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

IN THE MATTER OF APPLICATION NUMBER.....75201...

FILED BY JOHN TIMOTHY JACOBS & TERESA D. JACOBS.

ON DECEMBER 18, 2006

TO APPROPRIATE THE WATERS OF ...PERMIT 28062.

FILED
JUN 2 2 2007
STATE ENGINEER'S OFFICE

2007 JUN 22 PM 1:56

PROTEST

Comes now Antonio Guerra Martinez whose post office address is HCR 70 Box 570 Amargosa Valley, NV 89020 whose occupation is Self Employed and protests the granting of Application Number 75201, filed on December 18, 2006 by John Timothy Jacobs & Teresa D. Jacobs to appropriate the waters of an underground source under permit 28062 situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

On May 16, 1984 I purchased Lot one hundred Thirty-seven (137) in the Little Nevada Subdivision, APN 019-452-02. Also, I paid $500 and signed a RIGHT/OF/ENTRY to Gertrude Embry, A.k.a. Embry Water System for a water meter which was included into the sale price of the lot. On August 18, 1998 I purchased Lot 142 of little Nevada Subdivision, APN 019-452-03. On January 6, 2000 I purchased Lot 136 of little Nevada Subdivision, APN 019-452-01. My Grant, Bargain and Sell Deed says I have all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging to appertaining, and any reversion, remainder, rents, issues or profits thereof. I requested Jacobs to install a water meter for Lot 136 and he refused me. Applicant's colored map colored this lot green which mean this lot should be served water with a meter (See **Exhibit E**). On April 12, 2001 I purchased Lots number 15 and 16 in Little Nevada Subdivision, Death Valley Nevada Townsite, APN's 19-481-07 and 19-481-08. The GRANT, BARGAIN and SALE JOINT TENANCY DEED has this statement in the body of the deed, "TOGETHER, with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging to appertaining, and any reversions, remainders, rents, issues or profits thereof, ..." Applicant's colored map has a black dot on the lot which means there is no water service available, and no water right. (See **Exhibit E**). I asked Jacobs many times verbally for water service on my properties. He always told me he was getting other water rights before he could serve me. During the second week of June, Jacobs called me from Texas asking me why I was telling lies to my neighbors about his applications? I told him that I just giving them the facts. I was only showing them the colored map which is part of his applications. (See **Exhibit E**) I asked him, why did you mark my property with Black dots? He told me that State told him to color the map that way. I told him that if he would give me in writing that he would serve water to my commercial lots 7 and 8, I would not protest his applications. He said he could not do so. I purchased my property before he did. My property should receive water service before his. He is taking water to serve his lots void of water rights under Permits 28062 and 45061 which he purchased after me. He has sold three of these lots, 194, 195, & 225, all void of water rights under Permits 28062 and 45061 and his water company is presently supplying water to them. But he will not serve me. In 1982 when the water company had problems, the Division of Health pointed out to the county that all individual owners within the subdivision must be treated in a uniform manner. Mr. Jacobs purchased the assets of the Embry Water Supply company, he also purchased the liabilities to serve water to each Lot. If I can not get water supplied to my commercial lots, then I should be given permission to drill a commercial well.

In 1991 the Embry Water System supplied water to 8 residences, a 15-space trailer park, and 4 commercial establishments, all of which are in the Amended 1982 Little Nevada Subdivision. However, Embry never made application to the Public Utility Commission for a Permit as a water company.

The existing facilities facility was design by Alca Engineering & Surveying, Inc.: (Copy attached hereto as **Exhibit A)**

1 1) Well #1 can serve 92 lots

2 2) Well # 2 can serve 92 lots

3) Storage Capacity:

a) storage Tank = 42,000 gallons

b) Pressure Tank = 3,5000 gallons

c)Storage Tank @ Well #1 =3,000 gallons

d) Total Storage Capacity is 48,000 gallons that can serve 69 lots maximum.

4) The storage capacity is connected into s closed rectangular loop of water lines serving the Little Nevada Subdivision.

I have colored the rectangular water line loop Green on the copy of the certified subdivision map filed at permit 28062. (Copy of the map is attached hereto as **Exhibit B.)** The Applicant plans to connect the five new wells into the existing rectangular loop. Therefore, additional storage capacity will be needed for the existing system. As you can see the exiting storage capacity can serve only 69 lots maximum. The 119 AFA is enough water to service 107 single family residences, not including commercial establishments. Wells #1 and #2 provides enough water for 184 single family residences. The Applicant believes that if a well services only 15 lots or less he is under the threshold of a public water system. However, the seven wells do not have storage capacity and water lines connected directly to the lots they are servicing and each is not a separate water supplier for the lots listed in each of the ten applications. The Applicant is inadvertently circumventing the intent of Permits 28062 and 45061 which was approved by the State Engineer for the Amended Little Nevada Subdivision. The applicant believes that he can connect the five new wells, each permitted to supply water for less than 15 lots, into existing storage capacity and the using the rectangular water line loop that he is not a public water system. The existing water system will have more than 15 connections.

Nevada Revised Statute, 445A.235 defines **public water system** as a system, regardless of ownership, that provides public with water for human consumption through pipes or other constructed conveyances, if the system 15 or more service connections, as defined in NRS 445A.843 or regularly serves 25 or more persons.

The language of the section above, "... provides public with water for human consumption through pipes or other constructed conveyances, ..." does not mean a well only. Hence, the use of 7 wells connected into an existing storage capacity and one rectangular water line loop fits the definition of a public water system. The State Engineer should deny the Ten applications, 75199-75208, and determine that the T-N-T Enterprises water company a public water system.

I have reviewed and provided some background of the Embry Water System. I will give my understanding of these background documents:

1) January 31, 1962 the Nye County Commissioners approved the Little Nevada Subdivision, see page 312 of the Minutes of Nye County Commissioners. The Clerk was directed to endorse on the face of said map a copy of this Order authenticated by the seal of the County Commissioners.

2) April 26, 1962 at 3:15, see page 347 of the Minutes of Nye County Commissioners, "The Board convened in the Commissioner's office. The Board approved the map of "Little Nevada Subdivision, Death Valley, Nevada Townsite."

a) The use of one half (1/2) acre lots required a water company to supply water before the Nye County Commissioner could approve the subdivision. An individual well and septic system could not be permitted on these1/2 acre lots, per the 1957 Health Regulations.

3) July 15, 1962 W. Embry had a well drilled under Well Log No. 6691, which became Well Site #1 using Lots 40 & 41 for the Embry Water Supply.

4) November 15, 1971 Roland D. Westergard, State Engineer, notified W. D & Gertrude Embry that provisions of your permit 28062 with serial number 25496 to appropriate public waters of the State of Nevada requires you to file **Proof of Commencement of Work,** on or before November 15,1971. Our records show that you have not filed said **Proof** and therefore your permit is in poor standing and subject to cancellation. (Notice by Certified Mail No. 048362)

5) March 21, 1979 a letter from the State Health informed W. Embry that State Health took the chemical samples at Embry's Trailer Park on February 28, 1979. The fluoride level is 2.60 mg/l, 1.0 mg/l higher than the maximum allowed (1.6 g/l). Three additional check samples were required within the next thirty (30) days, and submitted to the State laboratory for fluoride analysis. The results of all four tests will then be averaged to determine if the maximum contaminant lever has been exceeded. The fluoride level in almost all wells in Southern Nye County is above 2.0 mg/l.

6) On November 13, 1981 the Division of Health gave Charles White NOTICE OF VIOLATION AND TO VACATE with respect to lots 50, 51, & 80 by CERTIFIED LETTER. This issue began the process to amend the 1961 Little Subdivision, which was **not** reviewed by Division of Water Resources.

7) On May 1, 1982 the Amended Little Nevada Subdivision was approved by Nye County Commissioner. The Amended Map show and delineated Lots 50, 51, 52, 53, 79, 80, 94, 95, 97, 98, 99, 130, 132, 133, 134, & 146 from the Amended Little Nevada Subdivision. Again, the subdivision was **not** certified the Division of Water Resources. The Division of Water Resources Certificate on the Amended Little Nevada reads, "Signature approval affixed to original subdivision filling Not Read for purposes stated herein" signed by Thomas H. Trotter, Nye County Planner.

a) It should be noted that **no** State Certifications are on the Original 1962 Little Nevada Subdivision Map!

8) "Mr. Embry has proposed a public water supply to serve the subdivision. A water system for the subdivision has not been approved as a public water supply although some water distribution lines are in the ground" (Letter under the date March 9, 1982 by James A. Edmundson, Bureau Chief Division of Health). "There are water rights appurtenant to the property which could be utilized for a community water system. The State of Nevada Water Right Permit 28062 is in the ownership of W. D. and Gertrude Embry, Sr. The Permit is for an underground source of water to support a quasimunicipal use within the area of the amended subdivision. The amount of the permit is for a diversion rate of 2.0 cubic feet per second not to exceed 88.6 million gallons annually." (Letter under Review No. 2404T with the date March 17, 1982 by Gerald Brownfield, Hydraulic Engineer Division of Water Resources.)

a)) It should be noted that the Water Rights in Permit No. 28062 came from the Water Rights appurtenant to the property to the lots inside the subdivision that could utilize the community water system.

9) "The plans which have been submitted on the above referenced water system appear to be satisfactory in concept. A statement is made that the system will be expanded as the lots are developed. It is usual policy of this office to review and approve a master plan for a water system to serve a subdivision and then allow the developer to build and /or expand the system to the approved limit as the demand requires." (Letter under Reference: Little Nevada Subdivision - Water Distribution System (NY 236 JM) dated September 1, 1981 signed by James A. Maston, P.E. Public Health Engineer Safe Drinking Water Program and J. A. Edmundson, Bureau Chief)

10) "The Little Nevada Subdivision was amended in 1982, to show 212 lots and the Health Jurat shows that community and individual water systems were approved by Consumer Health Protection Services. The water system was developed in 1983-84, and permitted by the State Health. On May 3, 1989, the system operation permit was not renewed and we declassified the system as a public water system. ... Water right permits were for 226 residential units and 28 commercial units prior to July 22, 1993, totaling 88.6 million gallons annually (MGA) for quasi-municipal purposes. After that date, the State Engineer reduced the amount by 16.96 MGA because of not proceeding in good faith and diligence to prove beneficial use. ... There was a conveyance of water rights to Jim Marsh's Casino, RV, and Motel Complex across High way 373, now under construction." (Letter under PWS I.D. #0152 dated April 18, 1995 TO: Jeff Fontaine, Supervisor, Public Health Engineering From: Dale Ryan, Public Health)

a) It should be noted that the Division of Water Resources **did not return** the 16.96 MGA to 44 residential lots that this water was allocated to serve.

b) These 44 residential lots are included in the remaining 102 parcels are void of water rights under Permits 28062 and 45061.

c) The water rights appurtenant to these 44 lots, which were applied to Permits 45061 for the 1982 Amended Little Nevada Subdivision, should be returned.

d) The priority of return should be based upon the date on the GRANT, BARGAIN, and SALE signed by TED A. EMBRY, TRUSTEE "EMBRY 1997 TRUST." The earliest date of sale will be offered service first.

e) The ABC Mine closed down in mid 1986. Most of the miners moved leaving the Embry Trailer park empty and the subdivision sales and growth stopped.

f) Embry Water Supply System was classified as a public water system sometime after 1982. The water system was developed in 1983-84, and permitted by the State Health. On May 3, 1989, the system operation permit was not renewed and we declassified the system as a public water system.

g) The State has knowingly allowed this water system to exist and operate in violation of the regulations of a public water systems under the authority of Nevada Revised Statutes and Nevada Administrative Code, Chapter 445A since 1989.

11) "Later, 100 AFA combined duty under Permits 28063 and 45061 was sold to Jams Marsh to develop a commercial project within Lot 7 and SE 1/4 of SW 1/4 Section 2, west of Highway 29, which is outside the boundary of Little Nevada Subdivision. The 100 AFA of Water Rights were appurtenant to the property that could utilize the community water system.

12) The sale of the 100 AFA included the water allocated to commercial purposes (i.e. 37.82 AFA), and water allocated to serve 55 residential lots (i.e. 62.18 AFA)

13) The sale of a portion of the Little Nevada Subdivision water right (i.e., 62.18 AFA) to James Marsh for commercial use outside the subdivision area destroyed the integrity of the subdivision as an integral project, severed water rights from 55 former subdivision lots, leaving these lots without water rights and unfit for subdivision use as expressed by Permits 28062 and 45061

a) The water rights appurtenant to the sold lots were **not** Embry's water rights to sell.

14) The GRANT, BARGAIN, SALE DEED for the lots sold by the Embry's contained the statement, "TOGETHER with all tenements, hereditaments and appurtenance, including easements and water rights, if any, thereto belonging to appertaining, and a reversions, remainders, rents issues or profits thereof." (Copy attached hereto as **Exhibit C)**

15) "After the sale and approval of Permits 53181 and 53182 for the combined duty of 100 AFA, and the cancellation of the combined duty of 52.05 AFA, there is a remaining combined duty of 119.85 AFA under Permits 28062 and 45061 sufficient to serve 107 residential lots, at 1.11 AFA per lot; and there are 102 residential lots without water right under Permits 28062 and 45061. Consistent with Nevada Water Law, Subdivision Law, Environmental Protection Law, and Health Law the State Engineer considers that the following criteria must apply to parcels of Little Nevada Subdivision in order to prevent inadvertent circumvention of the intent of Permits 28062 and 45061, and of the conditional approval by the State Engineer of the amended subdivision map: That 107 parcels of the little Nevada Subdivision remain with appurtenant water rights under Permits 28062 and 45061; and that for any of these 107 parcels, the State Engineer will require the dedication of 2.02 AFA (i.e., 1800 gallons per day) to the parcel from the combined duty under Permits 28062 and 45061 before the construction of a domestic well is approved for the parcel; That the water rights for 102 parcels were canceled or transferred off the subdivision, and these 102 parcels are void of water rights under Permits 28062 and 45061; and that for any of these 102 parcels void of water rights, the State Engineer will require dedication of 2.02 AFA to the parcel before the construction of a domestic well is approved; and That upon written approval of the State Engineer, and in cooperation with the appropriate Nye agency, the Nevada Division of Environmental Protection, and the Nevada Health Division-Public Health Engineering, water rights appurtenant to various subdivision parcels may be combined in various convenient ways to accumulate the 2.02 AFA to the parcel before the construction of a domestic well is approved." (Letter under the date April 9, 2004 by Robert LeRoy Thayer, Supervising Engineer) (Copy is attached hereto as **Exhibit D.)**

16) Mr. Thayer located 107 Parcels marked WS that remain with appurtenant water rights under Permits 28062 and 45061 on a copy of Certified Subdivision Map filed for Permit 28061 with water lines, seven (7) Private Wells marked PW, and two (2) Well Sites on lots 28 and 40. The remaining 102 parcels are void of water rights under Permits 28062 and 45061. I have hi-lited the 107 WS parcels in Yellow, the 7 PW in Orange, the 2 Well Sites in Blue, water line loop Green and the remaining 102 lots are in white. (See **Exhibit B)**

17) April 23, 1999 ownership of lot 41, .45 AC transferred to Darrell E. & Tina L. Cypert under Vesting Document #487890.

    a) Lot 41 is one half (1/2) of Well Site #1.

    b) Well Site #1 included lots 40 & 41.

18) March 20, 2003 ownership of lot 40, .45AC transferred to John Timothy and Teresa D. Jacobs under Vesting Document #557797.

    a) Lot 40 is one half (1/2) of Well Site #1.

    b)Well Site #1 included lots 40 & 41

19) It should be noted that Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

20) On November 4, 2004 John Jacobs and Teresa Jacobs received Certified Mail No. 71067808063000111751 from by Hugh Riddi, P.E., State Engineer. "The provisions of your permits, 28062 & 45061, to appropriate waters of the State of Nevada requires you to file Proof of Beneficial Use under both Permits and Cultural Map under 28062 only on or before October 29, 2004. Our records show that your have not filed said Proofs and therefore your permits are in poor standing and subject to cancellation."

21) The Applicant purchased lots 143, 178, 186, 187, 192, 193, 194, 200, 203, 223, 224, & 226 from the Embry 1997 Trust. He has installed electric pedestals on lots 143, 186, 187, 192, 193, & 226 all of which do not have water or septic systems at this time.

22) The Applicant submitted a copy of the 1961 Subdivision Map for Little Nevada with a color code menu-describing the coloring on the map: (Copy attached hereto as **Exhibit E**)

a) Thirty-three (33) lots colored Purple are lots with appurtenant water rights under Permits 28062 and 45061 and the proposal by the Applicant is "THIS WATER TO BE WITHDRAWN FROM PERMITS #45061 & 28062."

- This presents a major problem with this proposal because the GRANT, BARGAIN, SALE DEED for many of these lots contains the statement, "TOGETHER with all tenements, hereditaments and appurtenance, including easements and water rights, if any, thereto belonging to appertaining, and a reversions, remainders, rents issues or profits thereof." (See **Exhibit C**)

b) Twenty-eight (28) lots colored Green are "LOTS TO BE SERVED BY EXISTING WELLS #1 & #2, PEMITS 45061 & 2806, NO CHANGE APPLICATION NEEDED."

- A change application is need for two lots numbered 86 & 92. These two lots are void of water rights under Permits 28062 and 45061. (See **Exhibit B**)
- Well #1 is on Lot 40, which is only. 45AC and Well #2 is on Lot 48 which only 45AC. Pursuant to Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

c) Fourteen (14) lots colored Yellow are "LOTS TO BE SERVED BY WELL #3, CHANGE APPLICATIONS 75199 & 75200."

Applicant is presently supplying water to lot 194, which is void of water rights under Permits 28062 and 45061. Applicant sold lots 194, 195, & 225 March 4, 2005 and a new manufactured home has been placed on two-acre site. When the line for telephone was dug. The backhoe broke the water line loop for the water system. Thee entire water system was closed down until the water line was repaired connection was completed

d) Thirteen (13) lots colored Dark Blue are "LOTS TO BE SERVED BY WELL #4, CHANGE APPLICATIONS 75199 & 75200."

- Well #4 is on Lot 125, which is only 45AC. Pursuant to Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

e) Two (2) lots colored Red are "LOTS TO BE SERVED BY WELL #5, CHANGE APPLICATIONS 75199 & 75200."

f) Well #5 is on Lot 125, which is only 45AC. Pursuant to Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

g) Fourteen (14) lots colored Pink are "LOTS TO BE SERVED BY WELL #6, CHANGE APPLICATIONS 75199 & 75200."

h) Well #6 is on Lot 217, which is only 87AC. Pursuant to Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

i) Six (6) lots colored Light Blue are "LOTS TO BE SERVED BY WELL #7, CHANGE APPLICATIONS 75199 & 75200."

- Well #7 is on Lot 211, which is only 45AC. Pursuant to Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

j) Forty-two (42) lots colored Orange are "LOTS WITH PRESENTLY EXISTING PRIVATE DOMESTIC WELLS DREILLED BY PREVIOUS OWNERS. (18 WELLS)."

- There are some mistakes in the coloring.
- Lots 3, 36, 39, & 94 do not have wells drilled on them. Lots 3, 36, & 39 receive water from the Private Well on lot 38 with Well Log No: 60992.
- Lot 94A which included lot 94 and one half (1/2) of lot 95 is 3/4 of an acre with a well and septic system. One (1) acre is needed for a well and septic system
- Lots 84 & 85 are marked with a Black Dot;
- The owner of lots129, 150, & 151 had interior lot lines removed to make one lot with a new APN 019-462-19 and then drilled a well under Well Log No: 66590. The owner of lots 127 & 152 did the same with a new APN 019-462-20 and drilled a well under Well Log No: 82445. Since the two parcels were void of water rights under Permits 28062 and 45061, did the State Engineer require dedication of 2.02 AFA to the parcel before the construction of a domestic well was approved?

k) Forty-three (43) lots with diagonals are "LOTS OWNED BY JACOBS OR HULTQUIST WHO WILL AGREE TO NOTIFY AND DISCLOSE TO ANY BUYER THAT NO WATER SERVICE IS AVALIABLE, AND NO WATER RIGHT."

- The seven (7) Well Sites are located on lots with this symbol. Well # 1 is on Lot 40, Well # 2 is on lot 28, Well #3 is on lot 203, Well #4 is on lot 125, Well # 5 is on lot 156, Well # 6 is on lot 217, and Well #7 is on lot 211. Does this mean that the seven lots have no water rights, if so how can a well be drilled on the lot?

l) Twenty-nine (29) lots with Black Dots are "LOTS OWNED BY VARIOUS INDIVIDUALS WITH NO WATER SERVICE AVALIABLE, AND NO WATER RIGHT."

- Eight (8) lots are marked WS that remain with appurtenant water rights under Permits 28062 and 45061 on a copy of Certified Subdivision Map filed for Permit 28061 with water lines. The 8 lots are 45, 56, 57, 84, 85, 135, 144, & 219.
- Two (2) lots are marked with a Black Dot. The two lots are 15 & 16 which were sold by Ted A. Embry, TRUSTEE "EMBRY 1997 TRUST" April 12, 2001. In the body of the GRANT, BARGAIN and SALE JOINT TENANCY DEED, "TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging to appertaining, and any reversions, remainders, rents, issues or profits thereof,

and ..." (Copy of the Grant, Bargain, and Sale Joint Tenancy Deed is attached hereto as **Exhibit C)**.

- Two (2) lots are marked with a Black Dot, lots 195 & 225, which are presently being, supplied water through lot 194, which is void of water rights under Permits 28062 and 45061.

The Applicant has submitted application 75201 using Well #4 to supply water for 14 subdivision lots. The Well #4 will be connected into the Existing Water Supply loop.(See **Exhibit B)**

A1) The Proposed place of use for application 75201 are lots 74, 75, 104, 105, 154, 155, 174, 175, 153, 176, 177, 202, & 221 as shown on Little Nevada Subdivision Map in Nye County file 40753 & 61618 being in the SW.1/4 SE.1/4 of Section 2, T.18S., R.49E., M.D.M.

A2) Lots 74, 75, 104, & 105 are marked WS that remain with appurtenant water rights under Permits 28062 and 45061 on a copy of Certified Subdivision Map filed for Permit 28061 with water lines. (See **Exhibit B)**

A3) The proposed Well Site # 4 on Lot 125 which is on. 45AC.

- It should be noted that Assembly Bill No. 283 Chapter 554 amended NRS 278.010 Section 2, [9] 10; "Lot," means a distinct part or parcel of land which has been divided with intention or for the purpose of transferring ownership or for the purpose of building. The term does not include a parcel of land used or intended solely for use as a location for a water well.

A4) Lots 154, 155, 174, 175, 160, 161, 168, 169, 210, & 216 are void of water rights under Permits 28062 and 45061 on a copy of Certified Subdivision Map filed for Permit 28061 with water lines. (See **Exhibit D)**.

A5) Separate addition storage capacity and separate water lines are not included for connection to the new well application serving lots listed in the application.

A6) The applicant believes that he can connect new well #4, which he is proposing to serve only 13 lots, into existing storage capacity and the rectangular water line loop that he is not a public water system. The existing water system will have more than 15 connections.

A7) The Nevada Division of Environmental Protection (NDEP) Bureau of Safe Drinking Water (BSDW) regulates public water systems under the authority of Nevada Revised Statutes and Nevada Administrative Code, Chapter 445A. The BSDW of NDEP should determine the issue of connection the Well #4 into the existing water supply loop that a public water exists.

**SUMMARY:**

1: **The transfer of water rights under Permits 28062 and 45061 to any of parcel void of water rights should be denied.**

2: The 107 parcels marked WS that remain with appurtenant water rights under Permits 28062 and 45061 should not be transferred to any of the remaining 102 parcels that are void of water rights under Permits 28062 and 45061 (See **Exhibit B)**.

3: The applicant should offer to connect any of 107 Parcels marked WS that remain with appurtenant water rights under Permits 28062 and 45061 on a copy of Certified Subdivision Map filed for Permit 28061 with water lines at the original cost of $500 per meter and supply water to each lot using the 119.840545 AFA under Permits 28062 and 45061.

4: The State Engineer should restore the canceled 52.048544 AFA, which will be used to supply water to each of the void lot on a copy of Certified Subdivision Map filed for Permit 28061 with water meters and lines at the original cost of $500 per connection. The priority of service will be based upon the date on the GRANT, BARGAIN, and SALE signed by TED A. EMBRY, TRUSTEE "EMBRY 1997 TRUST." The earliest date of sale will receive service first.

5: The applicant's Water Company, T-N-T Enterprises, A.k.a . Embry Water System, should be designated as a public water system.

THEREFORE the Protestant requests that the application be Denied and that an order be entered for such relief as the State Engineer deems just and proper.

Signed ..... Antonio Guerra Martinez .....

Antonio Guerra Martinez

Address. HCR 70 Box 570

Amargosa Valley, Nevada 89020

(775) 372-1240

Subscribed and sworn to before me this ....20.....day of.....Mar....., 20.07.....

.....Shelly Kadrmas.....
Notary Public

State of.....Nevada.....

County of .....Nye.....

NOTARY PUBLIC
STATE OF NEVADA
County of Nye
SHELLY KADRMAS
No: 96-1623-14
My Appointment Expires March 30, 2008

Alca Engineering & Surveying, Inc.
2765 SO. HIGHLAND DRIVE • SUITE 103
LAS VEGAS, NEVADA 89109
PHONE: (702) 732-2105
KIRK S. ANDERSON P.E. 3214
JERRY SLIGAR R.L.S. 6030

October 6, 1983

## LITTLE NEVADA WATER SYSTEM CALCULATIONS

### Design Requirements For Total System

1. Existing Fire Station, therefore fire flow not required in system.
2. Water meters to be installed at each connection.
3. Total system to handle 217 lots.
4. Two (2) wells minimum required.

   I. Annual Average Demand
   217 lots x 3.5 people x 200 g.p.c.d. = 151,900 g.p.d.

   II. Peak Demand
   151,900 x 2.5 (peak factor) = 379,750 g.p.d.

   III. Minimum single well production
   151,900 gal./day ÷ 24 hrs./day ÷ 60 min./day = 105 g.p.m.

   IV. Minimum combined well production
   379,750 ÷ 24 ÷ 60 = 264 g.p.m.
   264 gal./min. ÷ 60 sec./min. ÷ 7.48 gal./ft.$^3$ = .59 c.f.s.

   V. Minimum storage requirements = 151,900 gallons

### Existing Facilities

1. Two (2) wells No. 1 = 68 g.p.m.
   No. 2 = 45 g.p.m.
   TOTAL 113 g.p.m.

   a. Number of lots that can be served using existing wells.

      1. 45 x 1440/3.5 (200) = 92 lots

      2. 113 x 1440/2.5 (3.5)(200) = 92 lots MAXIMUM

October 6, 1983

Page 2 - Continued

2. Storage Capacity

| | | |
|---|---|---|
| Storage Tank | = 42,000 | gallons |
| Pressure Tank | = 3,500 | gallons |
| Storage Tank @ Well #1 | = 3,000 | gallons |
| TOTAL | 48,500 | gallons |

a. Number lots that can be served with exising storage.

48,500/3.5 (200) = 69 lots MAXIMUM

REGISTERED PROFESSIONAL ENGINEER · STATE OF NEVADA
KIRK S. ANDERSON
CIVIL
No. 3214

10-13-83

10-13-83
DATE

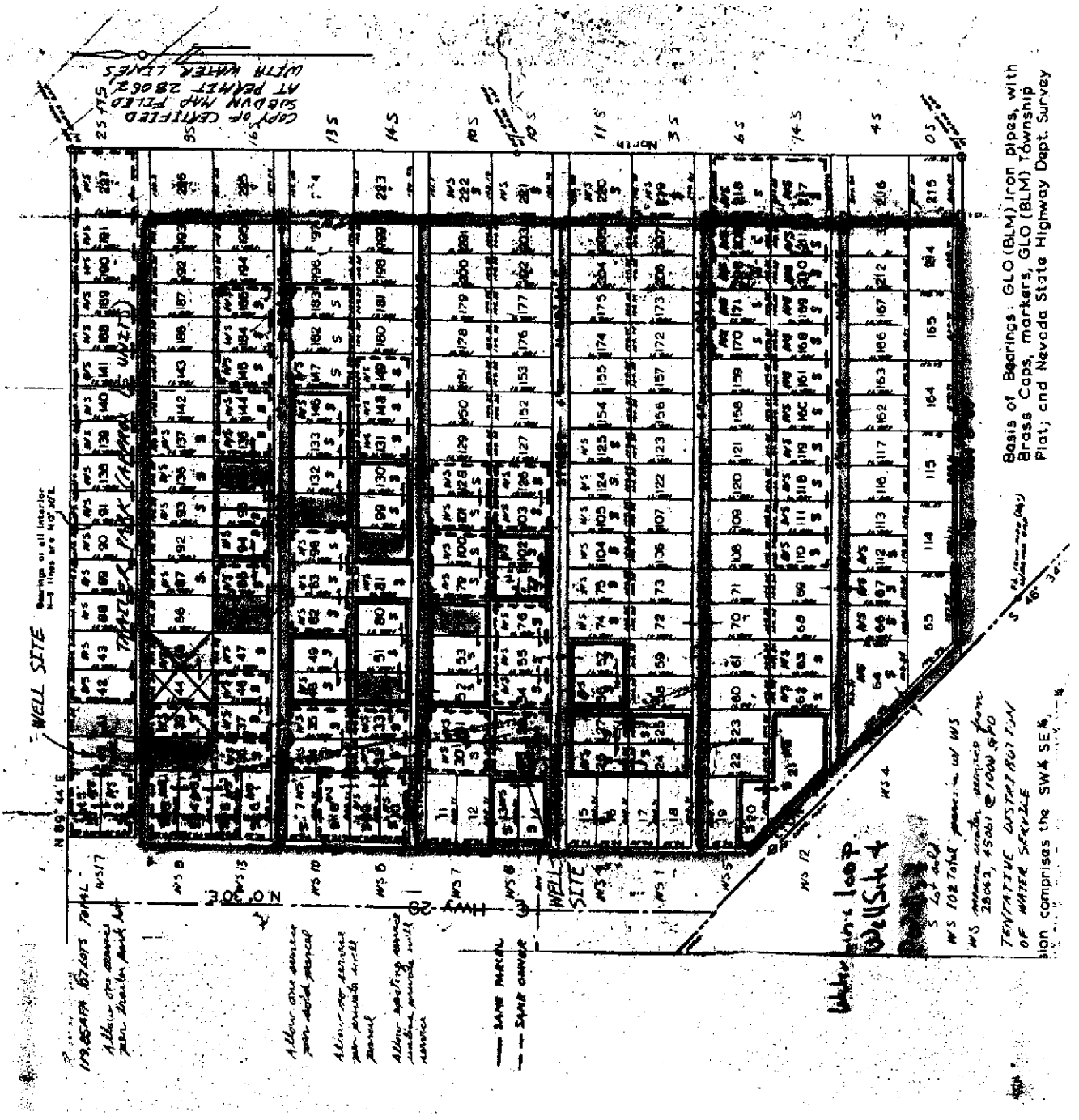

WELL SITE
Basis of Bearings: GLO (BLM) Iron pipes, with Brass Caps, markers, GLO (BLM) Township Plat; and Nevada State Highway Dept. Survey
COPY OF CERTIFIED SUBDIVN MAP FILED AT PERMIT 28062, WITH WATER LINES
TENTATIVE DISTRIBUTION OF WATER SERVICE
Hwy 29
N 0°30'E
N 89°44'E
North

EXHIBIT B

19-452-01

ORIGINAL

***GRANT, BARGAIN and SELL***

***JOINT TENANCY DEED***

**FOR VALUE AND CONSIDERATION**, receipt of which is hereby acknowledged, " THE EMBRY 1997 TRUST " do(es) hereby GRANT, BARGAIN and SELL to ANTONIO MARTINEZ GUERRA AND MARIA SANJUANA GUERRA, HUSBAND AND WIFE as joint tenants with rights of survivorship, and not as tenants in common, the real property situate in the County of NYE, DISTRICT OF AMARGOSA, STATE OF NEVADA, described as follows:

LOT ONE HUNDRED THIRTY SIX (136) OF LITTLE NEVADA SUBDIVISION, ASSESSORS PARCEL NUMBER (APN): 019-452-01

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging to appertaining, and any reversions, remainders, rents, issues or profits thereof.

DATED this 12th day of January, 2000

State of Nevada }
}ss.
County of Clark }

TED A. EMBRY, TRUSTEE
"EMBRY 1997 TRUST"

On this 12th day of January, 2000, Ted A. Embry, personally appeared before me, a Notary Public, who acknowledged that he executed the above instrument.

NOTARY PUBLIC STATE OF NEVADA
County of Clark
ELIZABETH J. CORRAL
Appt. No. 99-59526-1
My Appt. Expires Nov. 16, 2003

Elizabeth J. Corral
NOTARY PUBLIC

**Space below this line for recorder's use**

WHEN RECORDED, MAIL TO: Antonio Guerra HCR70 Box 570 Amargosa Valley NV 89020

File No. _____ Filed for record at the request of _____ _____ on the _____ day of _____, 20__ at _____ minutes past _____ o'clock _____.m. and recorded book _____ Of Official Records, page _____ Nye County, Nevada.

_____
Recorder

EXHIBIT C

KENNY C. GUINN
*Governor*

STATE OF NEVADA

R. MICHAEL TURNIPSEED, P.E
*Director*

HUGH RICCI, P.E.
*State Engineer*

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
**DIVISION OF WATER RESOURCES**
123 W. Nye Lane, Suite 246
Carson City, Nevada 89706-0818
(775) 687-4380 • Fax (775) 687-6972
http://water.nv.gov

April 9, 2004

Ron Williams
Nye County Planning Dept.
P.O. Box 1531
Tonopah, Nevada 89049

Re: Water Right Permits 28062 and 45061
(Little Nevada Subdivision)
Gertrude L. Embry, Owner

Dear Mr. Williams:

The State Engineer is reviewing Permits 28062 and 45061, and the Little Nevada' Subdivision to determine current and anticipated future use of water by the subdivision, and water available for future use under the permits.

Little Nevada Subdivision originally was granted conditional approval relying upon the commitment of the developer to furnish water service to all subdivision lots by a community water system. Previously approval was denied, because the developer proposed water service for the subdivision based upon a combination of a community water system and individual domestic wells.

Permits 28062 and 45061 were approved for a combined duty of 88.6 million gallons annually (MGA), i.e., approximately 271.90 acre-feet annually (AFA), to serve 226 residential lots (at 1.12 AFA per lot) of Little Nevada Subdivision (253.12 AFA), and for commercial purposes (18.78 AFA), within the place of use of the permits. The place of use under Permits 28062 and 45061 included the fractional Lot 7 (i.e., SW¼ of SW¼), a portion of SE¼ of SW¼, and SW¼ of SE¼ Section 2; and a portion of fractional Lot 1 (i.e., NE¼ of NW¼) and NW¼ of NE¼ Section 11, all T18S, R49E., M.D.B.&M. Highway 29 (now NV373) crosses the place of use in the north/south direction in the western parts of SE¼ of SW¼ Section 2, and Lot 1 Section 11. Little Nevada Subdivision occupies the place of use east of Highway 29; and apparently the place of use west of Highway 29 was intended for commercial development.

Subsequently, Little Nevada Subdivision was revised and reduced to 209 residential lots (i.e., parcels). After the subdivision was reduced, 234.08 AFA was allocated to serve 209

residential lots, and the remainder increased the allocation for commercial purposes to 37.82 AFA, the total allocation for the project remained at 271.90 AFA.

Upon approval of the Little Nevada Subdivision, and of Permits 28062 and 45061, the State Engineer considers that 1.12 AFA combined duty under Permits 28062 and 45061 was dedicated to each lot of the subdivision for water service from the community water system; and that the dedication may not be severed from any lot without written approval of the State Engineer.

Later, 100 AFA combined duty under Permits 28062 and 45061 was sold to James Marsh to develop a commercial project within Lot 7 and SE¼ of SW¼ Section 2, west of Highway 29, which area is outside the boundary of Little Nevada Subdivision. Permits 53181 and 53182 were approved for the commercial project. The sale of the 100 AFA included the water allocated to commercial purposes (i.e., 37.82 AFA), and water allocated to serve 55 residential lots, (i.e., 62.18 AFA).

The sale of a portion of the Little Nevada Subdivision water rights (i.e., 62.18 AFA) to James Marsh for commercial use outside the subdivision area destroyed the integrity of the subdivision as an integral project, severed water rights from 55 former subdivision lots, leaving these lots without water rights and unfit for subdivision use as expressed by Permits 28062 and 45061, and by the State Engineer's conditional approval of the subdivision. Therefore, the water service for the original 209 lots of the subdivision reverted to the combined community water system and individual domestic wells, which was previously denied by the State Engineer.

Subsequently, a portion of the combined duty under Permits 28062 and 45061, being 16.96 MGA (i.e., 52.05 AFA) was cancelled. This cancellation included water allocated to serve 46 residential lots.

After the sale and approval of Permits 53181 and 53182 for the combined duty of 100 AFA, and the cancellation of the combined duty of 52.05 AFA, there is a remaining combined duty of 119.85 AFA under Permits 28062 and 45061 sufficient to serve 107 residential lots, at 1.12 AFA per lot; and there are 102 residential lots without water rights under Permits 28062 and 45061.

Consistent with Nevada Water Law, Subdivision Law, Environmental Protection Law, and Health Law the State Engineer considers that the following criteria must apply to parcels of Little Nevada Subdivision in order to prevent inadvertent circumvention of the intent of Permits 28062 and 45061, and of the conditional approval by the State Engineer of the amended subdivision map:

That 107 parcels of the Little Nevada Subdivision remain with appurtenant water rights under Permits 28062 and 45061; and that for any of these 107 parcels, the State Engineer will require the dedication of 2.02 AFA (i.e., 1800 gallons per day) to the parcel from the combined duty under Permits 28062 and 45061 before the construction of a domestic well is approved for the parcel;

That the water rights for 102 parcels were cancelled or transferred off the subdivision, and these 102 parcels are void of water rights under Permits 28062 and 45061; and that for any of

these 102 parcels void of water rights, the State Engineer will require the dedication of 2.02 AFA to the parcel before the construction of a domestic well is approved; and

That upon written approval of the State Engineer, and in cooperation with the appropriate Nye County agency, the Nevada Division of Environmental Protection, and the Nevada Health Division-Public Health Engineering, water rights appurtenant to various subdivision parcels may be combined in various convenient ways to accumulate the 2.02 AFA necessary for dedication to construct a domestic well.

If you have any questions or comments concerning this matter, please contact me at (775) 687-4381, Extension 5.

Sincerely,

Robert LeRoy Thayer

Robert LeRoy Thayer
Supervising Engineer

rlt/sam
cc. Southern Nevada Branch Office
Darrell Rasner, Division of Environmental Production, Water Pollution Control

Gertrude L. Embry
752 Yellowtail Way
Henderson, Nevada
Cert Mail No. 7002 0860 0002 3175 5206

Lisle Lowe
HCR 69 Box 400E
Amargosa Valley, Nevada 89020
Cert Mail No. 7002 0860 0002 3175 5220

Ted A. Embry
8525 W. Hammer Lane
Las Vegas, Nevada 89149-4013
Cert Mail No. 7002 0860 0002 3175 5237

John & Teresa Jacobs
HCR 70 Box 562D
Amargosa Valley, Nv., 89020
Cert Mail No. 7002 0860 0002 3175 5213

Andy Huray, Health Division
Public Health Engineering
1179 Fairview Drive
Carson City, Nevada 89701

My Documents/Little Nevada.pdf

# LITTLE NEVADA SUBDIVISION

## DEATH VALLEY, NEVADA TOWNSITE

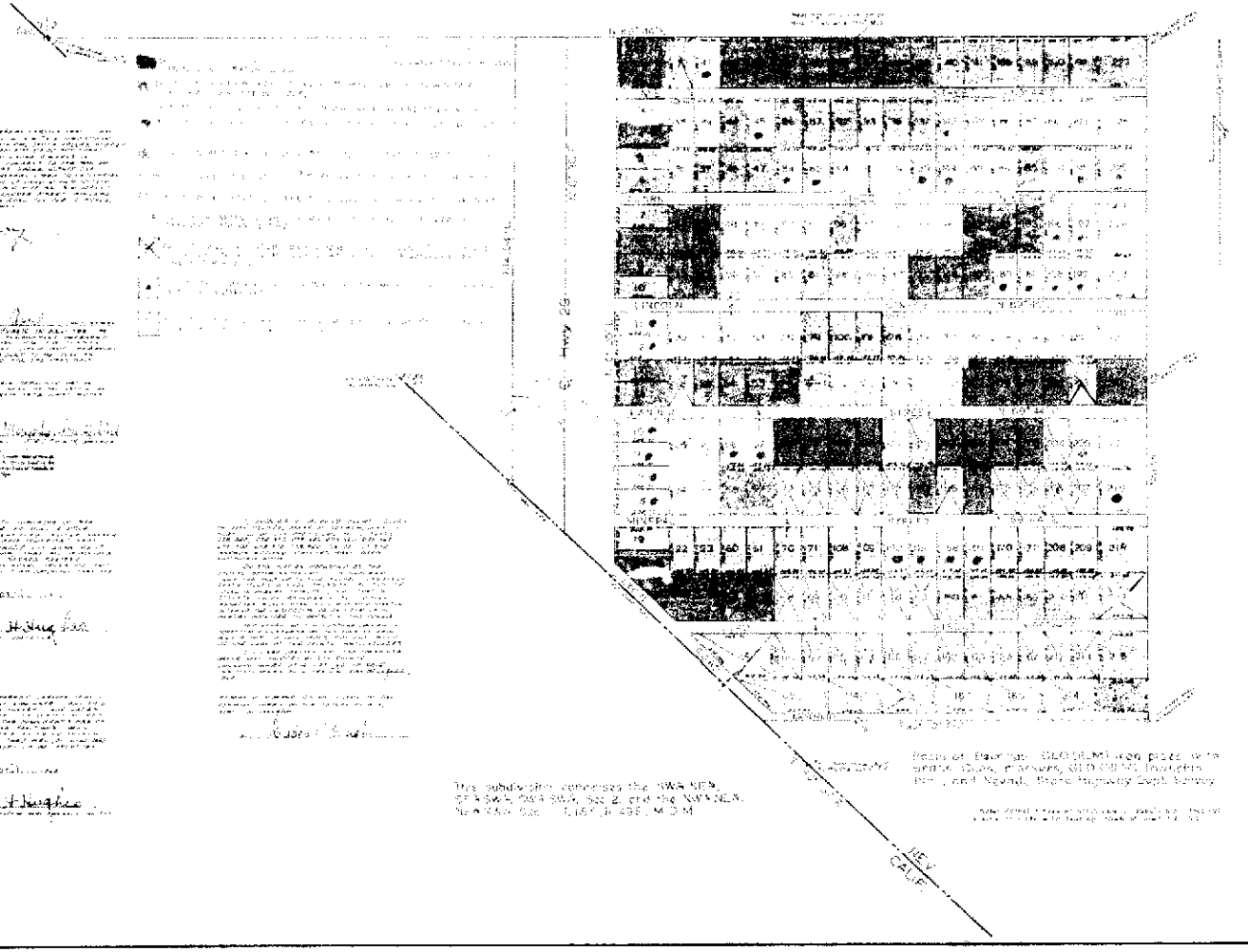
### IN UNINCORPORATED TERRITORY OF NYE COUNTY

BEING A SUBDIVISION OF PORTIONS OF SECTIONS 2 & 11, T. 18 S., R. 49 E.
MOUNT DIABLO BASE AND MERIDIAN

**STATE OF NEVADA**

SCALE 1 in. = 200 ft.

APRIL, 1962




40763

See amended map filed

EXHIBIT E Page 1

PIPE (1½") CAP

33 HIS WATER TO BE WITHDRAWN FROM PERMITS #45061 & 28062.

28 LOTS TO BE SERVED BY EXISTING WELLS #1 & #2, PERMITS 45061 & 28062, NO CHANGE APPLICATION NEEDED.

14 LOTS TO BE SERVED BY WELL #3, CHANGE APPLICATIONS 75199, & 75200

13 LOTS TO BE SERVED BY WELL #4, CHANGE APPLICATIONS 75201, & 75202.

I AM
ISION
NEVADA
EET,

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ICATION
THIN
REET,
ERAL
ORDS,

2 LOTS TO BE SERVED BY WELL #5, CHANGE APPLICATIONS 75203 & 75204

14 LOTS TO BE SERVED BY WELL #6, CHANGE APPLICATION 75205, & 75206

6 LOTS TO BE SERVED BY WELL #7, CHANGE APPLICATION 75207, & 75208.

42 LOTS WITH PRESENTLY EXISTING PRIVATE DOMESTIC WELLS DRILLED BY PREVIOUS OWNERS. (13 WELLS).

DC 43 LOTS OWNED BY JACOBS OR HIS TRUST WHO WILL AGREE TO NOTIFY AND DISCLOSE TO ANY BUYER THAT NO WATER SERVICE IS AVALIABLE, AND NO WATER RIGHT.

29 LOTS OWNED BY VARIOUS INDIVIDUALS WITH NO WATER SERVICE AVALIABLE, AND NO WATER RIGHT.

BEFORE
THE

3 LOTS, PURCHASED IRRIGATION WATER RIGHTS AND WITHDREW IN FAVOR OF DOMESTIC WELLS. (2 WELLS)

1744.54 ft.