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Exb 1a

IN THE SIXTH JUDICIAL DISTRICT COURT

Of the State of Nevada, in and for the County of Lander

\*\*\*\*\*

UNDERWOOD LIVESTOCK, INC.  
A NEVADA CORPORATION  
Plaintiff,

vs.

Case No. CV 9261

ROBERT "BOB" ABBEY, GAIL G. GIVENS  
and GERALD M. SMITH

Defendant.

S U M M O N S

\*\*\*\*\*

The State of Nevada sends greetings to the above-named defendant:

You are hereby summoned and required to serve upon MARTIN G. CROWLEY, ESQ

plaintiff's attorney, whose address is

237 So. Sierra St., Reno, Nevada 89501

an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.\*

Gladys Quirio  
Clerk of Court

Date: March 20, 2003.

By: Anna Sebastiano  
Deputy Clerk

Note: When service is by publication, insert a brief statement of the object of the action. See Rule 4.

ASSEMBLY NATURAL RES., AGRICULTURE & MINING  
DATE: 5/12/03 ROOM: 3161 EXHIBIT K-10  
SUBMITTED BY: Joe Fallini

K

1 Martin G. Crowley, Esq.  
2 American Legal Services  
3 (State Bar No. 3049)  
4 237 So. Sierra St.  
5 Reno, Nevada 89501  
6 Phone (775) 786-5279  
7 Fax: (775) 332-3013

8 Attorney for Plaintiff

2003 MAR 20 PM 3:11

ANN JOHNSTONE  
DIST. COURT CLERK

9 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF LANDER**

11 UNDERWOOD LIVESTOCK, INC.  
12 a Nevada Corporation,

13 Plaintiff,

14 vs.

15 ROBERT "BOB" ABBEY, GAIL G. GIVENS,  
16 and GERALD M. SMITH

17 Defendants.

Case No. 9261  
Department No. 01

18  
19  
20 COMPLAINT

21 COMES NOW Plaintiff, UNDERWOOD LIVESTOCK, INC., a Nevada Corporation  
22 by and through its counsel, Martin G. Crowley, Attorney at Law and complain and alleged of the  
23 Defendants, ROBERT "BOB" ABBEY, GALE GIVENS, and GERALD SMITH as follows:

24 GENERAL ALLEGATIONS

- 25 1. UNDERWOOD LIVESTOCK, INC. is a duly licensed Nevada corporation in the  
26 State of Nevada under the ownership of DALTON WILSON.  
27 2. ROBERT "BOB" ABBEY, GAIL E. GIVENS, AND GERALD M. SMITH are  
28 residents in the State of Nevada and are employees of the United States Department of the Interior,

Case No. 9261

Department: D-6

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LANDER

\* \* \*

UNDERWOOD LIVESTOCK INC,

APPLICATION FOR  
ISSUANCE OF A WRIT  
OF MANDAMUS

Applicant,

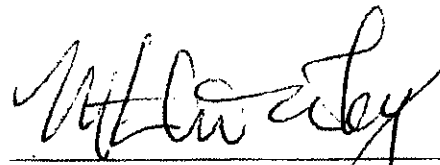
COMES NOW, Applicant, UNDERWOOD LIVESTOCK INC, by and through its attorney, MARTIN G. CROWLEY, Esq., and pursuant to NRS 34.150, et seq., prays this Court for the issuance of a Writ of Mandamus. Such writ would command ROBERT "BOB" ABBEY, GALE G. GIVENS, AND GERALD M. SMITH, all of whom are the named defendants in civil case number CV 9261, to reconstruct the diversion structure which provided water for watering livestock and irrigation on the deeded 80 acres belonging to Underwood Livestock, Inc. which the water is appurtenant to and which the named defendants had caused to be removed on September 25, 2000. The Writ would further command that the three named defendants to remove all fences around the point of diversion and to remove the road barricade blocking access to Underwood Springs by Underwood Livestock, Inc.'s officers and employees.

This application is based upon the Affidavit of DALTON WILSON and the Points and Authorities which are attached hereto.

PETITION FOR A WRIT OF MANDAMUS

K Page 1 of 8 pages

1 DATED this 10<sup>th</sup> day of April ~~March~~, 2003.

  
MARTIN G. CROWLEY, ESQ.  
Attorney for Applicant  
Bar No: 3049  
237 So. Sierra Street  
Reno, Nevada 89501  
(775) 786-5297

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1 on the waer sources which insured that there would b sufficient livestock water  
2 and irrigation water.  
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4 5. That on October 5, 1998 Gerald M. Smith sent correspondence to Dalton Wilson  
5 informing him that the water diversion structure on Underwood Creek which  
6 was situated one half mile west of Underwood Springs did not comply with the  
7 requirements of "Interim Management Policy For Lands Under Wilderness Review"  
8 inasmuch as Underwood Livestock, Inc. did not receive authorization from the  
9 Bureau of Land Management to maintain and improve the dam. Mr. Smith warned  
10 that if Underwood Livestock, Inc. could not prove that it had authorization to make  
11 the repairs and improvements from the BLM the structure could be removed at  
12 Underwood Livestock, Inc.'s expense.  
13  
14

15 6. On February 25, 2000, Underwood Livestock, Inc. sent correspondence to Mr.  
16 Smith reminding him that Underwood Livestock, Inc. had reconstructed and  
17 maintained the diversion structure in accordance with the rights afforded it with the  
18 patent, the certificated water right and the Claim to Possessory Interest on file in the  
19 BLM office and on file in the Eureka and Lander County Recorders' Offices. The  
20 letter pointed out that Underwood Livestock, Inc. did not have to seek authorization  
21 from the BLM for work done to maintain and repair any water source structures.  
22  
23 Because both the Taylor Grazing Act and the Federal Land Policy and Management  
24 Act (FLPMA) specifically prohibited the federal government or any agency thereof  
25 from abridging any pre-existing rights in effect before the passage of those acts,  
26  
27

1 Undewood Livestock, Inc. was relying upon the Bureau of Land Management's  
2 reply to a 1996 Freedom of Information Act Request (FOIA) in which the Bureau  
3 admitted that there was no authority for the Bureau to determine existence, status  
4 or use of pre-existing rights any entity with demonstrated pre-existing rights to  
5 obtain any special permits or other authorizations. Attached and incorporated  
6 herein is Exhibit B which is a copy of the FOIA and the BLM's response.  
7

- 8
- 9 7. On April 10, 2000, Gale G. Givens sent certified correspondence to Underwood  
10 Livestock, Inc. commanding Dalton Wilson and Don Bowman to "arrange for the  
11 satisfactory removal of the dam by May 10, 2000 or face additional trespass  
12 penalties and a citation which could result in fines of not more than \$1,000.00 or  
13 imprisonment of not more than 12 months."  
14
- 15 8. On September 25, 2000, Robert Abbey, Gale G. Givens and Gerald M. Smith  
16 directed employees of the BLM to remove the structure and, in fact, the structure  
17 was destroyed and removed. Certain armed BLM officers were directed to assume  
18 positions around the demolition activity. Thereafter Dalton Wilson and Don  
19 Bowman were ordered to pay the sum of \$27,900.64 for the alleged costs for  
20 removal.  
21
- 22 9. On September 25, 2000, after removing the diversion structure Robert Abbey,  
23 Gale G. Givens, and Gerald M. Smith directed BLM employees to fence the area  
24 where the diversion structure had been situated and to block the road leading to  
25 the source of the water for the diversion structure. The area was in fact fenced  
26



1 and a barricade was constructed to block access to the water source.

2  
3 10. That the road barricade and the fence are, at the present time, still in place,  
4 and that Underwood Livestock, Inc. still is not able to make beneficial use of  
5 the water for either livestock watering or irrigation purposes on the 80 acres of  
6 deeded ground.

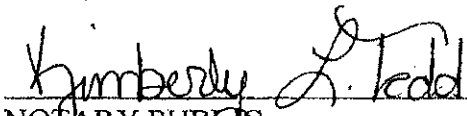
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8 11. That Underwood Livestock, Inc. has filed a civil action against the three named  
9 defendants. Whatever remedy may result from that case is not a speedy or  
10 or adequate remedy in that the continued prohibition from access to and use of  
11 water will result in further and immediate economic loss to Underwood  
12 Livestock, Inc.

13  
14 DATED this 16<sup>th</sup> day of April, 2003

15  
16   
DALTON WILSON

17  
18 Subscribed and sworn to before me by

19 Dalton Wilson this 16<sup>th</sup> day  
20 of April, 2003

21  
22   
23 NOTARY PUBLIC



27 PETITION FOR WRIT OF MANDAMUS

28 K Page 6 of 8 pages

1 POINTS AND AUTHORITIES

2 NRS 32.150, et seq., governs the issuance of a Writ of Mandamus.

3  
4 NRS 34.160 provides that a district court may issue a Writ to compel the performance  
5 of an act which the law especially enjoins as a duty resulting from an office.

6 This case involves the willful and wrongful destruction of a crucial water diversion  
7 structure which was the personal property of Underwood Livestock, Inc. and which was  
8 critical to the ranching operation and without which cattle could not be watered and crops could  
9 not be irrigated. The case also involves the willful and deliberated confiscation of the area  
10 around the point of diversion and the blocading of the only point of access to the Underwood  
11 water source.  
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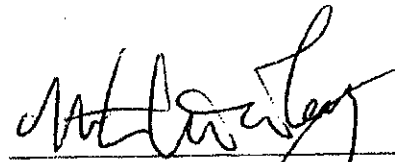
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14 NRS 34.170 provides "that a writ shall issue in all cases where there is not a plain ,  
15 speedy, and adequateremedy in the ordinary course of law."

16 The applicant in the within pleadings has filed a civil lawsuit against Robert Abbey,  
17 Gail G. Givens, and Gerald M. Smith personally and pointing out that the clearly established law  
18 specifically prohibits government employees from interfering with a private land owner's  
19 right to water, forage, and rights of way which have been legally recorded and filed. Any remedy  
20 which may be available in that lawsuit is not speedy and not adequate in terms of insuring that  
21 the applicant can utilize the water essential to the ranching operation. The applicant is without  
22 the ability to participate in his normal business.  
23  
24

25 NRS 34.200 provides that if the application for a writ is made upon notice, then the  
26 notice shall be at least 10 days and the the writ shall not be granted upon default, but shall be  
27

1 heard by the Court whether the adverse party appears or not.

2 DATED this 18<sup>th</sup> day of April, 2003.



MARTIN G. CROWLEY, ESQ.

Attorney for Applicant

Bar No. 3049

237 So. Sierra St.

Reno, Nevada 89501

(775) 786-5297