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

FILED
AUG 24 2009
STATE ENGINEER'S OFFICE

2009 AUG 24 PM 2:01

IN THE MATTER OF APPLICATION NUMBER.78673,
FILED BY JOHN T. AND TERESA D. JACOBS,
ON JUNE 29, 2009,
TO APPROPRIATE THE WATERS OF PERMIT 66396

} PROTEST

Comes now Antonio Guerra Martinez whose post office address is 1826 Nye Street Amargosa Valley, Nevada 89020 whose occupation is self-employed. and protests the granting of Application Number 78673, 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 72, 73, 74, 154, 155, 172, 106, 107, 123, 156, & 157, 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 29. This proposal would place a well 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 1, an excel spreadsheet of the pumpage inventory attached hereto) This permit 66396 should have been cancelled in 2006. 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 eleven (11) domestic lots are not directly connected to the proposed new well. Jacobs has no distribution lines from the POD of the new well to the lots. When will Jacobs construct the distribution lines for his water service to the eleven (11) described lots served by this Quasi-Municipal permit? No plans have been submitted for this quasi-municipal use other than drilling a well.

John Bosta 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. The Applicants,

John T. and Teresa D. Jacobs have filed a Petition for Judicial Review in the Fifth Judicial District Court, Case No. 27481.

It should be noted that some of the 107 lots have been combined such that there are 97 individual parcels. My lot 137 has a meter and is connected the Embry Water Supply System. However, my other four (4) lots are classified as dry, but each of my deeds issued by Ted A. Embry, Trustee "Embry 1997 Trust" says I have water rights, if any. I claim the ownership of 8.96 acre-feet annually of 22.4 acre-feet annually of the water rights that is not used by the Embry Water Supply System on the ten (10) lots that have been combined and allowed to drill wells for one domestic service well for one family dwelling using 2.24 acre-feet annually. I can drill two wells to service my lots.

During the Protest Hearing for permit applications 75199-75208 under Direct Examination John T. Jacobs testified that he did not buy any shares and did not buy any ownership interest in a water company. He only purchased two lots, 40 and 28, with 39.055 MGA of water rights. Jacobs provided one copy of the Corporation Grant, Bargain, Sale Deed to the Hearing Officer from Ted A Embry, Trustee of The Embry 1997 Trust dated December 21, 1997 in consideration of $10.00, the receipt of which is hereby acknowledged, with Exhibit "A" attached hereto and made part of the deed. Exhibit "A" gives the legal Descriptions:

- Lot 28 and 40 as shown on the map of Little Nevada Subdivision, Death Valley Townsite, filed in the Office of the County Recorder of Nye County, Nevada, on May 11, 1962 in Book C of Surveys at page 135, as File No. 40753, Nye County, Nevada,, Nevada records, and shown on the amended map of Little Nevada Subdivision filed in the Office of the County Recorder of Nye County, Nevada on May 18, 1982, as File No. 61618, Nye County, Nevada Records;
- The Assessor's Parcel Number of 2002-2003: 19-441-03 and 19-472-10;
- Together with 39.055 MGA contained in Patent #45061 and Permit #28062

and State of Nevada Declaration of Value for a value of $7,000:

- for Property for Vacant Land and Agricultural use;
- both Ted Embry and John Jacobs sign this document under the penalty of perjury. (See EXHIBIT 2 attached hereto)

Look at the history of the Embry Water Supply Service.

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 February 15, 1974 the Nevada State Division of Health, Bureau of Environmental Health sent an Official Notice to the Little Nevada Subdivision, W.M. Embry to cease providing water, other than your own residence, until a water supply, approved by the Health Division is available.

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 September 1, 1981 a letter from the Division of Health, Bureau of Consumer Health Protection Services, Safe Drinking Water Program signed by James A. Maston, Public Health Engineer and J. A. Edmundson, Bureau Chief was sent to Bill Embry referencing the Little Nevada Subdivision – Water Distribution System (NY 236 JM). The purpose of this letter was informing Bill Embry that the plans for the referenced water system were approved in concept. A statement is made that the system will be expanded as the lots are developed.

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 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. 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 Mr. 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-Various Other Users, which is more than 15 connection or 25 people from 1996 to 2006. Therefore, the Embry Water Supply Service was and is a public water system from 1996 to 2006.. 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 they are 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. (Attached hereto is EXHIBIT 3, an excel spreadsheet for the pumpage inventory for permits 28062 and 45061 from 1996 to 2008)

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..

When did T-N-T Enterprises purchase or lease the Embry Water Supply System? T-N-T Enterprises uses the 4-½ miles of distribution lines 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 Mr. David Kalan 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 Statue 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 Monday August 10, 2009 I visited the Nye County Recorders Office, there is no record of Jacobs or T-N-T Enterprises purchasing the Embry Water Supply System and the Nye County Assessors Office, 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 the Embry Water Supply Service so T-N-T Enterprises is entitled to use the 4-½ miles of distribution lines in the ground and to file an application with the Public Utility Commission to operate a public water system. If the new well is connected to the 4-½ distribution lines in the ground to service the 11 domestic lots described above and the 39 connection of permit 78671 & 78672 will be 50 lots 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

Antonio Guerra Martinez
1826 Nye Street
Amargosa Valley, NV 89020
(775) 372-1240

Subscribed and sworn to before me this 20 day of August, 2009

Deborah Myers
Notary Public

State of Nevada
County of Nye

NOTARY PUBLIC
STATE OF NEVADA
County of Nye
No. 08-5459-14 DEBORAH MYERS
My Appointment Expires Nov 19, 2011

Ground Water Pumpage Inventory Permit #66396 2001-2008

Year	Number	Status	Ower of Record	Place of Use					Acres or	Used	Remarks
				1/4	1/4	S	T	R	Duty	(A/F)	
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 1

A.P.N. # 19-441-03;19-472-10

R.P.T.T. $ 9.10
ESCROW NO. 25026191
Full Value

RECORDING REQUESTED BY:
COW COUNTY TITLE CO.
WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:

557797

Timothy & Teresa Jacobs
HCR 70 Box 562-D
Amargosa, NV 89020

CORPORATION
GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That
TED A. EMBRY, Trustee of THE EMBRY 1997 TRUST dated December 31, 1997

in consideration of $10.00, the receipt of which is hereby acknowledged, does hereby Grant, Bargain Sell and Convey to
JOHN TIMOTHY JACOBS and TERESA D. JACOBS, husband and wife as joint tenants

and to the heirs and assigns of such Grantee forever, all that real property situated in the unincorporated area
County of NYE State of Nevada, bounded and described as follows:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

DATE: March 12, 2003 THE EMBRY 1997 TRUST

BY: TED A. EMBRY
Trustee

BY: _____

STATE OF Nevada }
} ss.
COUNTY OF NYE }

This instrument was acknowledged before me on Mar 12, 2003,
by, TED A. EMBRY

Signature: _____
Notary Public

Notary Public - State of Nevada
COUNTY OF NYE
SUSAN L. ALCORN
No. 94-0023-04 My Appointment Expires Apr. 12, 2006

EXHIBIT 2 page 1

Unofficial Copy

557797

EXHIBIT "A"

LEGAL DESCRIPTION

ESCROW NO.: 25026191

All that certain real property situate in the County of Nye, State of Nevada, described as follows:

Lot 28 and 40 as shown on the map of LITTLE NEVADA SUBDIVISION, DEATH VALLEY TOWNSITE, filed in the Office of the County Recorder of Nye County, Nevada, on May 11, 1962 in Book C of Surveys at page 135, as File No. 40753, Nye County, Nevada, Nevada records, and shown on the amended map of LITTLE NEVADA SUBDIVISION filed in the Office of the County Recorder of Nye County, Nevada on May 18, 1982, as File No. 61618, Nye County, Nevada records.

ASSESSOR'S PARCEL NUMBER FOR 2002 - 2003: 19-441-03
19-472-10

TOGETHER WITH 39.055 MGA Contained in Patent #45061 and Permit #28062

Unofficial Copy

Official Records Nye County Nevada
Requested By: Cow County Title Co
03/20/03 11:26 AM 557797
Donna L. Motis Recorder
Fee: $15.00 State: $ Dep: tp

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 19-441-03;19-472-10
   b)
   c)
   d)

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: 557737
Book: Page:
Date of Recording:
Notes:

2. Type of Property:
   a) XX Vacant Land b) ____ Single Family Res.
   c) ____ Condo/Townhouse d) ____ 2-4 Plex
   e) ____ Apartment Bldg. f) ____ Comm'l/Ind'l
   g) XX Agricultural h) ____ Mobile Home
   i) Other:

3. Total Value/Sales Price of Property $ 7,000.00

   Deed in Lieu of Foreclosure Only (Value of Property) $ 0.00

   Transfer Tax Value $ 7,000.00

   Real Property Transfer Tax Due: $ 9.10

4. If Exemption Claimed:

   a. Transfer Tax Exemption, per NRS 375.090, Section:

   b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed

Signature: Capacity: Trustee 1997 Embry TRU

Signature: Capacity: Buyers

SELLER (GRANTOR) INFORMATION (required)	BUYER (GRANTEE) INFORMATION (required)
Print Name: THE EMBRY 1997 TRUST	Print Name: JOHN TIMOTHY JACOBS
Address: 8525 W. HAMMER LANE	Address: HCR 70 BOX 562D
City/State/Zip: LAS VEGAS, NV 89149	City/State/Zip: AMARGOSA VALLEY, NV 89020-9

COMPANY/PERSON REQUESTING RECORDING (required if not the Seller or Buyer)

Company Name: COW COUNTY TITLE Escrow No.: 25026191
Address: 761 S. Raindance Drive
City/State/Zip: Pahrump, NV 89048

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT 2 page 3

Unofficial Copy

Embry Water Supply Service Ground Water Pumpage Inventory 1996-2008

				Place of Use					Acres or	Used	
Year	Number	Status	Ower of Record	1/4	1/4	S	T	R	Duty	(A/F)	Remarks
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 3