ORIGINAL

FILED
MAY 19 2006
STATE ENGINEER'S OFFICE

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 73758,
FILED BY CITY OF FERNLEY,
ON 1/26/06, , TO APPROPRIATE THE
WATERS OF Truckee River

PROTEST

Comes now DESERT LAKES GOLF COURSE, LLC., c/o its attorney, Brent T. Kolvet, Esq.
(Printed or typed name of protestant)
whose post office address is 6590 South McCarran Blvd, Suite B, Reno, Nevada 89509
(Street No. or P.O. Box, City, State and Zip Code)
whose occupation is , and protests the granting
of Application Number 73758, filed on January 26, 2006, ,
by the City of Fernley to appropriate the
(Printed or typed name of applicant)
waters of Truckee River situated in Lyon
(Underground or name of stream, lake, spring or other source)
County, State of Nevada, for the following reasons and on the following grounds, to wit:

1. The City of Fernley is not the beneficial owners of the water rights which the current application to change affects (See Attached Exhibit "A").

2. The granting of Application 73758 will adversely affect the water rights held and/or used by Desert LakesGolf Course, LLC.

THEREFORE the protestant requests that the application be Denied
(Denied, issued subject to prior rights, etc., as the case may be)
and that an order be entered for such relief as the State Engineer deems just and proper.

2006 MAY 19 PM 2:45

Signed Brent T. Kolvet
(Agent or protestant)
Brent T. Kolvet, Esq.
(Printed or typed name, if agent)
Address 6590 South McCarran Blvd, Suite B
(Street No. or P.O. Box No.)
Reno, NV 89509
(City, State and Zip Code No.)

Subscribed and sworn to before me this 18th day of May, 2006

Mary C. Wilson
(Notary Public)

MARY C. WILSON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 92-2345-2 - Expires April 12, 2008

State of Nevada
County of Washoe

$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

JOHN L. THORNDAL
JAMES G. ARMSTRONG
CRAIG R. DELK
STEPHEN C. BALKENBUSH
PAUL F. EISINGER
CHARLES L. BURCHAM
BRIAN K. TERRY
BLAIR C. PARKER
WILLIAM R. KILLIP, JR.
BRENT T. KOLVET
ROBERT F. BALKENBUSH
PHILIP GOODHART
JAMES J. JACKSON
DEBORAH L. ELSASSER
CHRISTOPHER J. CURTIS
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JASON D. GUINASSO
GREG B. WILKIN
DOUGLAS M. ROWAN
CHRISTINE M. BOOZE
BENJAMIN B. FORD
ERIK W. FOX

LAW OFFICES
THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER
A PROFESSIONAL CORPORATION
THORNDAL.COM

BRENT T. KOLVET, ESQ.
RENO OFFICE
BKOLVET@THORNDAL.COM

LAS VEGAS
1100 E. BRIDGER AVENUE
LAS VEGAS, NV 89101
MAILING:
P.O. DRAWER 2070
LAS VEGAS, NV 89125-2070
(702) 366-0622
FAX: (702) 366-0327

RENO
6590 S. MCCARRAN BLVD.
SUITE #B
RENO, NV 89509
(775) 786-2882
FAX: (775) 786-8004

ELKO
919 IDAHO STREET
ELKO, NV 89801
(775) 777-3011
FAX: (775) 786-8004

March 17, 2006

Hugh Ricci, State Engineer
Conservation & Natural Resources - State of Nevada
Water Resources Division
901 South Stewart Street, Suite 2002
Carson City, NV 89701

Re: Application Number 73758

Dear Mr. Ricci:

I am writing on behalf of Desert Lakes Golf Course, LLC. (Desert Lakes) to object to the City of Fernley's application number 73758 which seeks to change the point of diversion, manner of use and place of use of 738 acre feet of surface rights of base permit 53894. The basis for objecting to the processing of the application is that the City of Fernley, while holding legal title to said water rights, is not the beneficial owner of same. Specifically, Desert Lakes' predecessor in interest, Mark E. Simoncini and Julia R. Somoncini, Trustees of the Rainbow Trust, deeded the subject water rights to the Town of Fernley, the predecessor in interest to the City of Fernley. Pursuant to the terms of the agreement by which the water rights were transferred, the Town/City, was to maintain the water rights for use within the project. The project was identified as being the Desert Lakes Subdivision. As part of that project, the parties contemplated that the water rights would be used for development of residential lots and "for golf course and irrigation within the project, including dust abatement on undeveloped portions of the property, so long as the project exists." See a copy of the agreement attached hereto.

Further, the agreement provided that the Town [City] "shall take all reasonable actions to preserve the water rights transferred...." Under that same section of the agreement, the parties clearly provided for the possibility that the water rights transferred could be used for "future development." See paragraph five of the attached agreement.

Based on the terms of the agreement referenced herein, Desert Lakes respectfully requests that Application 73758 not be processed unless and until Desert Lakes agrees or otherwise notifies the State Engineer that is has dropped its objections to the City's application. In the event that the State Engineer's office determines it appropriate to continue to process application 7358, then please consider this letter to be a protest of the application. Desert Lakes reserves the right to amend the grounds for protest before the time for filing protests expires.

Please add me to the list of persons requesting notification regarding the referenced Application. If you have further questions, or need further information, please feel free to contact me.

Yours truly,

Brent T. Kolvet

BTK/mcw
cc: Jack Ferris
Douglas J. Frye
John Hughs

AGREEMENT

THIS AGREEMENT is made and entered into this 21 day of February, 1996, by and between the TOWN OF FERNLEY, an unincorporated town and political subdivision of the State of Nevada, hereinafter referred to as "TOWN," and MARC E. SIMONCINI and JULIA R. SIMONCINI, TRUSTEES OF THE RAINBOW TRUST, of Reno, Nevada, hereinafter referred to jointly as "Developer."

WHEREAS, the Town is the owner and operator of the Fernley Town Utilities system, consisting of water and wastewater systems within the Town boundaries; and

WHEREAS, the Developer is and/or represents the owner of the real property located off Farm District Road in Fernley, Lyon County, Nevada, known as the Desert Lakes Subdivision ("the Project") more specifically described as:

> All that certain real property situate in Sections 22 and 23, Township 20 North, Range 25 East, M.D.B.&M., Lyon County, described as follows:
>
> Parcels 1, 2, 3, and 4 as shown on the Parcel Map for Federal Land Bank of Sacramento, recorded in the Official Records of Lyon County, Nevada, on January 11, 1988 as Document No. 113022.
>
> Final Subdivision Map #188868, approved by Lyon County Board of County Commissioners and recorded on 1-4-96.

WHEREAS, the Developer wishes to provide for water and wastewater service to said property from the Town's municipal utilities system;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, and in addition to the applicable laws, ordinances, rules and regulations of the Utilities' water and wastewater systems, the parties agree as follows:

1. The Developer shall convey to the Town, within thirty

REBECCA ANN HAROLD
FERNLEY TOWN ATTORNEY
P.O. Box 1362
Fernley, Nevada 89408
(702) 575-6025

190748

(30) days from the date of this agreement, all water rights appurtenant or related to said property, including but not limited to 738.00 acre feet of Newlands Project surface water rights, all supplemental groundwater rights, and 808.80 acre feet of certificated well or underground water rights and/or permits. Such conveyance shall be free and clear of any and all outstanding taxes, liens and other obligations and encumbrances. All water rights must be valid and in good standing, as verified by TCID and the Nevada State Engineer; the Developer shall pay all expenses associated with such review and verification. Within ten (10) days from the date of this agreement, the Developer shall install meters on all three wells on the property and provide copies to the Town of all logs and records of use of said wells.

2. The Town will file all applications and documents necessary to acquire the water rights, and pay all associated costs.

3. The Town shall credit the Developer with the amount of water rights conveyed toward the amount of water rights required for connection of all or any portion of said property to the Town's municipal water system pursuant to FTO4 or any other applicable ordinance of the Town. This credit shall be applicable and usuable for a period of twenty-five (25) years from the date of this agreement.

4. The Town shall allow the Developer to use an amount in excess of any water rights so conveyed not used or credited pursuant to FTO4, for golf course and irrigation within the Project, including dust abatement on undeveloped portions of the

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FERNLEY TOWN ATTORNEY
P.O. Box 1362
Fernley, Nevada 89408
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property, so long as the Project exists. The Developer shall notify the Town by January 15 annually of the amounts and timing of water delivery or withdrawal expected to be so used for the coming year, and present a proposal as to the respective amounts of surface and groundwater requested. The Town shall notify the Developer by February 15 as to the respective amounts and timing approved for such use. The Developer shall not pay for this water, but shall pay all costs associated with such use of the water rights, including irrigation district operation and maintenance charges. The Developer may purchase any additional water needed for such purposes if and as available from the Town.

5. The Town shall take all reasonable actions to preserve the water rights transferred hereunder; if, however, through no fault of the Town the water rights shall be cancelled, lost or otherwise become unavailable for future development, the Town shall have no further obligation or liability to the Developer pursuant to the terms of this agreement.

6. The Developer shall pay or provide for all water and wastewater extensions, infrastructure and related appurtenances for the project, including legal easements to the Town, before any water or wastewater service is provided to the project. All designs, plans, specifications and construction shall require approval by Fernley Town Utilities. The major improvements shall include the following:

water: offsite transmission line along Farm District Road
1.5 million gallon storage tank south of TCID Canal, site to be determined by the Town
infrastructure within Developer's project

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sewer: gravity and force main to east wastewater facility, including lift station with automatic bar screen and auxiliary power capabilities infrastructure within Developer's project.

7. In addition to those items listed above, the Developer shall pay to the Town a sum not to exceed $609,336.00, of which $209,336 shall be paid on or before 1 June 1996 and $100,000 shall be paid on or before 1 June of each of the subsequent four years, for construction of additional wastewater treatment facility capacity and improvements.

8. The Town shall issue a total of 806 water and 806 wastewater will-serve commitments, which will be in effect for a period of twenty-five (25) years from the date of this agreement. No more than 200 of said will-serves may be used or exercised in any year until and unless the entire $609,336 has been paid to the Town. Any failure to pay the installments listed in Paragraph 7 above as scheduled will constitute immediate revocation of all will-serves for the Project.

9. This agreement is binding on the parties and their heirs, successors and assigns forever.

10. This agreement is a private agreement between the parties, and the contents are not to be construed as a policy or as guidelines for any future developments in the Town.

11. This agreement supersedes and replaces that agreement

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REBECCA ANN HAROLD
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P.O. Box 1362
Fernley, Nevada 89408
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formerly entered into by and between the parties on 12 April 1995.

IN WITNESS WHEREOF, the parties have set their hands on the dates indicated.

TOWN OF FERNLEY
P. O. Box 1624
Fernley, Nevada 89408

2-21-96
date

By: Gerald Kane
GERALD KANE
Fernley Town Board Chairman

ATTEST:

Carl E. Stanley
Town Clerk

THE RAINBOW TRUST
155 Cadillac Place
Reno, Nevada 89408

Feb 21, 96
date

By: Marc E. Simoncini, Trustee
MARC E. SIMONCINI, Trustee

2-21-96
date

By: Julia R. Simoncini, Trustee
JULIA R. SIMONCINI, Trustee

State of Nevada)
: ss.
County of Lyon)

PATRICIA NORMAN
NOTARY PUBLIC
STATE OF NEVADA
LYON COUNTY
95-1067-12 My Apont. Expires Dec. 1, 1999

This instrument was acknowledged before me on 12 April 1995 by MARC E. SIMONCINI and JULIA R. SINONCINI as Trustees of THE RAINBOW TRUST.

Patricia Norman
Notary Public

MICROFILMED

190748
OFFICIAL RECORDS
LYON COUNTY, NEV.
RECORD REQUESTED BY
Fernley Utilities
96 FEB 28 PM 2:36
NANCY M. CARR
COUNTY RECORDER

P.O. Box 9
Fernley, NV
89408

REBECCA ANN HAROLD
FERNLEY TOWN ATTORNEY
P.O. Box 1362
Fernley, Nevada 89408
(702) 575-6025

SECTION	SUBDIVISION	ACREAGE
22	SW1/4 NE1/4	20.5
22	NE1/4 NE1/4	12.0
22	NE1/4 SE1/4	22.4
23	NW1/4 NW1/4	6.2
23	SW1/4 NW1/4	22.0
23	NW1/4 SW1/4	11.2
23	NE1/4 SW1/4	9.7
23	SE1/4 NW1/4	16.7
23	NE1/4 NW1/4	1.9
23	NW1/4 NE1/4	8.9
23	SW1/4 NE1/4	14.8
23	NW1/4 SE1/4	7.0
	TOTAL	184.4 ACRES

STATE OF NEVADA
COUNTY OF LYON } SS

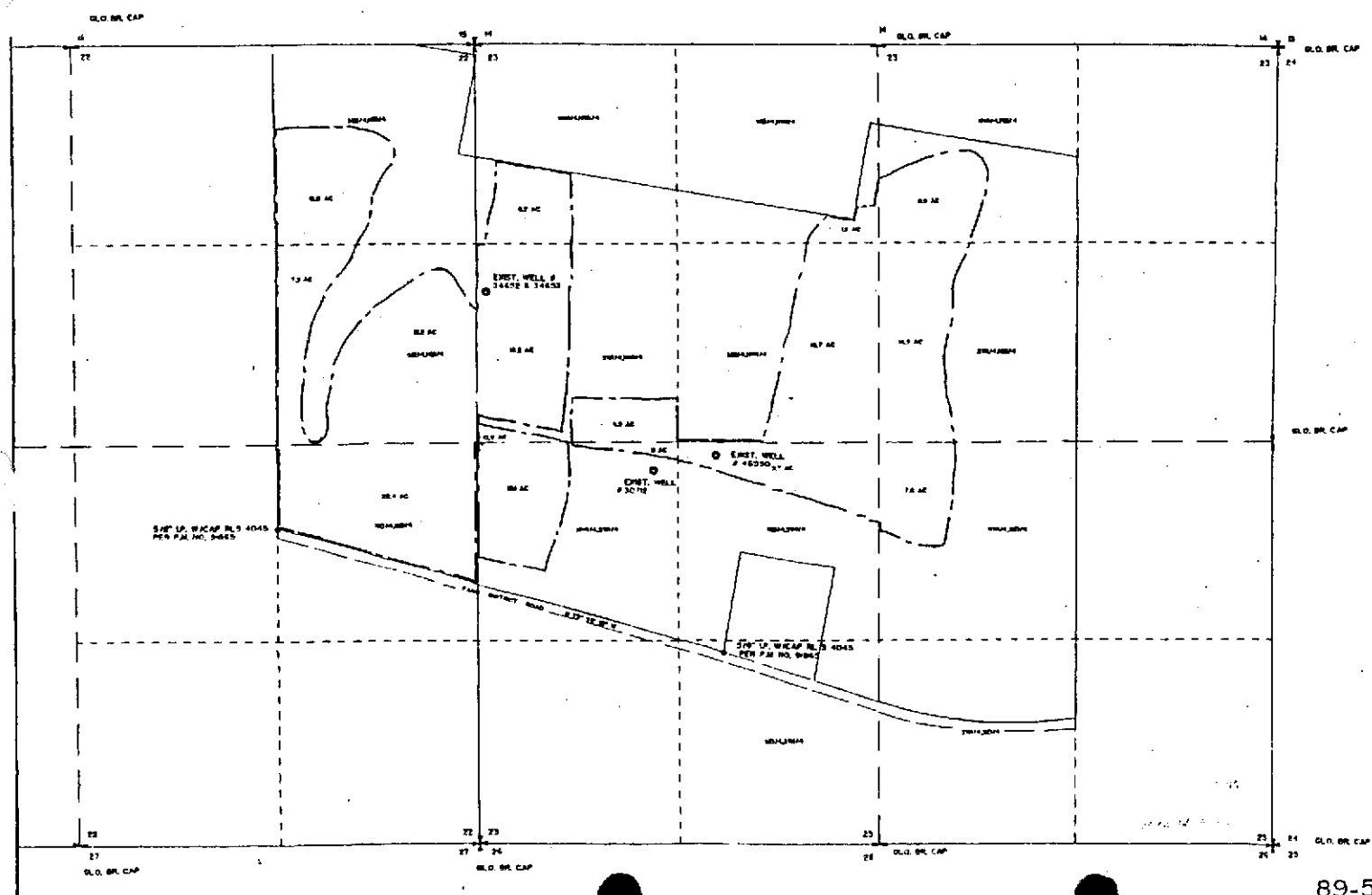
I, George H Denson, being first duly sworn, do depose and say that this map has been correctly drawn to the designated scale from field notes of a survey made under my direction on the 16th day of May, 1988, that it truly and correctly represents the proposed extent of water used to divert water from a surface source in Lyon County By Rainbow Trust for recreational and domestic purposes hereto for appropriated under claim No. 3 of the Truckee River Federal Court Decree.

George H Denson
George H Denson Water Right Surveyor No. 285

Subscribed and sworn to before me this 5th day of September 1989

Wendy A Martinez
NOTARY PUBLIC

SECTIONS 22 & 23 T 20N R 25E M.D.M.



BASIS OF BEARING

LEGEND
SECTION CORNER
1/4 SECTION CORNER
EXISTING WELLS
EXISTING PLACE OF USE
NEW PLACE OF USE

SCALE IN FEET

EXHIBIT A

SHEET 2 OF 2

MAP
TO ACCOMPANY APPLICATION TO CHANGE
THE PLACE AND MANNER OF USE
OF SURFACE WATERS HERETOFOR APPROPRIATED BY

RAINBOW TRUST

UNDER CLAIM NO. 3 OF THE TRUCKEE RIVER
FEDERAL COURT DECREE

FOR RECREATIONAL AND DOMESTIC PURPOSES IN
LYON COUNTY, NEVADA

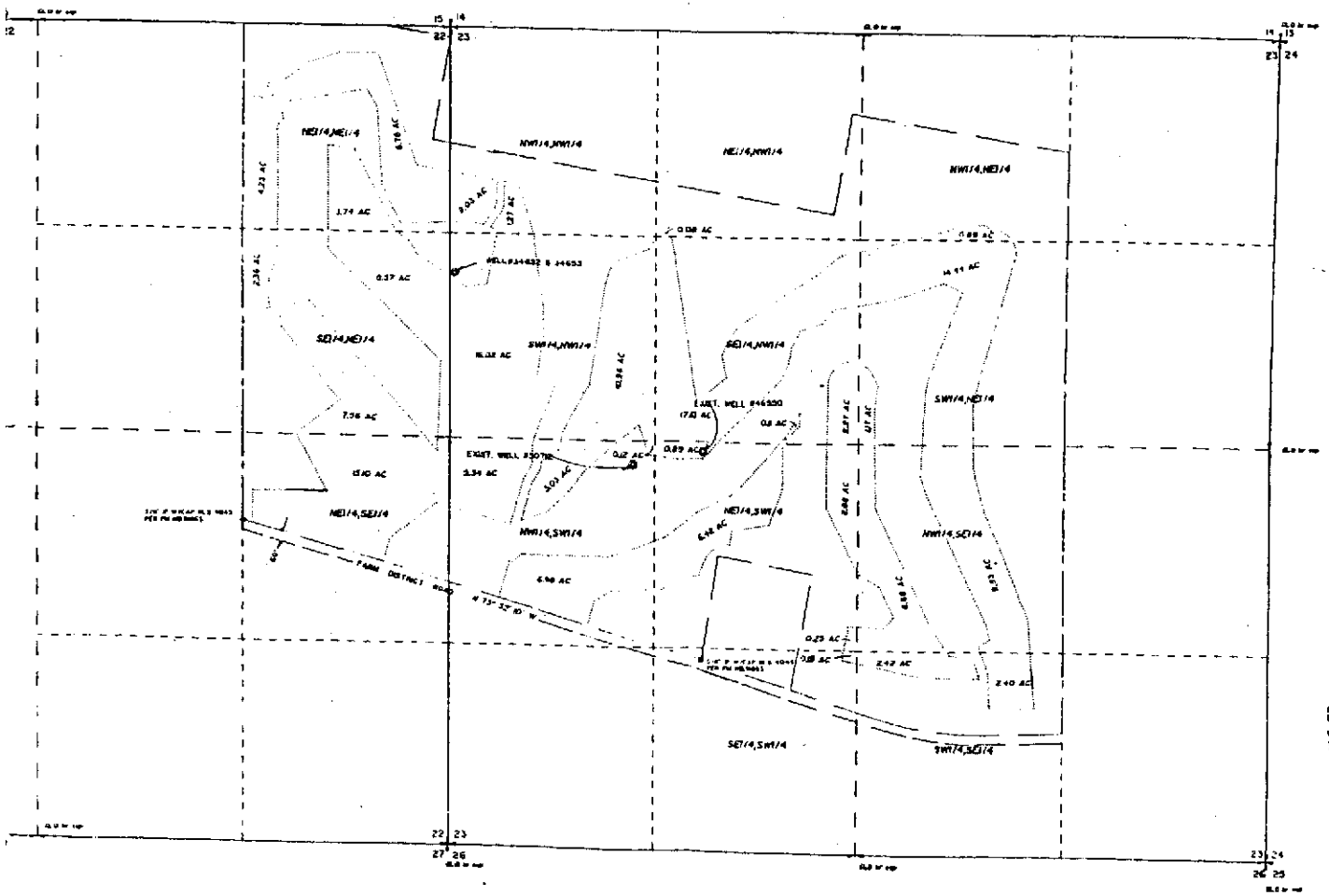
89-54a

53854

194280

194280

Sections 22 & 23 Township 20 North Range 25 East
Mount Diablo Meridian



ACREAGE TABULATION

SECTION	SUBDIVISION	PROPOSED ACREAGE
22	NE 1/4, NE 1/4	16.75
22	SE 1/4, NE 1/4	14.43
22	NE 1/4, SE 1/4	15.16
23	NW 1/4, NE 1/4	8.69
23	SW 1/4, NE 1/4	15.61
23	NE 1/4, NW 1/4	6.04
23	NW 1/4, NW 1/4	3.30
23	SW 1/4, NW 1/4	26.38
23	SE 1/4, NW 1/4	19.51
23	NE 1/4, SW 1/4	18.44
23	NW 1/4, SW 1/4	13.07
23	SE 1/4, SW 1/4	6.15
23	NW 1/4, SE 1/4	16.21
23	SW 1/4, SE 1/4	4.82
	TOTAL ACREAGE	164.66

STATE OF NEVADA
COUNTY OF LYON

I, George H Denson, being first duly sworn, do depose and say that this map has been correctly drawn to the designated scale from field notes of a survey made under my direction on the 15th day of May 1988. That it truly and correctly represents the proposed extent of works used in direct water from a surface source in Lyon County by Rainbow Trust for recreational and domestic purposes hereinfor appropriated under claim No. 3, of the Truckee River Federal Court Decree.

George H Denson
George H Denson Water Rights Surveyor No. 483

Subscribed and sworn to before me this 17th day of July 1989.

Charlotte King
NOTARY PUBLIC

MARK OF DRAWINGS

Northerly line of Farm District Road bearing N 73° 52' 10" W per WRST right of way plans.

LEGEND

Section corner
1/4 Section corner
existing place of use
new place of use
existing wells

SCALE IN FEET

EXHIBIT B

SHEET 1 OF 2

MAP
TO ACCOMPANY APPLICATION TO CHANGE
THE PLACE AND MANNER OF USE
OF SURFACE WATERS HERETOFOR APPROPRIATED BY

RAINBOW TRUST

UNDER CLAIM NO. 3 OF THE TRUCKEE RIVER
FEDERAL COURT DECREE

FOR RECREATIONAL AND DOMESTIC PURPOSES IN
LYON COUNTY, NEVADA

89-54

53894

194280

194280

53894

EXHIBIT "C"

Original Place of Use in Township 20 North, Range 25 East, M.D.B.&M.

SECTION	SUBDIVISION	ACREAGE
22	SE¼, NE¼	28.5
22	NE¼, NE¼	12.0
22	NE¼, SE¼	22.4
23	NW¼, NW¼	6.2
23	SW¼, NW¼	22.0
23	NW¼, SW¼	11.2
23	NE¼, SW¼	9.7
23	SE¼, NW¼	18.7
23	NE¼, NW¼	1.9
23	NW¼, NE¼	8.9
23	SW¼, NE¼	14.9
23	NW¼, SE¼	7.6
	TOTAL	164.00 ACRES

194280

EXHIBIT "D"

Existing Place of Use in Township 20 North, Range 25 East, M.D.B.&M.

SECTION	SUBDIVISION	ACREAGE
22	NE¼, NE¼	16.75
22	SE¼, NE¼	18.49
22	NE¼, SE¼	15.10
23	NW¼, NE¼	0.89
23	SW¼, NE¼	15.61
23	NE¼, NW¼	0.08
23	NW¼, NW¼	3.30
23	SW¼, NW¼	26.98
23	SE¼, NW¼	19.51
23	NE¼, SW¼	10.44
23	NW¼, SW¼	15.67
23	SE¼, SW¼	0.15
23	NW¼, SE¼	16.21
23	SW¼, SE¼	4.82
	TOTAL	164.00 ACRES

MICROFILMED

194280

OFFICIAL RECORDS
LYON COUNTY, NEV.
RECORD REQUESTED BY
FERNLEY UTILITIES
96 JUN 11 PM 12:07

NANCY M. CARR
COUNTY RECORDER
FEE -0- DEP. ES