickler
La Vaca Cattle Co.
2489 W Main St.
Littleton, CO 80120
303-730-2300 Office
303-730-3223 Fax
303-981-8543 Cell

EXHIBIT 3

EXHIBIT 3

Sarah Hope

From: John Milton <john@winnemucca.net>
Sent: Friday, July 08, 2016 11:20 AM
To: 'Phil A. Chambers'
Subject: RE: Happy Creek Final Notice
Attachments: Review of Cancelled Permit 76237.pdf

Phil,

Attached is a copy of the Review of Cancelled Permit. Let me know if you want any changes or additions. I found the e-mail from Ron it came about the same time as the notice for PBU for Permits 83008,83006 and 830012. Somehow I got them confused. I can't explain how I screwed this up.
John

From: Phil A. Chambers [<mailto:pac47@qwestoffice.net>]
Sent: Thursday, July 7, 2016 10:47 AM
To: 'John Milton' <john@winnemucca.net>
Subject: FW: Happy Creek Final Notice

FYI – May 23 email from Ron Fickler.

From: Ron Fickler [<mailto:RFickler@lavacacattle.com>]
Sent: Monday, May 23, 2016 12:29 PM
To: John Milton (john@winnemucca.net)
Cc: Phil A. Chambers
Subject: Happy Creek Final Notice

Hi John

Just wanted to make sure you received this.

Thanks Ron

Ronald S Fickler
La Vaca Cattle Co.
2489 W Main St.
Littleton, CO 80120
303-730-2300 Office
303-730-3223 Fax
303-981-8543 Cell



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2016 DEC -2 PM 12:31

W. RAE SPERO
DIST. COURT CLERK

Case No. CV 20,869

Dept. No. 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

HAPPY CREEK, INC.,

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

**NOTICE OF APPEARANCE
FOR RESPONDENT**

The State of Nevada, by and through counsel, ADAM PAUL LAXALT, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Deputy Attorney General JUSTINA A. CAVIGLIA has assumed responsibility for representing the interests of Respondent, Jason King, P.E., the State Engineer, in his capacity as the Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources ("Nevada State Engineer").

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DATED this 30th day of November, 2016.

By:

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

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Paul G. Taggart, Esq.
Rachel L. Wise, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

Dorene A. Wright



COPY FILED

2016 DEC -2 PM 12:31

WILLIAM S. PERU
DIST. COURT CLERK

Case No. CV 20,869

Dept. No. 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

HAPPY CREEK, INC.,

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

**NOTICE OF
INTENT TO DEFEND**

Respondent, Jason King, P.E., Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources ("Nevada State Engineer"), by and through counsel, Nevada Attorney General ADAM PAUL LAXALT and Deputy Attorney General JUSTINA A. CAVIGLIA, hereby gives notice of his intent to defend in the Petition for Judicial Review of the decision of the State Engineer served upon the State Engineer on or about November 14, 2016.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 30th day of November, 2016.

ADAM PAUL LAXALT
Attorney General

By:

JUSTINA A. CAVIGLIA
Deputy Attorney General
Nevada Bar No. 9999
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1222
Fax: (775) 684-1108
Email: jcaviglia@ag.nv.gov
*Attorney for Respondent,
Nevada State Engineer*

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 30th day of November, 2016, I served a true and correct copy of the foregoing NOTICE OF INTENT TO DEFEND, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Paul G. Taggart, Esq.
Rachel L. Wise, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

Dorene A. Wright
Dorene A. Wright

FILED

DEC 08 2016

TAMI RAE SPERO
DIST. COURT CLERK

--FILED--
Administrative Office of the Courts
Date: 12/08/16

By: Seborah Crews

**SUPREME COURT OF THE STATE OF NEVADA
ADMINISTRATIVE OFFICE OF THE COURTS**

IN THE MATTER OF THE ASSIGNMENT OF
A SENIOR JUDGE

Order No. 17-00383

MEMORANDUM OF TEMPORARY ASSIGNMENT

WHEREAS, the Honorable Michael R. Montero, District Judge, is unable to hear the matter of *Happy Creek, Inc. v. Jason King, P.E., et al.*, Case Number CV 20,869, now pending in the Sixth Judicial District, now therefore

IT IS HEREBY ORDERED that the Honorable Steven Kosach, Senior Judge, is assigned to hear any and all matters in *Happy Creek, Inc. v. Jason King, P.E., et al.*, Case Number CV 20,869, and he shall have authority to sign any orders arising out of this assignment. The Court shall notify the parties of the assignment and provide Steven Kosach, Senior Judge with any assistance as requested.

Entered this 8 day of December 2016.

NEVADA SUPREME COURT

By: Chris, Justice

Copy: The Honorable Steven Kosach, Senior Judge
The Honorable Michael R. Montero, District Judge, Sixth Judicial District Court

JT APP 25

1 Happy Creek, Inc., Petitioner, vs. Jason King, Et Al, Respondents.

2 Sixth Judicial District Court of Nevada, Case No. CV 20869

3
4 **DECLARATION OF SERVICE**

5
6 I am a citizen of the United States, over the age of 18 years, and not a party to or interested
7 in this action. I am an employee of the Humboldt County Clerk's Office, and my business address
8 is 50 W 5th Street, Winnemucca, NV 89445. On this day I caused to be served the following
9 document(s):

10 **MEMORANDUM OF TEMPORARY ASSIGNMENT**

11 X By placing in a sealed envelope, with postage fully prepaid, in the United States Post
12 Office, Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's
13 practice whereby the mail, after being placed in a designated area, is given the appropriate postage
14 and is deposited in the designated area for pick up by the United States Postal Service.

15
16 _____ By personal delivery of a true copy to the person(s) set forth below by placement in the
17 designated area in the Humboldt County Clerk's Office for pick up by the person(s) or representative
18 of said person(s) set forth below.

19 Paul G. Taggart, Esq.
20 Rachel L. Wise, Esq.
21 Taggart & Taggart, Ltd.
108 N Minnesota St.
Carson City, NV 89703

Justina A. Caviglia
Deputy Nevada Attorney General
100 N Carson St.
Carson City NV 89701-4717

22 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
23 is true and correct.

24 Executed on December 9, 2016 at Winnemucca, Nevada.

25 
26 _____
Humboldt County Clerk

FILED

DEC 19 2016

TAMI RAE SPERO
DIST. COURT CLERK

1 CASE NO.: CV 20. 869

2 DEPT. NO.: 130

5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF HUMBOLDT

7
8 HAPPY CREEK, INC., a Nevada Corporation,)

9 Petitioner,)

10 vs.)

11 JASON KING, P.E., Nevada State)
12 Engineer, DIVISION OF WATER RESOURCES,)
13 DEPARTMENT OF CONSERVATION AND)
14 NATURAL RESOURCES,)

15 Respondent.)

STIPULATION AND ORDER

REGARDING BRIEFING SCHEDULE

15 COMES NOW, Petitioner, HAPPY CREEK, INC., a Nevada Corporation (hereinafter "Happy
16 Creek"), by and through its attorneys of record, PAUL G. TAGGART, Esq., and RACHEL L. WISE,
17 Esq., of the law firm of TAGGART & TAGGART, LTD., and Respondent, JASON KING, P.E.,
18 Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF
19 CONSERVATION AND NATURAL RESOURCES (hereinafter "State Engineer") by and through his
20 attorney of record, JUSTINA A. CAVIGLIA, Esq., Deputy Attorney General of the Nevada Attorney
21 General's Office, and hereby agree and stipulate as follows:

22 That the parties have agreed to the following briefing schedule in the above entitled matter.

- 23 1. The State Engineer shall file the Record on Appeal on or before January 17, 2017;
24 2. Happy Creek shall have up to and including February 16, 2017, in which to file its
25 Opening Brief;
26 3. The State Engineer shall have up to and including March 20, 2017, in which to file his
27

Taggart & Taggart, Ltd.
100 North Minnesota Street
Carson City, Nevada 89703
(775)882-0900 - Telephone
(775)883-9900 - Facsimile

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 - Telephone
(775) 883-9900 - Facsimile

Answering Brief, and

4. Happy Creek shall have up to and including April 19, 2017, in which to file its Reply Brief.

AFFIRMATION

Pursuant to NRS 239B.030


The undersigned do hereby affirm that the preceding document does not contain the social security number of any persons.

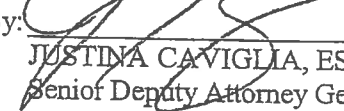
DATED this 12th day of December, 2016.

DATED this 12th day of December, 2017.

TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 - Telephone
(775) 883-9900 - Facsimile

NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1208 - Telephone
(775) 684-1108 - Facsimile

By: 
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
RACHEL L. WISE, ESQ.
Nevada State Bar No. 12303
Attorneys for Petitioner

By: 
JUSTINA CAVIGLIA, ESQ.
Senior Deputy Attorney General
Nevada State Bar No. 9999
Attorney for Respondent

The Court, having reviewed and considered all the pleadings and documents on file, and the arguments therein, the Court finds the following:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the above-captioned Stipulation and Order regarding Briefing Schedule is granted.

IT IS SO ORDERED.

DATED this 14 day of December, 2016.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing, as follows:

[X] By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Justina A. Caviglia, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

DATED this 12th day of December, 2016.



Employee of TAGGART & TAGGART, LTD.

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-8900 - Telephone
(775)883-9900 - Facsimile



COPY

FILED

DEC 28 2016

TAMI RAE SPERO
DIST. COURT CLERK

Case No. CV 20,869

Dept. No. 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

HAPPY CREEK, INC.,

Petitioner,

vs.

JASON KING, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Respondent.

SUMMARY OF
RECORD ON APPEAL

The attached documents constitute the record on appeal in this matter of Permit Nos. 76237 through 76244, Bates-stamped pages SE ROA 1-137.

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
09/12/16	Certificate of Record	1	1
Permit No. 76237			
09/07/07	Permit No. 76237	2	2
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	3	4
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	5	5
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	6	7

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	8	9
07/15/16	Permit Cancellation Checklist	10	10
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	11	12
09/09/16	Notice of Hearing	13	15
09/09/16	Email from DWR to John Milton re: notice of cancellation hearing	16	16
10/12/16	Petition Hearing Minutes	17	18
10/12/16	Petitioner's Exhibit 1 at petition hearing	19	20
10/17/16	Application for Extension of Time; DWR Receipt	21	22
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	23	23
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	24	24
12/06/16	DWR Hydrographic Abstract	25	25
Permit No. 76238			
09/07/07	Permit No. 76238	26	26
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	27	28
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	29	29
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	30	30
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	31	32
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	33	33

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Index To Administrative Record Re: Permit Nos. 76237 Through 76244				
DATE	DESCRIPTION	Bates Range SE ROA		
09/09/16	Notice of Hearing	34	35	
10/12/16	Petition Hearing Minutes	36	37	
10/17/16	Application for Extension of Time; DWR Receipt	38	39	
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	40	40	
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	41	41	
Permit No. 76239				
09/07/07	Permit No. 76239	42	42	
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	43	44	
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	45	45	
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	46	46	
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	47	48	
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	49	49	
09/09/16	Notice of Hearing	50	51	
10/12/16	Petition Hearing Minutes	52	53	
10/17/16	Application for Extension of Time; DWR Receipt	54	55	
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	56	56	
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	57	57	

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
Permit No. 76240			
09/07/07	Permit No. 76240	58	58
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	59	60
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	61	61
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	62	62
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	63	64
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	65	65
09/09/16	Notice of Hearing	66	67
10/12/16	Petition Hearing Minutes	68	69
10/17/16	Application for Extension of Time; DWR Receipt	70	71
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	72	72
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	73	73
Permit No. 76241			
09/07/07	Permit No. 76241	74	74
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	75	76
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	77	77
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	78	78

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	79	80
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	81	81
09/09/16	Notice of Hearing	82	83
10/12/16	Petition Hearing Minutes	84	85
10/17/16	Application for Extension of Time; DWR Receipt	86	87
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	88	88
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	89	89
Permit No. 76242			
09/07/07	Permit No. 76242	90	90
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	91	92
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	93	93
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	94	94
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	95	96
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	97	97
09/09/16	Notice of Hearing	98	99
10/12/16	Petition Hearing Minutes	100	101
10/17/16	Application for Extension of Time; DWR Receipt	102	103

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	104	104
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	105	105
Permit No. 76243			
09/07/07	Permit No. 76243	106	106
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	107	108
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	109	109
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	110	110
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	111	112
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	113	113
09/09/16	Notice of Hearing	114	115
10/12/16	Petition Hearing Minutes	116	117
10/17/16	Application for Extension of Time; DWR Receipt	118	119
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	120	120
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	121	121
Permit No. 76244			
09/07/07	Permit No. 76244	122	122
04/29/09	Permit to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated	123	124

Index To Administrative Record Re: Permit Nos. 76237 Through 76244

DATE	DESCRIPTION	Bates Range SE ROA	
06/19/15	Letter from DWR to Happy Creek re: application for extension of time is granted	125	125
05/19/16	Letter from DWR to Happy Creek re: final notice for permit to file proof of beneficial use and cultural map	126	126
07/11/16	Petition for Review of Cancelled Permit; DWR Receipt	127	128
07/19/16	Letter from DWR to Happy Creek re: notice of cancellation for failure to comply with terms of permit	129	129
09/09/16	Notice of Hearing	130	131
10/12/16	Petition Hearing Minutes	132	133
10/17/16	Application for Extension of Time; DWR Receipt	134	135
11/01/16	Letter from DWR to Happy Creek re: cancellation of permit is rescinded	136	136
11/16/16	Letter from DWR to Happy Creek re: application for extension of time is granted	137	137

AFFIRMATION

The undersigned does hereby affirm that the preceding Summary of Record on Appeal does not contain the social security number of any person.

DATED this 27th day of December, 2016.

ADAM PAUL LAXALT
Attorney General

By:

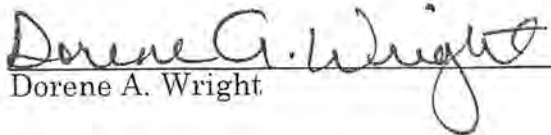
JUSTINA A. CAVIGLIA
Deputy Attorney General
Nevada Bar No. 9999
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1222
Fax: (775) 684-1108
Email: jcaviglia@ag.nv.gov
Attorney for Respondent,
Nevada State Engineer

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 27th day of December, 2016, I served a true and correct copy of the foregoing SUMMARY OF RECORD ON APPEAL, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Paul G. Taggart, Esq.
Rachel L. Wise, Esq.
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703

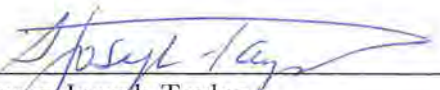

Dorene A. Wright

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

CERTIFICATE OF RECORD

STATE OF NEVADA)
) ss
CARSON CITY)

I, Susan Joseph-Taylor, Deputy Administrator of the Division of Water Resources, State of Nevada, duly appointed and qualified, having full charge of the records and files of the Office of the State Engineer, do hereby certify that any copies of originals provided herein are complete and true copies as appear in the records and files of the Office of the State Engineer of Nevada.



Susan Joseph-Taylor
Deputy Administrator

12/8/16

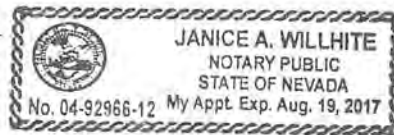
Date

SUBSCRIBED AND SWORN to before me
by Susan Joseph-Taylor this

9 day of 12, 2016.



Notary Public



Record on Review In the matter of the
Cancellation and Reinstatement of
Permits 76237, 76238, 76239, 76240,
76241, 76242, 76243 and 76244

APPLICATION TO CHANGE THE P.O.U. OF 60059

No. 76237

Date Filed SEP 07 2007

NEW PRIORITY DATE JUL 11, 2016

Indexed under

Well Log 23268

Name of applicant

Map

Basin 2 - 29

Stream

PINE FOREST VALLEY

Township 41N Range 32E

County HUMBOLDT

Point of diversion NE 1/4 SE 1/4 Section 02

Applicant HAPPY CREEK, INC.

Source of Water UNDERGROUND

Returned for correction SEP 14 2007

Abrogated by

Corrected application received SEP 24 2007

Map filed PODs + Prop. POU filed 9/24/07; Exist. POU under PBU for 60059 filed 10/17/02

Sent for publication OCT 05 2007

Proof of publication filed NOV 01 2007

Investigated on ground by

Protested

Ready for action NOV 29 2007




Approved April 29, 2009

1.89 cfs

Irrigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			13/18/17	13/18/17
2nd extension				
Date filed		JUN 04 2010		
				Filed under map

CERTIFICATE NO.		ISSUED		AMOUNT				
Use								
COMPUTER CHECK	File Entry		Publication		Permit		Certificate	

ADDRESS

JUL 19 2016
 CANCELLED BECAUSE OF
 FAILURE OF APPLICANT TO COMPLY WITH
 THE PROVISIONS OF PERMIT
 P.E. STATE ENGINEER
 Can. Rescinded 10-17-2016

B



Permit No. 76237

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 12/15/1966

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60059, Certificate 16214, is issued subject to the terms and conditions imposed in said Permit 60059, Certificate 16214 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

JT APP 40
SE ROA 3

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 1.89 cubic feet per second or 587.87 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009

KL Hull P.E.
for State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl

cc: Desert Mountain Surveying, email

JT APP 42
SE ROA 5



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No:71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa

cc: Desert Mountain Surveying (Email)

Schedule of Fees:

Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 43
SE ROA 6**

[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)

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Search or Enter a Tracking Number

[Customer Service >](#)

Have questions? We're here to help.

[Get Easy Tracking Updates >](#)

Sign up for My USPS.

Tracking Number: **71067808063000627597**Updated Delivery Day: **Monday, May 23, 2016**

Product & Tracking Information

Available Actions

Postal Product:

Features:

Certified Mail™

DATE & TIME

STATUS OF ITEM

LOCATION

May 23, 2016 , 12:23 pm

Delivered, Left with Individual

LITTLETON, CO 80120

Your item was delivered to an individual at the address at 12:23 pm on May 23, 2016 in LITTLETON, CO 80120

May 23, 2016 , 8:03 am

Arrived at Unit

LITTLETON, CO 80120

May 22, 2016 , 4:49 am

Departed USPS Facility

DENVER, CO 80266

May 21, 2016 , 9:27 am

Arrived at USPS Facility

DENVER, CO 80266

May 20, 2016 , 6:20 am

Departed USPS Facility

RENO, NV 89510

May 19, 2016 , 9:25 pm

Arrived at USPS Facility

RENO, NV 89510

Track Another Package

Tracking (or receipt) number

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SE ROA 7

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA
PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76237

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

John H. Milton II
Permittee or Agent

Address

146 West Second Street
Street No. or PO Box
Winnemucca, Nevada, 89445
City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76237		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00

Permit Cancellation Checklist

Permit # 76237 thru 76244

Date 7/15/16

- ☒ Is the permit Abrogated, Withdrawn or Cancelled? (No)
- ☒ Have 30 days passed since the date of the mailing of the Final Notice? (Yes)
Latest date of mailing/re-mailing of F.N.= 5/19/16
Latest date that a Proof or Extension may be filed= 6/18/16
- ☒ Has a signed Green Certified Mail Card been received from the Owner of Record? (Yes) Or, has the notice been re-mailed regular mail or notice returned undeliverable. Yes
- ☒ Is there a valid mailing address for the Owner of Record? (Yes) No
- ☒ Is the permit one of a series, and is anything filed under the other permits in the group? Yes (No)
- ☒ Have regular mail or e-mail copies of the Final Notice been sent to all responsible parties?
Agent of record ✓
Proposed new owner and agent for any pending ROC NA
Proposed new owner and agent for any pending application NA
All parties requesting correspondence ✓
Party that filed the latest form and/or paid for latest form in the permit file ✓
- ☒ Was an Application for Extension of time mistakenly filed under the base right? Yes (No)
- ☒ Are Extension, POC or PBU forms being held at the front desk which are to be filed under this permit? Yes (No)
- ☒ Is an ROC pending for this permit? Yes (No) Were agent/pending owner noticed regular mail?
- ☒ Is an Application to Change filed under this permit? Yes (No) Were agent/pending applicant noticed regular mail? Talk with S.E. or deputy if an RFA Application to Change is on file and will fully abrogate the right that is subject to cancellation.
- ☒ Has S.E. Office been notified in writing of current bankruptcy proceedings? Yes (No)



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

**JT APP 48
SE ROA 11**

2. Article Number		COMPLETE THIS SECTION ON DELIVERY	
 CAN/76237+/aa 7106 7808 0630 0063 5769		A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: Batch #: 97568 Happy Creek, Inc. 2489 West Main Street Littleton, CO 80120-1910 7/18/2016 9:55 AM		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES enter delivery address below: <input type="checkbox"/> No	
		3. Service Type	<input checked="" type="checkbox"/> Certified
		4. Restricted Delivery? (Extra Fee)	<input type="checkbox"/> Yes
Code2: File: CAN/76237+/aa			
PS Form 3811		Domestic Return Receipt	

JT APP 49
SE ROA 12

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for 12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada. Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

**JT APP 50
SE ROA 13**

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

2. Article Number

7106 7808 0630 0064 1074✓

1. Article Addressed to:

Batch #:
98546

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Code2: 76237/CanHN/MWjm

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES enter delivery address below: ☐ No

[Handwritten Signature]

3. Service Type



Certified

4. Restricted Delivery? (Extra Fee)



Yes

PS Form 3811

Domestic Return Receipt

JT APP 52
SE ROA 15

Juanita Mordhorst

From: Juanita Mordhorst
Sent: Friday, September 09, 2016 9:02 AM
To: 'dms@winnemucca.net'
Subject: Notices of Cancellation Hearings
Attachments: Peterson, David R. 76929 Can HN MWjm 9-9-16.pdf; Murray, Steven R. and Suzanne 67833, 67834, 67835, 67836, 67837 and 69857 Can HN MWjm 9-9-16.pdf; James M. Bonavia Properties, LLC 82650, 82651, 82652, 82653, 82654, 82655 and 82656 Can HN MWjm 9-9-16.pdf; Home Ranch, LLC 83821 Can HN MWjm 9-9-16.pdf; Azzarello, Charles G. and Judy R. Kritikos 78190 and 78372 Can HN MWjm 9-9-16 Can HN MWjm 9-9-16.pdf; Happy Creek, Inc. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644 Can HN MWjm 9-9-16.pdf

Dear Mr. Milton,

Please find attached Notices of Cancellation Hearings (I apologize your name was omitted on the letters.)

Juanita Mordhorst
Admin. Asst. III, Hearings Section & Adjudications
Division of Water Resources



Omitted cc; on the letters but DID send:

John Milton III, Desert Mountain Surveying, E-mail:
dms@winnemucca.net (John Milton) 76929; 67833 etc.; 82650 etc.; 83821; 78190 etc.; 76237

82650 etc, regular mail:
John L. Falen Livestock
P.O. Box 132
Orovada, Nevada 89425

**JT APP 53
SE ROA 16**

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: *Same*

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: *John H. Milton III*
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: *July 11, 2016*

NEXT PROOF DATE: *April 29, 2017*

ACTION TAKEN: *30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.*

CANCEL

76237

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

Karl Ectorville

DATE

PERMIT REINSTATED

NEW PROOF FILING DATE: NO CHANGE

OF HEARING: Oct. 12, 2016

Ron Fickler

to John Milton
cc Phil Chambers

Mon, May 23 11:28 AM

Happy Creek Final Notice

1 file attached ^



scan4051
.pdf 50.8 KB

Hi John

Just wanted to make sure you received this.

Thanks Ron

Ronald S Fickler
La Vaca Cattle Co.
2489 W Main St.
Littleton, CO 80120
303-730-2300 Office
303-730-3223 Fax
303-981-8543 Cell



STATE OF NEVADA

LEO DROZDOFF
Director
JASON KING, P.E.
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

(800) 992-0900

(In Nevada Only)

<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No: 71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa

cc: Desert Mountain Surveying (Email)

Schedule of Fees:

Fee for filing Proof of Completion - \$60

Fee for filing Proof of Beneficial Use - \$60

Fee for filing Request for Extension of Time - \$120

JT APP 57
SE ROA 20

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76237 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III

, the



Permittee



Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year
5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00+
6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)

☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed John H. Milton III

Permittee or Agent

Address 146 West Second Street

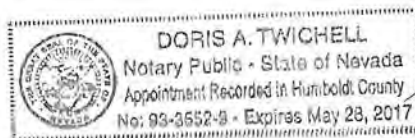
Street Address or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone 775-623-4414E-mail dms@winnemucca.net

Doris A. Twichell
Signature of Notary Public Required



Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

2016 OCT 17 PM 2:34
STATE ENGINEER'S OFFICE



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76237		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

JT APP 60
SE ROA 23



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>
November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr
cc: Desert Mountain Surveying (email)

Hydrographic Abstract

Number of Records: 15

Dec 6, 2016

Selection Criteria: basin IN ('132') AND source IN ('ug')

Basin	Application	Change of Application	Cert	File date	App status	Source	Point of Diversion			Diversion rate	Use	Priority Date	Duty balance Sup?	CO	Owner name
							QQ	Q	SEC	TWN	RNG				
132	24765			11-18-68	CAN	UG	SE	SE	07	26N	40E		0.00	PE	DAHL, DEMAR HARVEY
	26766			06-12-72	CAN	UG	NE	SW	08	27N	40E		181.00	PE	MOBILE OIL CORPORATION
	26767			06-12-72	CAN	UG	SW	SE	04	27N	40E		181.00	PE	MOBILE OIL CORPORATION
	29116			01-02-75	CAN	UG	NW	SE	26	28N	39E		960.00	PE	AMAT, RENE
	40917			03-18-80	CAN	UG	NW	NW	17	28N	40E		0.00	PE	KRABBE, AUBREY
	44081		11196	06-29-81	CER	UG	SE	SW	11	26N	39E		27.25	PE	JOE SAVAL COMPANY, LLC
				CHANGED BY: 78187T	EXP	UG									
				CHANGED BY: 79495T	EXP	UG									
	44829			10-29-81	WDR	UG	SE	SW	11	26N	39E		0.00	PE	BLM
	77712			12-22-08	PER	UG	NW	SW	34	27N	40E		240.00	PE	JOE SAVAL CO LLC
	77713			12-22-08	PER	UG	NW	SW	34	27N	40E		23.62	PE	JOE SAVAL CO LLC
	78187T	44081		03-25-09	EXP	UG	NW	SW	34	27N	40E		27.25	PE	JOE SAVAL CO LLC
	79495T	44081		02-11-10	EXP	UG	NW	SW	34	27N	40E		27.25	PE	JOE SAVAL CO LLC
	82193			10-11-12	PER	UG	SW	SE	04	27N	40E		13.94	PE	JOE SAVAL COMPANY LLC
	86543			10-31-16	APP	UG	NE	NE	21	27N	40E		23.40	PE	ORNI 15 LLC

No. 76238

Date Filed SEP 07 2007

NEW PRIORITY DATE JUL 11, 2016
Well Log 95462

Indexed under

Name of applicant

Map

Basin 2 - 29

Stream

PINE FOREST VALLEY

Township 42N Range 32E

County HUMBOLDT

Point of diversion NE 1/4 SE 1/4 Section 35

Applicant HAPPY CREEK, INC.

Source of Water UNDERGROUND

Returned for correction SEP 14 2007

Abrogated by

Corrected application received

Map filed PODs + Prop. POU under 76237 filed 9/24/07; Exist. POU under PBU for 60059 filed 10/1/07

Sent for publication OCT 05 2007

Proof of publication filed NOV 01 2007

Investigated on ground by

Protested

Ready for action NOV 29 2007

Approved April 29, 2009 4.0 cfs Irrigation

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			12/15/17	12/18/17
2nd extension				
Date filed		JUL 29 2010		
				Filed under map

CERTIFICATE NO.		ISSUED		AMOUNT				
Use								
COMPUTER CHECK	File Entry	<input checked="" type="checkbox"/>	Publication	<input checked="" type="checkbox"/>	Permit	<input checked="" type="checkbox"/>	Certificate	

ADDRESS

JUL 19 2016

CANCELLED BECAUSE OF
FAILURE OF APPLICANT TO COMPLY WITH
THE PROVISIONS OF PERMITP.E. STATE ENGINEER
Can. Rescinded 10-17-16

B



Permit No. 76238

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 03/03/1969

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60060, Certificate 16215, is issued subject to the terms and conditions imposed in said Permit 60060, Certificate 16215 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243, and 76244 shall not exceed 3,063.60 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 4.0 cubic feet per second or 913.60 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

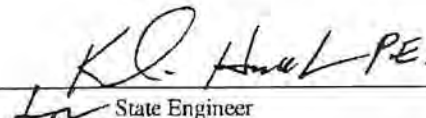
April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009



State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl
cc: Desert Mountain Surveying, email

**JT APP 66
SE ROA 29**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No: 71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa
cc: Desert Mountain Surveying (Email)

Schedule of Fees:
Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 67
SE ROA 30**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT NO. 76238

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed


Permittee or Agent

Address

146 West Second Street
Street No. or PO Box
Winnemucca, Nevada, 89445
City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76238		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa

**JT APP 70
SE ROA 33**

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

September 9, 2016

NOTICE OF HEARING

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910
Certified Mail #7106 7808 0630 0064 1074

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

Ladies and Gentlemen:

Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. These permits were cancelled for the Permittee's failure to timely file the Proofs of Beneficial Use as provided under Nevada Revised Statutes (NRS) § 533.410.

The State Engineer has received your written petition requesting a review of the cancellation at a public hearing, pursuant to NRS § 533.395 (2). Accordingly, a hearing has been set for **12:30 p.m. on Wednesday, October 12, 2016, to be held at the Humboldt County Library Meeting Room, 85 East Fifth Street, Winnemucca, Nevada.** Failure to appear at the designated time and place will result in an affirmation of the State Engineer's cancellation.

You or your designated representative should plan to attend for the purpose of presenting evidence or testimony in support of your position concerning the cancelled permits. You are expected to come to the hearing with an original and one copy of any exhibit that is being offered into evidence for submission to the State Engineer.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify me in writing at the Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2806, as soon as possible.

**JT APP 71
SE ROA 34**

Happy Creek, Inc.

Re: Cancelled Permit Nos. 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 72644

September 9, 2016

Page 2

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or to call me at (775) 684-2806.

Sincerely,



Malcolm J. Wilson, P.E.

Hearing Officer

MJW/jm

cc: Division of Water Resources, E-mail
Patty Kaczmarek, E-mail
Sam Monteleone, E-mail
Thomas K. Gallagher, E-mail

NRS § 533.395(2) PETITION HEARING

PERMIT NO.: 76237, 76238, 76239, 76240, 76241, 76242, 76243 & 76244

OWNER OF RECORD: Happy Creek, Inc.

OWNER AT HEARING: Same

HEARING TIME: 12:30 PM

HEARING DATE: October 12, 2016

HEARING PLACE: Humboldt County Library Meeting Room
85 East Fifth Street, Winnemucca, Nevada

REPORTED BY: Digital Recorder

APPEARANCES FOR
PETITIONER: John H. Milton III
Glen Thiede

WATER RESOURCES: Malcolm J. Wilson

NEW PRIORITY DATE: July 11, 2016

NEXT PROOF DATE: April 29, 2017

ACTION TAKEN: 30 days to file Extension of Time
Applications. Reinstate upon receipt
in office of State Engineer.

CANCEL

76238

FAILURE OF PERMITTEE
TO COMPLY WITH THE
TERMS OF THE PERMIT

DATE

Karl Eitenmiller

PERMIT REINSTATED

NO CHANGE

Oct. 12, 2016

APPLICATION FOR EXTENSION OF TIME

(See instructions on back)

A. NDWR's Owner(s) of Record Happy Creek, Inc.B. IN THE MATTER OF PERMIT NO. 76238 FILED TO APPROPRIATE/CHANGE THE WATERS OF
underground

(Name of stream, lake, spring, underground or other source)

C. THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton III

, the



Permittee



Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 1 year
5. What is the expenditure on the project under this permit? (a) Last year \$10,000± (b) Total to date \$600,000.00+
6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the
(Not to exceed 1 year)

☐ Proof of Completion of Work ☒ Proof of Beneficial Use ☒ Cultural Map (Check all that apply)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is needed. (See instructions on back. Use additional pages if necessary):

The well for this Permit has been drilled, a pump, motor and totalizing water have been installed. Permits 76237-76244 have a common place of use that has been completely irrigated. During the past irrigation season 2 of the totalizing water meters had to be replaced, 1 stopped working and the other was giving erratic readings, so the permittee was unable to obtain a complete set of meter readings for the entire irrigation season. During the last irrigation season at least 2400 acre feet of water was placed to beneficial use. The permittee expects to be able to file the Proof of Beneficial Use within the next year and requests an extension of time for that filing.

State of Nevada

County of HumboldtSubscribed and sworn to before me on October 14th, 2016by John H. Milton III

Print name of Permittee or Agent signing form

Signed

John H. Milton III
Permittee or Agent

Address

146 West Second Street

Street Address or PO Box

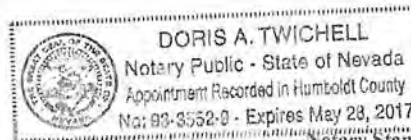
Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

775-623-4414

E-mail

dms@winnemucca.netDoris A. Twichell
Signature of Notary Public Required

Notary Stamp or Seal Required

\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

29 2017
 11/14/17



**Division of Water Resources
Receipt for Payment**



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31573
Check Date: 10/14/2016
Date Received: 10/17/2016
Receipt #: 27591

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$120.00	76238		- Extensions	COVERS EXT NO'S 76237 THROUGH 76244 CK TOTAL \$960.00

BRIAN SANDOVAL
Governor

STATE OF NEVADA



KAY SCHERER
Interim Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

November 1, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, Colorado 80120-1910

Re: Cancelled Permit Nos. 76237 through 76244, inclusive

Permits 76237 through 76244, inclusive, which are currently held in the name of Happy Creek, Inc., were cancelled as of July 19, 2016. The State Engineer received your written petitions requesting a review of the cancellations at a public hearing pursuant to Nevada Revised Statutes (NRS) § 533.395(2).

Accordingly, a hearing was held on October 12, 2016, where it was ruled that the cancellations of your permits would be rescinded conditioned on the filing of Applications for Extension of Time; your Applications for Extension of Time were timely received on October 17, 2016.

The cancellations of Permits 76237 through 76244, inclusive, have been rescinded, and pursuant to NRS § 533.395(3) the priority date for these permits is set to July 11, 2016, which is the date the petitions for review of the cancellations were received in the Office of the State Engineer.

If you have any questions on this matter feel free to send me an e-mail at mjwilson@water.nv.gov or call me at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Hearing Officer

MJW/jm

cc: John H. Milton III, Desert Mountain Surveying, E-mail

JT APP 77
SE ROA 40



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>
November 16, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

RE: Permit(s) 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2017, with the provision that no further extensions will be granted for filing Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2833.

Sincerely,

A handwritten signature in black ink, appearing to read "April M. Holt".

April M. Holt
Water Resource Specialist I

AMH/lr
cc: Desert Mountain Surveying (email)

APPLICATION TO CHANGE THE P.O.U. OF 60061

No. 76239

Date Filed SEP 07 2007

NEW PRIORITY DATE: JUL 11, 2016

Indexed under		Well Log 9922A
Name of applicant		
Map		Basin 2 - 29
Stream		PINE FOREST VALLEY
Township 41N	Range 32E	County HUMBOLDT
Point of diversion SE	1/4 NE	1/4 Section 02
Applicant HAPPY CREEK, INC.		
Source of Water UNDERGROUND		
Returned for correction SEP 14 2007		Abrogated by
Corrected application received SEP 24 2007		
Map filed POU & Prop. POU under 76237 filed 4/24/07; Exist. POU under PBU for 6 filed 1		
Sent for publication OCT 05 2007		
Proof of publication filed		
Investigated on ground by		
Protested		

Ready for action NOV 29 2007




Approved April 29, 2009

2.785 cfs

Diversion

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		Apr. 29, 2010	Apr. 29, 2012	Apr. 29, 2012
1st extension			13/14/15/16/17	13/14/15/16/17
2nd extension				
Date filed		JUN 04 2010		
				Filed under map

CERTIFICATE NO.		ISSUED		AMOUNT				
Use								
COMPUTER CHECK	File Entry		Publication		Permit		Certificate	

JUL 19 2016

ADDRESS

CANCELLED BECAUSE OF
FAILURE OF APPLICANT TO COMPLY WITH
THE PROVISIONS OF PERMIT

P.E. STATE ENGINEER
Can. Rescinded 10-17-16

B



Permit No. 76239

THE STATE OF NEVADA

PERMIT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: HAPPY CREEK, INC.
Source: UNDERGROUND
Basin: PINE FOREST VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st
Priority Date: 03/03/1969

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the place of use of the waters of an underground source as heretofore granted under Permit 60061, Certificate 16216, is issued subject to the terms and conditions imposed in said Permit 60061, Certificate 16216 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 shall not exceed 3,063.6 acre-feet annually for the irrigation of 765.90 acres within the described place of use.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 2.785 cubic feet per second or 228.66 acre-feet annually and not to exceed an annual duty of 4.0 acre-feet per acre of land irrigated from any and all sources.

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

April 29, 2010

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

April 29, 2012

Map in support of proof of beneficial use shall be filed on or before:

April 29, 2012

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of April, A.D. 2009

R.L. Hull P.E.
for State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

llb

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

June 19, 2015

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910

Permits 76237 through 76244

This is to inform you that the Application for Extension of Time has been granted to April 29, 2016, with the provision that no further extensions will be granted for the filing of Proof of Beneficial Use and Cultural Map except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter
Water Resource Specialist I

CE/dl
cc: Desert Mountain Surveying, email

JT APP 82
SE ROA 45

STATE OF NEVADA



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
(800) 992-0900
(In Nevada Only)
<http://water.nv.gov>

FINAL NOTICE

May 19, 2016

FINAL NOTICE

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120
Certified Mail No: 71067808063000627597

Re: Final Notice for Permit 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use and Cultural Map** on or before **April 29, 2016**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

aa

cc: Desert Mountain Surveying (Email)

Schedule of Fees:

Fee for filing Proof of Completion - \$60
Fee for filing Proof of Beneficial Use - \$60
Fee for filing Request for Extension of Time - \$120

**JT APP 83
SE ROA 46**

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA
PETITION FOR REVIEW OF CANCELLED PERMIT

Name of Petitioner Happy Creek, Inc.

IN THE MATTER OF PERMIT No. 76239

THIS PETITION IS RESPECTFULLY SUBMITTED.

Comes now John H. Milton II, the Agent under Permit No. 76237
Person signing Petition Permittee or Agent

1. If this permit has multiple owners, is this petition submitted on behalf of all owners?

☐ Yes ☐ No (Check the appropriate box)

2. If "NO", on whose behalf is this petition being filed?

3. Explain in detail why this request for a review of the cancellation is being submitted (*Use additional sheets if necessary*):

This Permit is part of a series of Permits (76237-76244) that irrigate 765.90 acres at the Happy Creek Ranch. All the wells are drilled and irrigation of the place of use is ongoing. Because of a miscommunication on the part of the agent the extension for filing of the Proof of Beneficial Use did not take place. The Permittee only needs a complete year of totalizing water meter readings and they will be able to file the Proof of Beneficial Use. Therefore the permit holder requests that this permit be re-instated.

4. This petition must be received by the Nevada Division of Water Resources within sixty days from the date of the cancellation. A separate petition and filing fee must be submitted for each cancelled permit.

Signed

Permittee or Agent

Address

146 West Second Street

Street No. or PO Box

Winnemucca, Nevada, 89445

City, State, ZIP Code

Phone

(775) 623-4414

(Suggested form may be substituted by alternative petitions which comply with the provisions of NRS 533.395(2) and 533.410).



Division of Water Resources
Receipt for Payment



Desert Mountain Surveying
146 W. Second St
Winnemucca, NV 89445

Check #: 31402
Check Date: 7/8/2016
Date Received: 7/11/2016
Receipt #: 25612

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2017	\$360.00	76239		- Cancellation	COVERS CANCELLATION NO'S 76237 THROUGH 76244

CHECK TOTAL
\$2,880.00

7/12/2016

30

**JT APP 85
SE ROA 48**



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 19, 2016

Happy Creek, Inc.
2489 West Main Street
Littleton, CO 80120-1910
Cert. Mail: 71067808063000635769

RE: Notice of Cancellation of Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244
To Whom It May Concern:

This letter is notice that Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 are cancelled as of June 19, 2016 for failure to comply with the terms of the permits. These permits have been cancelled for failure to submit the Proofs of Beneficial Use and Supporting Cultural Map or Applications for Extension of Time in compliance with Chapter 533 of the Nevada Revised Statutes (NRS).

NRS 533.395, subsection 2, provides that "...the holder of the permit may within 60 days of the cancellation of the permit, file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public meeting." "The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation." (emphasis added).

On July 11, 2016, this office received Petitions for Review of Cancelled Permits 76237, 76238, 76239, 76240, 76241, 76242, 76243 and 76244 from Desert Mountain Surveying. The petitions are under review and you will receive a notice under a separate cover concerning said petitions.

Please be advised that the permittee is responsible for notifying the State Engineer's office of any address and/or ownership change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise. If you have any questions, please contact me at (775) 684-2815.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Eitenmiller".

Karl Eitenmiller, PE
Supervising Engineer IV

cc: Desert Mountain Surveying
KE/aa