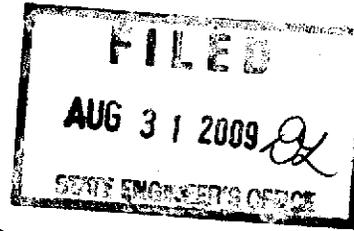


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 78671,
FILED BY JOHN T. AND TERESA D. JACOBS,
ON JUNE 29, 2009,
TO APPROPRIATE THE WATERS OF PERMIT 66396



PROTEST

Comes now John F. Bosta whose post office address P. O. Box 42 Amargosa, Nevada 89020 whose occupation is retired, and protests the granting of Application Number 78671, filed on June 29, 2009 by John T. and Teresa D. Jacobs to appropriate the waters of an underground source under permit 66396 situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

The proposed application changes the use of Permit 66396 from Irrigation & Domestic to Quasi-Municipal for Lots 143, 186, 187, 192, 193, 226, 194, 224, 223, 222, 203, & 200, as shown on Little Nevada Subdivision Map F. 40753 & 61618, Nye County Records, being in the SW ¼ SE ¼ of Section 2 and NW ¼ NE ¼ of Section 11, all in T.18S., R.49E., M.D.MM.

The proposed well POD Tie: S.87°27'45" W., a distance of 1184 FT. The proposed POD is in lot 40, which is the same ½ acre lot as Permit 28062.

On March 12, 2003 Ted A. Embry sold lots 29 and 40 to John Timothy and Teresa D. Jacobs together with 39.055 MGA in Permits 45061 and 2862. Jacobs has continued to supply water under T-N-T Enterprises to the customers of the Embry Water Supply Service.

On August 25, 2004 Jacobs purchased 53 dry lots all of which are void of water rights pursuant to State Engineer's Ruling #5895. He connected meters to at least five of these of lots and provided water service to each. He sold lot 195 and continues to provide water service to this dry lot void of any water rights. (See EXHIBIT 1 attached hereto)

On September 14, 2004 I purchased lots 79 and 100 of Little Nevada Subdivision. Both of these lots were classified as WS, which means that I was entitled to waster service on each lot. Lot 100 had water service at the time of my purchase. I wanted to build a house on each lot. I needed water service for lot 79 so that I could apply for construction loans package for 5 houses, two of which was a house on each lot 79 & 100 and three lots at other locations outside of Little Nevada Subdivision.

Lot 79 is one of the 107 parcels of the little Nevada Subdivision that remains with appurtenant water rights under Permits 28062 and 45061 (See State Engineer's Ruling # 5896 Exhibit A). I requested water service from Tim Jacobs. He refused my request because he would be serving more that 15 connection to Water Company, T-N-T Enterprises, A.k.a. Embry Water System and he would be required to apply for a Public Utility Commission (PUC) permit for a water company. He did not want to be regulated the by the PUC. However, the Embry Pumpage Inventory Report 2004 provides contradicting information; 3-commercial businesses and 35-various other users for a total of 38 service connections to the distribution main in the ground. (See EXHIBIT 2 attached hereto) Pursuant to NRS 445A.235 Jacobs was operating a public water system in 2004 when he denied me service.

This proposal will place two wells in Lot 40; both of these wells are in a vacant lot, which is violation of NRS 278.0165. "Lot" means a distinct part or parcel of land, which has been divided to transfer ownership or to build. The term does not include a parcel of land used or intended solely for use as a location for a water well.

The proposed application changes Permit 66396 owned by Darrell E. Cypert issued for Irrigation and Domestic use to be applied to beneficial use not exceed 0.1942 cubic-feet per second, but not to exceed 51.95 acre-feet annually, and to exceed a yearly duty of 5.0 acre-feet per acre of land irrigated from any and/or all sources. Proof of the application of water to beneficial use was not filed by June 25, 2006. The pumpage inventory for Permit 66396 was zero for each year 2001-2006. (See EXHIBIT 3, attached hereto) This Permit 66396 should have been cancelled in 2005. There has been no irrigation of crops at the rate 5.0 acre-feet per acre of land from 2001-2008. No proof of beneficial use has been filed.

On June 19, 2009 the Nevada Board of Agriculture is posted the following policy for the Department of Agriculture to follow in regard to protecting all aspects of water that is used either directly, or indirectly, for agriculture production. To monitor and report to the Board in a timely fashion any and all proposed reallocation of any Nevada water for any use other than for its historic application to agriculture production. If the permit is not cancelled the irrigation use should not be changed to quasi-municipal use.

A connection to a well alone is not a water system. The service connections for the twelve (12) domestic lots are not directly connected to the proposed new well. Jacobs has no "Distribution main" from the POD of the new well to the 12 lots. When will Jacobs construct the distribution lines from the new proposed well to the twelve (12) described lots served by this Quasi-Municipal permit? No plans have been submitted for this quasi-municipal use other than drilling a well.

Antonio Guerra Martinez and I protested permit applications 75199-75208. The State Engineer issued Ruling # 5895 which denied all ten (10) applications and made the finding that the remaining water under Permits 28062 and 45061 is appurtenant to the 107 lots identified in Appendix A and the remaining subdivision lots are dry.

During the Public Hearing, February 27, 2008, under DIRECT EXAMINATION, pages 109-111, John T. Jacobs testified; "I did not purchase a water company. And if you look at the grant, bargain deed it just says I bought X amount of water rights on two lots." (See EXHIBIT 4 attached hereto)

The Applicants, John T. and Teresa D. Jacobs have filed a Petition for Judicial Review of Ruling # 5895 in the Fifth Judicial District Court, Case No. 27481.

Jacobs's hands are not clean in the Case No. 27481.

- ◆ Under the date of March 2, 2003 Jacobs purchased Lots 28, APN 019-472-10 and 40, APN 019-441-03; TOGETHER with 39.055 MGA Contained in Patent #45061 and Permit #28062.
- ◆ He has disconnected and removed the meters from at least two of the original water customers, Lot 47, 30, & 31, of the Embry Water Supply Service.
- ◆ Under the date August 25, 2004 Jacobs purchased 53 lots from the Embry 1997 Trust for \$31,100
- ◆ Jacobs installed and connected at least five meters to his new lots all of which are dry lots void of water rights.
- ◆ During this construction period of installing meters Jacobs refused me water for lot 79, which has appurtenant water rights remaining under Permits 28062 and 45061.
- ◆ Jacobs sold two dry lots, 194 and 195 with a meter and provides water service as of today.

Look at the history of Permits 28062 and 45061 to supply water to the lots in the 1982 Little Nevada Subdivision.

On July 15, 1962 L. C. Cook drilled a domestic well for W. Embry. See well log 6691, which becomes the well for Permit 28062.

On August 29, 1974 State Engineer Roland D. Westergard approved the application for permit 28062 for 2.0 cfs not to exceed 88.6 million gallons annually for water to be used for a Quasi-Municipal & Domestic public water system serving the 228 single family dwelling (part mobile homes) plus 38 single family 1 acre plots, commercial enterprises (bar, cafe, and various commercial enterprises – up to 28).

On November 1, 1981 W. D. and Gertrude Embry, Sr. filed an Application for Permit 45061 for a Quasi-Municipal and Domestic use for the work to drill a well, pump and motor, 3500 gallon pressure tank and 42,000gallon storage tank. Item 15 Remarks: This well will be used in conjunction with Well No. 1 under Permit 28062, to serve the same development for a total from both sources of 88.6 mga. The Approval of State Engineer: This permit to change the Point of Diversion of a Portion of the water of the underground sources as heretofore granted under Permit 28062 is issued subject to the terms and condition imposed in said Permit 28062 and with the understanding that no other rights on the source will be affected by the change proposed herein. The total combined duty of water under this permit and Permit 28062 shall not exceed 88.6 million gallons annually. Granted by Peter G. Morros on the 23 rd day of July AD. 1982

On March 2, 1982 the Department of Conservation and Natural Resources, Division of Water Resources, Subdivision Review sent a letter to Nye County Planning Commission that a water supply is not included. The final amended map does not indicate what the source of water for the proposed subdivision is to be. There are no water rights appurtenant to the property, which could be, support approval based on a community water system. Action: Disapproved to water quantity as required by statutes for the Little Nevada Amended subdivision based on water service by community and individual domestic wells based on the reasons described in the context of this review. Respectfully submitted, Gerald Brownfield, Hydraulic Engineer.

On March 9, 1982 James A. Edmundson, Bureau Chief of the Division of Health letter to Robert L. Hanks, Nye County Department of Planning, “The 1957 health division regulation requires a minimum of ¼ acre (10900 sq. ft.) lot for the installation of an individual sewage disposal system on a lot served by a community water supply. The regulation also requires a minimum area of 1 acre (43560) for the installation of an individual sewage disposal system on a lot served by a well.”

On March 17, 1982 the Department of Conservation and Natural Resources, Division of Water Resources, Subdivision Review Amended sent a letter to Nye County Planning Commission that there are water rights appurtenant to the property which could be utilized for a community water system. State of Nevada Water Right Permit 28062 is in the ownership of W. D. and Gertrude Embry, Sr. The Permits 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. Conditional Approval of this Amended Map would be considered if the proposed method of serving all the lots was by a community water system. We would need assurance that the water system would be constructed. Also a backup well would be required to satisfy necessary demands. A hydrologic report prepared by a professional engineer or hydrologist would be required which demonstrates that the aquifer and wells to be utilized could support the proposed water demand of the project. Respectfully submitted, Gerald Brownfield, Hydraulic Engineer.

On October 13, 1983 ALCA Engineering & Survey sent two (2) prints of Little Nevada Water System Water Plan and a copy of Design Requirements to Albert F. Porta, State Consumer Health Protection Services.

On October 17, 1983 the Department of Human Resources, Health Division sent to Nye County Planning a letter referencing the Little Nevada – Water System (NY 236 AP)A that the plans and specifications for the referenced water system have been reviewed and approved for 69 lots. However, before any additional lots are

occupied, a construction schedule for installation of the system must be submitted. This schedule must be commensurate with the build-out of the approved 69 lots.

The Little Nevada Subdivision (227 Units) Water System (Nye County) operated from 1983 to 1989. The Embry Water Supply is an "existing public water system" pursuant to NAC 445A.6591; a public water system that has operated for 5 or more years. In 1989, the permit was not renewed and marked inactive.

On October 29, 1990 Ted A. Embry filed an Application For Extension of Time for Gertrude Embry for Permit No. 28062 for filing Proof of Beneficial Use. In the Application Ted A. Embry submits a letter dated October 16, 1989 in response to Christine Thiel request for information regarding work progress. We have properly dedicated the streets and right-of-way to Nye County, and the County is providing maintenance thereof. The primary stage of water system was completed in 1984 including:

- (a) four and ½ miles of 4 ½ inch water main in very street within the subdivision and around the perimeter thereof in ground;
- (b) two wells of approximately 350 and 300 feet, respectively, with pumps, casings and storage facilities for approximately 46,000 gallons above ground;
- (c) 63 meter, meter boxes and related valves available as needed for customers coming on line;
- (d) fully automated electric panel with three (3) phase power supply for the coordinated use of the two wells to pump water into the storage facilities.
- (e) See enclosed Design of Water System, which has been completed as designed.

The Embry Water Supply Service did not provide any pumpage inventory for permits 28062 and 45061 until 1996. The Embry Water Supply Service inventory for permits 28062 and 45061 begins in 1996, which is recorded in the Ground Water Pumpage Inventory Amargosa Valley, No. 230. The Embry Water Supply Service provided water to 3-Commercial Businesses and 40-Variou Other Users, which is more than 15 connection or 25 people from 1996 to 2006. Therefore, the Embry Water Supply Service was and is an existing public water system from 1996 to 2008. However, the Embry family never informed the Public Utility Commission about their service to the public.

Since 2003 the T-N-T Enterprises has continued to report the pumpage for permits 28062 and 45061 under the name of Embry to hide the fact that T-N-T Enterprises is a public water system using the 4 ½ miles of distribution line installed in the ground during the 1st stage of the Embry Water Supply System described by Ted Embry in his application of the 1990 Extension above. In 2007 the T-N-T Enterprises reduced the service to 0-Commercial Businesses and 14-Domestic Lots for one year only and in 2008 report increased the service to 1-Commercial Business and 14-Domestic Lots. (See EXHIBIT 2 attached hereto)

The T-N-T Enterprises is an "existing public water system" pursuant to NAC 445A.6591; a public water system that has operated for 5 or more years. The facts in Exhibit 4 speak for themselves even though Jacobs is making Pumpage Inventory Reports for Permits 28062 and 45061 under Embry's name. T-N-T Enterprises, has provided service to 15 or more service connection during the period, 2003-2008 every year except 2007 when he served only 14 domestic lots. Remember that Jacobs refused me service in 2004. What difference would have been that I would have been the 37th service connection; every other year from 2003 to 2008 T-N-T has had 15 or more service connections?

T-N-T Enterprises is a "Public water system", which has the meaning ascribed to it in NRS 445A. 235; a system, regardless of ownership, that provides the public with water for human consumption provides the public with water for human consumption through pipes or other constructed conveyances, if the system has 15 or

more service connections, as defined in NRS 445A.843, or regularly serves 25 or more persons. The term includes:

- (a) A facility for the collection, pumping, treatment, storage or distribution of water which is controlled by the operator of the system and used primarily in connection with the system; and
- (b) A facility for the collection or storage before treatment of water, which is not controlled by the operator of the system but is used primarily in connection with the system.

Pursuant to NRS 445A.843 a "Service connection" means:

- (a) The point of connection between a public water system and the system used by a customer of the public water system to obtain water from that system, at which point the public water system loses its control over the use of the water;
- (b) If a meter is installed between a public water system and the system used by a customer of the public water system to obtain water from that system, the downstream end of the meter or meter assembly; or
- (c) At a park for mobile homes or recreational vehicles, the point of connection of the mobile home or recreational vehicle to the riser for water service of the public water system that serves the park.

Pursuant to NAC 445A.65835 "Distribution main" means any pipe in a distribution other than a service line.

When did T-N-T Enterprises purchase or lease the Embry Water Supply System, which includes the distribution main? T-N-T Enterprises uses the 4-½ miles of distribution lines in the ground to deliver water to their present 15 connections reported in the 2008 pumpage report.

On July 20, 2009 Jacob's attorney Thomas D. Driggs sent Dave Kakan a certified letter stating that his firm represents the T-N-T Enterprises with respect to Jacobs' Water System and delivery of water service to certain lots within the Little Subdivision in Amargosa Valley. The water service provided by the Jacobs to such lots within Little Nevada is limited to systems of 14 connections in order to comply with certain Nevada Statute Regulations (NRS). This letter states that pursuant to NRS § 445A.235 that addition a 15th service would make the Jacobs Water System a "public water system" in which Jacobs would be subject to additional regulations by Nevada Department of Environmental Protection. Such regulation would result in additional compliance costs to the Jacobs that would in turn result in higher water rates to the customers receiving water service in Little Nevada. The Jacobs has no intention of becoming a public water system.

On Wednesday, July 22, 2009 Tom Driggs sent an email to Jason King about the water service on Mr. Hollis' lot 47 suggesting he file an application to drill a well and share of his water with one of his non-water lot neighbors behind him (lots 44 or 86) that do not have water or get a number of other neighbors together to setup their own water users' association. Mr. Driggs is not well informed. Both lots behind Mr. Hollis has water supply service by Tim Jacobs. Lot 44, APN 019-442-06 was the Single-family residence of Gertrude Embry at 1766 E. Nye St., which was the first service connection to the Embry Water Supply System. T-N-T Enterprise Water Service continues to provide water and bill Felipe Naranjo for water. Tim Jacobs purchased lot 45 from Embry 1997 Trust for \$587 August 25, 2004 and sold it to Felipe Naranjo. Felipe Naranjo could drill a domestic well for his residence on lot 45, APN 019-442-05. However, a domestic well is for one-acre lot with one residence. This was the major issues and problems in 1981 that caused Mr. Charles White and others to amend the "Little Nevada Subdivision, Death Valley Townsite file no. 40753, May 11, 1962"

Lot 86, APN 019-442-04, is dry lot without water rights that Jacobs installed a meter and is providing water service for Loraine & Troy Gary. This service is a violation of State Engineer's Ruling # 5895. Jacobs has no water rights under Permits 28062 and 45061. Jacobs is stealing the water appurtenant to the 107 lots identified in the Ruling # 5895 and providing the water to dry lots, which has no water rights.

Both Lots 47 and 86 have a residence and septic system on a 1/2 acre lot neither lot can be used to drill a well as suggested by Mr. Driggs.

On Monday August 10, 2009 Antonio Guerra and I visited the Nye County Records Office, which has no record of Jacobs or T-N-T Enterprises purchasing the Embry Water Supply System and the Nye County Assessors Office, which has no property tax assessment for any water distribution lines or water mains under ground in very street within the subdivision and around the perimeter thereof in ground.

Jacobs needs to establish proof that he purchased or leases the Embry Water Supply Service so that T-N-T Enterprises is entitled to use the 4-1/2 miles of distribution lines in the ground and to file an application with the Public Utility Commission to operate a public water system to service the 107 who are entitled to the remaining water under Permits 28062 and 45061. If the new well is connected to the 4-1/2 distribution lines in the ground to service the 12 domestic lots described above, 27 connection will be serviced by the distribution lines.

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 John F. Bosta

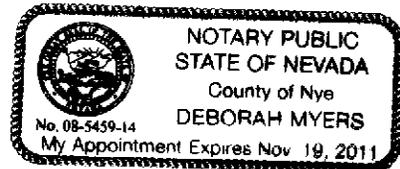
John F. Bosta
P. O. Box
Amargosa, Nevada 89020
(775) 372-9038

Subscribed and sworn to before me this 28 day of August, 2009

Deborah Myers

Notary Public

State of Nevada
County of Nye



Embry Water Supply Service Ground Water Pumpage Inventory 1996-2008

Year	Number	Status	Owner of Record	Place of Use					Acres or Duty	Used (A/F)	Remarks
				1/4	1/4	S	T	R			
1996	28062	Permit	Embry	SW	SE	2	18	49	172	16	2-Commercial Businesses
	45061			SE	SW						28-Variious Other Users
				SW	SW						
				NW	NE	11					
1997	28062	Permit	Embry	SW	SE	2	18	49	172	50.2	2-Commercial Businesses
	45061			SE	SW						32-Variious Other Users
				SW	SW						
				NW	NE	11					
1998	28062	Permit	Embry	SW	SE	2	18	49	119.90	64.3	2-Commercial Businesses
	45061			SE	SW						32-Variious Other Users
				SW	SW						
				NW	NE	11					
1999	28062	Permit	Embry	SW	SE	2	18	49	119.90	64.3	3-Commercial Businesses
	45061			SE	SW						31-Variious Other Users
				SW	SW						
				NW	NE	11					
2000	28062	Permit	Embry	SW	SE	2	18	49	119.90	24.4	3-Commercial Businesses
	45061			SE	SW						30-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2001	28062	Permit	Embry	SW	SE	2	18	49	119.90	46.4	3-Commercial Businesses
	45061			SE	SW						39-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2002	28062	Permit	Embry	SW	SE	2	18	49	119.90	46.6	3-Commercial Businesses
	45061			SE	SW						40-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2003	28062	Permit	Embry	SW	SE	2	18	49	119.90	46.6	3-Commercial Businesses
	45061			SE	SW						35-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2004	28062	Permit	Embry	SW	SE	2	18	49	119.90	46.6	3-Commercial Businesses
	45061			SE	SW						35-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2005	28062	Permit	Embry	SW	SE	2	18	49	119.90	41.7	3-Commercial Businesses
	45061			SE	SW						32-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2006	28062	Permit	Embry	SW	SE	2	18	49	119.90	41.7	3-Commercial Businesses
	45061			SE	SW						30-Variious Other Users
				SW	SW						2-Wells
				NW	NE	11					
2007	28062	Permit	Embry	SW	SE	2	18	49	119.90	22.93	0-Commercial Businesses
	45061			SE	SW						14-Domestic Lots
				SW	SW						2-Wells
				NW	NE	11					
2008	28062	Permit	Embry	SW	SE	2	18	49	119.90	22.93	1-Commercial Businesses
	45061			SE	SW						14-Domestic Lots
				SW	SW						2-Wells
				NW	NE	11					

EXHIBIT 2

Ground Water Pumpage Inventory Permit #66396 2001-2008

Year	Number	Status	Owner of Record	Place of Use					Acres or Duty	Used (A/F)	Remarks
				1/4	1/4	S	T	R			
2001	66396	Permit	Cypert	NE	SW	2	18	49	52	0.00	
2002	66396	Permit	Cypert	NE	SW	2	18	49	52	3.00	
2003	66396	Permit	Cypert	NE	SW	2	18	49	52	0.00	
2004	66396	Permit	Cypert	NE	SW	2	18	49	52	0.00	
2005	66396	Permit	Cypert	NE	SW	2	18	49	52	0.00	
2006	66396	Permit	Cypert	NE	SW	2	18	49	52	0.00	
2007	66396	Permit	Cypert	NE	SW	2	18	49	52	0.02	Meter Reading
2008	66396	Permit	Cypert	NE	SW	2	18	49	52	0.02	Meter Reading

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOHN TIMOTHY JACOBS

called as a witness on behalf of the Applicant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walch:

Q. Mr. Jacobs, could you please state and spell your name for the record.

A. It's John T. Jacobs, J-o-h-n T-i-m-o-t-h-y J-a-c-o-b-s.

Q. Do you go by Tim?

A. Yes, I do.

Q. You heard some testimony earlier about the protestants' position that you bought a water company. I want to just go ahead and address that right up front. Did you buy any stock in a water company?

A. No, I did not.

Q. Did you buy any shares in a water company?

A. No, I did not.

Q. Did you buy any ownership interests in a water company?

A. No, I did not.

Q. Do you know whether or not the Embrys have formed a legal entity to hold the water company?

1 A. As far as I know they did not.

2 Q. But nevertheless we did see some bills, we did
3 see some bills from the protestants indicating you are
4 sending some \$35 per month charges to some of the folks
5 within Little Nevada; is that correct?

6 A. Yes, it is.

7 Q. If you would explain to the State Engineer why
8 you are sending those bills.

9 A. Okay. When I purchased the two lots in the
10 39.055 MGA, I purchased that. I did not purchase a water
11 company. And if you look at the grant, bargain deed it just
12 says I bought X amount of water rights on two lots.

13 Q. Let me interrupt you real quickly. We did not
14 provide a grant, bargain, sale deed as part of the exhibits.
15 We'll give the State Engineer one and the protestants one if
16 you think it's germane to the proceeding.

17 HEARING OFFICER WILSON: I would like to go
18 ahead and have that for the record.

19 MR. WALCH: Unfortunately I didn't bring enough
20 copies.

21 HEARING OFFICER WILSON: Thank you.

22 MR. WALCH: You're marking that as an exhibit?

23 HEARING OFFICER WILSON: Yes. Let's mark that
24 as the next exhibit number. Let's mark it as Exhibit 90.
25 And if you can give us some foundation for that.

1 Q. (By Mr. Walsh) Sure. The deed that you're
2 holding, Mr. Jacobs, is that the deed by which you purchased
3 the water rights that you've applied to move here?

4 A. Yes, it is.

5 Q. When did you make that purchase?

6 A. It was March 20th of 2003.

7 Q. You also bought a couple of lots within the
8 subdivision by virtue of that transaction as well; is that
9 correct?

10 A. Yes, I did.

11 Q. Which lots did you buy?

12 A. Can I get my map?

13 Q. First of all, make sure you speak up.

14 A. Okay.

15 Q. What you're looking at for the record is the
16 1962 subdivision map with some color markings and a chart to
17 go with those color markings; is that correct?

18 A. Yes, it is.

19 Q. So I asked you which lot did you acquire from
20 the Embrys.

21 A. Lot 40 and lot 28.

22 Q. Okay. And are those lots where the wells are?

23 A. Yes, they are.

24 Q. Wells one and two as described by the
25 protestants?