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

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AUG 15 2012

STATE ENGINEER'S OFFICE
ELKO OFFICE

IN THE MATTER OF APPLICATION NUMBER #81976
FILED BY Rand Properties, LLC
ON June 20, 20 12, TO APPROPRIATE THE
WATERS OF Trout Creek

PROTEST

Comes now William A. Nisbet, agent for protestant Julian Tomera Ranches Inc., Battle Mountain Division
Printed or typed name of protestant

whose post office address is 421 Court Street Elko, Nevada 89801-3527
Street No. or PO Box, City, State and ZIP Code

whose occupation is state water right surveyor and protests the granting

of Application Number #81976, filed on June 20, 20 12

by Rand Properties, LLC to appropriate the

waters of Trout Creek situated in Lander
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

Protestant is the current permittee authorized by the BLM to graze livestock upon the public range supplied with water by the pipeline described in the "Cooperative Agreement", dated October 11, 1979, and as conveyed to protestant by predecessor of applicant, described in BLM "assignment of range improvements", dated March 1, 1989, copies enclosed, & in protestant's permit #39377, & change application #80737. Applicant has no authority to use or operate said stock watering pipeline. Reference is also made to BLM letter of March 29, 2011, addressed to Rand Properties, confirming Tomera as party of responsibility for pipeline maintenance. Claim #02678 is part of complaint, case CV-10122, Lander County District Court (Filippini vs. Tomera vs. Rand), seeking adjudication of this stream system, and such change application is therefore premature.

THEREFORE the Protestant requests that the application be denied
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed William A. Nisbet
Agent or protestant

William A. Nisbet, agent
Printed or typed name, if agent

Address 421 Court Street
Street No. or PO Box

Elko, Nevada 89801-3527
City, State and ZIP Code

(775)738-2121
Phone Number

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Subscribed and sworn to before me this 15th day of August, 20 12
by William A. Nisbet.

Coralee Griswold
Notary Public

CORALEE GRISWOLD
Notary Public, State of Nevada
Appointment No. 94-1860-6
My Appt. Expires May 29, 2014

State of Nevada
County of Elko

+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Form 4115–19
(November 1978)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COOPERATIVE AGREEMENT

RANGE IMPROVEMENTS AND CONSERVATION PRACTICES

OFFICE USE ONLY	
Expires Indefinite	EXTENDED TO
Job Number(s) 4607	
Job Name(s) Trout Creek Pipeline	

1. I, (We) Leroy Horn of Battle Mountain, Nevada 89820,

of ,

of ,

and of ,

hereinafter called cooperator(s) and the United States of America, by the Bureau of Land Management, hereinafter called the Bureau, for and in consideration of the mutual benefits hereunder, and in accordance with the Taylor Grazing Act (43 U.S.C. 315, 315a–r), as amended, the National Soil Conservation Act (16 U.S.C. 590a–q(1)), as amended, and the Federal Land Policy and Management Act (43 U.S.C. 1701, et. seq.) do enter into this cooperative agreement for the construction and/or maintenance of range improvements, installation of conservation works or establishment of conservation practices, hereinafter referred to collectively as improvements, for the benefit of the public lands and of the cooperator(s).

2. The improvements known as the Trout Creek Pipeline

[X] will be [ ] are located upon: ¼, Sec(s). (See attached map) , T. , R. , Meridian,
County of Lander , State of Nevada .

3. IT IS MUTUALLY AGREED:

(a) The parties hereto will furnish labor, materials, and equipment as required, the total cost or value not to exceed the amount listed below for each of the parties respectively for the initial construction and/or installation of the improvements indicated in paragraph 2.

NAME(S) OF COOPERATOR(S)	ITEMS	TOTAL COST OR VALUE
Leroy Horn	Installation & Maintenance	$
BUREAU OF LAND MANAGEMENT		
	AGGREGATE COST	$

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(a) Upon notice from the authorized officer of the Bureau, cooperator(s) will promptly supply labor, materials, and equipment as specified in paragraph 3(a) as required. Contributed materials in excess of the amount required shall be returned to the contributor. Equipment contributed shall be returned promptly following completion of the work. Work will be conducted under the supervision and direction of the authorized officer and shall be pursued with diligence until completed.

4(a) The cooperator(s) shall be liable, jointly and severally, for the repair and maintenance of the improvements following completion, in good and serviceable condition. The cooperator(s), without further notice from the authorized officer shall do the necessary work promptly. If work is not performed as necessary, the authorized officer shall notify the cooperator(s) and specify a period within which to complete the work as required.

(b) In event the cooperator(s) default in the repair and maintenance of the improvements the authorized officer may do or cause such work to be done for and in behalf of the cooperator(s); and the necessary cost and expense thereof shall become a charge and obligation upon and shall be paid by the cooperator(s). It is further understood in case of default that any grazing permit or lease may be cancelled and may not be renewed or extended or any assignment thereof may not be approved unless and until all charges and costs owed by the cooperator(s) hereunder shall have been paid; and provided that the Bureau may pursue such other remedies, legal or administrative, as may be authorized.

(c) Repair and maintenance, as herein required, shall mean normal upkeep and maintenance necessary to preserve, protect, and prolong the useful life of the improvements, but shall not include major repairs where the damage is due to floods, earthquakes, or other acts of God, or fire not the result of fault or negligence of the cooperator(s) as determined by the authorized officer.

5. IT IS FURTHER AGREED:

(a) Title to the said improvements in place, together with all labor and materials furnished by either party and used in the construction and maintenance thereof, shall be in the United States of America. The improvements may be removed, in whole or in part, during the term of this agreement or any extension thereof, by mutual consent of the parties or by direction of the authorized officer; such removal shall be made by the cooperator(s), or by the Bureau at its option. Upon removal of the improvements, any salvageable materials, after deducting an amount to compensate for the actual cost of removal, shall be available for distribution to the parties then subject to this agreement in proportion to the actual amount of their respective contributions to the initial construction of the improvements. The parties shall take possession and remove their portion of the salvaged materials within ninety (90) days after first notification in writing that such material is available; upon failure to do so within the time allowed, the materials shall be deemed to have been abandoned and title thereto shall thereupon vest in the United States.

(b) During the course of salvaging material, the United States assumes no responsibility for the protection or preservation of said material.

6. If the cooperator(s) shall assign or transfer his interest in any grazing permit or lease embracing the lands upon which the improvements are constructed or in connection with which they are used, the cooperator(s) may include in such assignment or transfer his interest in this Cooperative Agreement, involving his right to the use of the improvements and to his proportionate share of the salvageable material. Before the assignee or transferee will be recognized as successor to the cooperator(s)'s interest hereunder, such assignee or transferee will be required by the authorized officer to accept an assignment of this agreement and agree to be bound by the provisions respecting the use and maintenance of the improvements.

7. The cooperator(s) use of the improvements will be in conformance with any stipulations or grazing permit or lease and regulations of the Secretary of the Interior.

8. This agreement shall not accord to cooperator(s) any preference, privilege, or consideration with respect to any grazing permit or lease not expressly provided herein or in the rules and regulations governing such grazing permit or lease.

9. Items 2, 3, and 4(a) of this agreement may be modified or cancelled by written agreement of the parties, which agreement shall become a part hereof.

10. This contract is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the nondiscrimination clauses. A copy of this order may be obtained from the authorized officer.

11. This agreement shall remain in full force and effect until Indefinitely , 19 unless (1) sooner terminated by mutual written consent of parties, or (2) is terminated by the authorized officer after notice in writing because of the cooperator(s) default or violation, or (3) is terminated by the authorized officer after notice in writing because the improvements are not compatible with adopted land use plans or classification under the public land laws.

12. Special conditions

Leroy Horn will install and maintain the pipeline and troughs to Bureau of Land Management specifications. Materials will be furnished by the Advisory Board.

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COOPERATOR(S)

Leroy Horn (Signature) Aug 17 1979 (Date)

(Signature) (Date)

(Signature) (Date)

(Signature) (Date)

(Signature) (Date)

THE UNITED STATES OF AMERICA

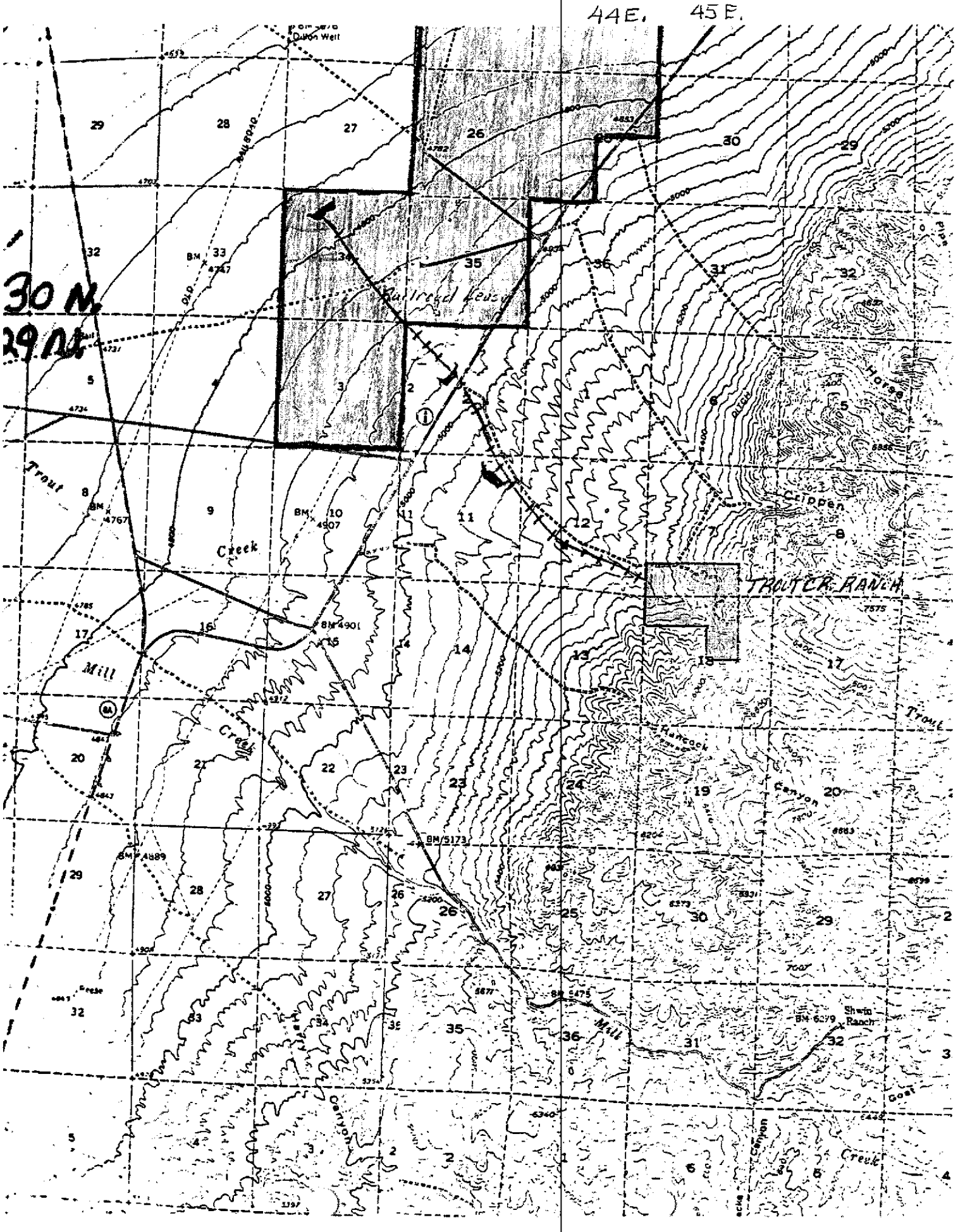
State of Nevada

District BATTLE MOUNTAIN

By [signature] (Signature)

Area Manager (Title)

10/11/79 (Date)


44E.
45E.
30 N.
29 N.
Dillon Well
Railroad Lease
TROUT CR. RANCH
Trout
Creek
Mill
Creek
Crippen
Horse
Hancock
Canyon
Trout
Shwin Ranch
Mill
Canyon
Creek
Goat
BM 4901
BM 5173
BM 4889
BM 5475
BM 6279
BM 4767
BM 4907
BM 4747

Form 4120-8
(January 1980)
(Formerly 7330-9)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FOR BLM USE ONLY

State . . . . . .
Office . . . . . .
Grazing Record No. . .

ASSIGNMENT OF RANGE IMPROVEMENTS

INSTRUCTIONS – Prepare four copies. Submit original to assignor and one copy each to the assignee, case or lease file, and District job file.

I HEREBY ASSIGN all my right, title, and interest to *(name of assignee)*
JULIAN TOMERA RANCHES, INC., Battle Mountain Division,

, in and to the following

[X] Cooperative Agreements (Form 4120-6) and/or [ ] Rangeland Improvement Permit (Form 4120-7) approved by the Bureau of Land Management for job(s) listed below

JOB NUMBER	TYPE **	NAME	LOCATION *
4607		Trout Creek Pipeline	T.29 & 30N., R.44 & 45 E.,MDB&M
4409		Harry Canyon Fence	That portion east of SR 305.

Date: March 1, 1989

Signature of Assignor: LeRoy Horn
LEROY HORN

I, JULIAN TOMERA RANCHES, INC., assignee named in the above assignment of [X] Cooperative Agreements [ ] Permits do hereby agree to be fully bound by all the terms and provisions of the said [X] Cooperative Agreements [ ] Permits and the regulations under which they were issued to the same extent and in the same manner as the assignor herein.

JULIAN TOMERA RANCHES, INC., Battle Mountain Division,

By: Peter M Tomera
(Assignee's Signature)

Assignment approved 3/2/89
(Date)

March 1, 1989
(Date)

By Mary M. O'Brien
(Signature)

* *Give legal description* ** *Type of authorization: A = Cooperative Agreement; P = Permit*

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Battle Mountain District Office
50 Bastian Road
Battle Mountain, Nevada 89820
Phone: 775-635-4000 Fax: 775-635-4034
http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html

TAKE PRIDE IN AMERICA

In Reply Refer To:
4120 (NVB0100)

MAR 29 2011

Rand Properties, LLC
C/O Martha Rand
P.O. Box 2703
Elko, NV 89803-2703

Dear Mrs. Rand

I am writing in regards to the current conditions of the range improvements within your permitted area of use in the Argenta allotment. As you were made aware in a letter issued to you on January 13, 2011, the maintenance responsibility of the Trout Creek pipeline and Harry Canyon drift fence are assigned to Julian Tomera Ranches, Inc. We are aware that providing water in this pipeline remains a point of contention between you, Julian Tomera Ranches, Inc, and Chiara Ranch. As a result of water not being provided in the pipeline, proper management of this portion of the allotment is also being jeopardized.

The terms and conditions of your grazing permit state that, "All horse use will be made on the flat of the Reese River Valley and to the west of old highway 8A". This is a term and condition that was implemented in 1994 when LeRoy Horn held the permit. Mr. Horn was also the individual who constructed the Trout Creek pipeline with authorization by the Bureau of Land Management to properly distribute livestock within this portion of the allotment. As a result, the Trout Creek pipeline is the only water development that provides a consistent source of water for your permitted area of use. Its condition and functionality directly affect the potential for proper management and aid in the attainment of the standards and guidelines for grazing administration as stated in 43 CFR §4180.2.

If found that water is not being adequately provided for proper grazing management and standards are not being met within your permitted area of use, action may be taken on your permitted AUMs for the Argenta Allotment. 43 CFR §4180.2 (c) states that, "The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section".

Monitoring will take place to determine the condition and functionality of the Trout Creek Pipeline. If you would like to take part in the monitoring process, please contact Casey Johnson, the assigned Rangeland Management Specialist at (775) 635-4059. If you have any questions, comments, or concerns in regards to matters associated with the Trout Creek pipeline or other livestock permitting issues, please contact Michele McDaniel, Supervisory Rangeland Management Specialist for the Mount Lewis Field Office at (775) 635-4083.

Sincerely,

Douglas W. Furtado
District Manager
Battle Mountain District Office

cc:
Chiara Ranch c/o Dan Filippini
Julian Tomera Ranches, Inc. c/o Pete Tomera
Josh Smith

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CHILTON Engineering and Surveying Ltd.

Successful Projects - On Time - On Budget

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ELKO OFFICE

August 15, 2012

Division of Water Resources
901 South Stewart Street, #2002
Carson City, Nevada 89701-5250

RE: #81976 (Rand Properties, LLC)

Dear sir,

Enclosed herewith, in the name of Julian Tomera Ranches Inc., Battle Mountain Division

( ) Application to appropriate water
( ) Application to change
( ) Application to change, temporary
( ) Request for waiver
( ) Petition for review of canceled permit
( ) Proof of completion of work
( ) Proof of application of water to beneficial use
(x) Protest, in duplicate
( ) Proof of appropriation
( ) Application for extension of time
( ) Well driller report (log)
( ) Map(s) _____ sheet(s)
( ) Report of conveyance, abstract of title & deed.
( ) Map to accompany will be sent under separate cover.
(x) Fees totaling: $25.00 (ck. # 5315)
( ) Withdrawal of application.
( ) Affidavit of identity.

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Sincerely,

William A. Nisbet

William A. Nisbet,
state water-right surveyor

c Mr. Pete Tomera
Box 276
Battle Mountain, Nevada 89822

421 Court St • Elko, Nevada 89801 (775) 738-2121
Fax (775) 738-7955
e-mail: chilton@chilton-inc.com