



LANGLEY & BANACK
INCORPORATED

Attorneys and Counselors at Law

January 22, 2014

Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

VIA CMRRR#7196 9008 9111 8609 2386

Regarding: City of Asherton
Permit Number: WQ0013746001

MWD
87778

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By HL

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CHIEF CLERK'S OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Comments to City of Asherton's Request to Amend their Permit and Request for a Public Meeting and Contested Case Hearing

Dear Executive Director;

Please be advised that Langley & Banack, Inc. represents Larry Votaw (P.O. Box 486, Carrizo Springs, Texas 78834) who owns property immediately adjacent to and surrounding the City of Asherton's domestic wastewater treatment facility. Please accept this correspondence as Mr. Votaw's comments on this proposed project and Mr. Votaw's request for a public meeting and a contested case hearing.

Mr. Votaw's property abuts the current wastewater treatment facility on the north, east and south sides. Mr. Votaw also owns property to the immediate northeast of the facility. *Please see Exhibit "A" – Mr. Votaw's Property.* Mr. Votaw has experienced numerous issues with flooding and contamination arising from the current wastewater treatment facility as the discharge flows onto his property. Mr. Votaw's sister, Jackie Lynn Russell, who is located on Mr. Votaw's east boundary has also experienced similar problems, and she has requested to join in this comment, request for a public meeting and request for a contested case hearing.

Mr. Votaw and Ms. Russell initially submitted their comments on or about July 9, 2013. I have attached a copy of their original correspondence for your reference.

Mr. Votaw and Ms. Russell have continued to experience flooding of their property since their last submitted comments. In fact, they are experiencing flooding on portions of their ranch that had never flooded before. Based on the information I have been provided, I do not believe that the discharged water flows through an "unnamed tributary" into El Moro Creek. The use of the word "tributary" indicates that the water is flowing through a channel or depression to reach El Moro Creek. However, the water is flowing from the discharge facility across flat land that is gently sloping such that the water discharges and is not confined to any "tributary" whatsoever.

401 QUARRY STREET • EAGLE PASS, TEXAS 78852
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Based on the latest discharge, the water is obstructing and flooding ranch roads. I have attached a CD with photos and videos depicting the water crossing roads which had not been inundated with water before. In addition, there had not been any rain that could have contributed to the flooding when these photos were taken.

Mr. Votaw and Ms. Russell recently entered into an oil and gas lease with Eagle Ford Minerals, LLC (EFM). The lease has a one (1) year primary term. EFM recently staked a location on Mr. Votaw's and Ms. Russell's property and has already paid surface damages for the pad site and the access road. The access road for which they have already paid surface damages is underwater and impassible. The inundation of water will likely prevent the drilling of an oil and gas well or result in a major build-up of the access road which would then damn up the discharge water leading to other issues of drainage, erosion, and standing water.

Due to the flooding and contamination issues, Mr. Votaw filed suit against the City of Asherton in 1993 in *Larry Votaw v. The City of Asherton*, Cause Number 93-0708053-CV in the 365th Judicial District Court in Dimmit County, Texas. *Please see Exhibit "B" – Amended Petition and Soil Analysis Report*. That suit was ultimately dismissed in 2000. *Please see Exhibit "C" – Order of Dismissal*. Mr. Votaw and the City of Asherton reached an agreement whereby the existing wastewater treatment facility would be decommissioned and a new facility would be put in place to address the issues raised in the lawsuit. The City of Asherton breached the settlement agreement as they never constructed the new facility as set forth in the agreement. *Please see Exhibit "D" – Agreement*.

Although the City of Asherton never complied with the settlement agreement entered into with Mr. Votaw, the City proposed in 2006 that additional acreage be purchased from Mr. Votaw in which a pivot irrigation system would be installed. *Please see Exhibit "E" – Proposal from Southwest Engineers to the City of Asherton*. Mr. Votaw would have had the right to lease the land back at a nominal fee and would operate the pivot irrigation system at the City's expenses. Again, the City failed to follow through with their agreement with Mr. Votaw.

Since first filing suit in 1993, Mr. Votaw has attempted get the City of Asherton to comply with their permits and state laws regarding effluent discharge. Mr. Votaw has entered into agreements for the City to construct new facilities and alternative methods of handling the discharge; however, the City has never followed through with the agreements. All the while, Mr. Votaw and Ms. Russell have had to deal with flooding and effluent discharge from the City's facility. Once again, the City is attempting to submit a new proposal to TCEQ.

Mr. Votaw has two (2) fresh water wells in the immediate vicinity of the discharge. Such effluent discharge has the potential to contaminate the fresh water bearing sands. If the effluent enters the fresh water bearing sands, such effluent material will have the potential to contaminate various other water sources.

The effluent discharge affects ranching operations and makes roadways impassible. Because of such conditions, property values are likely to be decreased.

The effluent discharge is also likely to have an adverse effect on the health and safety of the property owners as well as their families, employees, and guests. The current level of contamination is unknown as well as the adverse effects of exposure to such contamination.

Mr. Votaw also operates a deer breeding program. The consumption of the effluent discharge may have an adverse effect on the quality of the animals Mr. Votaw is raising as well and the meat product after such animal is harvested. It is also unknown what effect on humans may result if such animals are consumed.

Mr. Votaw has tried to work with the City of Asherton on numerous occasions to remedy this situation. The best solution would be to install the pivot irrigations system so that the water could be properly absorbed into the subsoil.

However, if such discharge continues to damage the surface of Mr. Votaw's and Ms. Russell's property, it is likely that they will be left with no other option than litigation. For these reasons, Mr. Votaw and Ms. Russell hereby protest the request to amend the permit.

Mr. Votaw and Ms. Russell respectfully request that this matter be set for a public meeting and respectfully request a contested case hearing.

If you should have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

LANGLEY & BANACK, INC.



Patrick J. Kelly

PJK/lp

Enclosures: As indicated.

cc: Kevin Reed

Kreed@buffcoproduction.com

Via E-Mail PDF



LANGLEY & BANACK
INCORPORATED

Attorneys and Counselors at Law

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2014 JAN 27 PM 12:18

August 6, 2013

CHIEF CLERKS OFFICE

Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

Regarding: City of Asherton
Permit Number: WQ0013746001

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The effluent discharge is contrary to what the City indicated in their application. The discharge is not down an unnamed tributary to El Moro Creek. The discharge is across the surface and subsurface of Mr. Votaw's property and Ms. Russell's property. Because of the permeability of the surface, the water is quickly absorbed. However, the subsoil is impermeable thus resulting in the discharge traveling just below the surface. Such characteristic makes the surface appear solid when in fact the subsurface is soaked.

Mr. Votaw has two (2) fresh water wells in the immediate vicinity of the discharge. Such effluent discharge has the potential to contaminate the fresh water bearing sands. If the effluent enters the fresh water bearing sands, such effluent material will have the potential to contaminate various other water sources.

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If you should have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

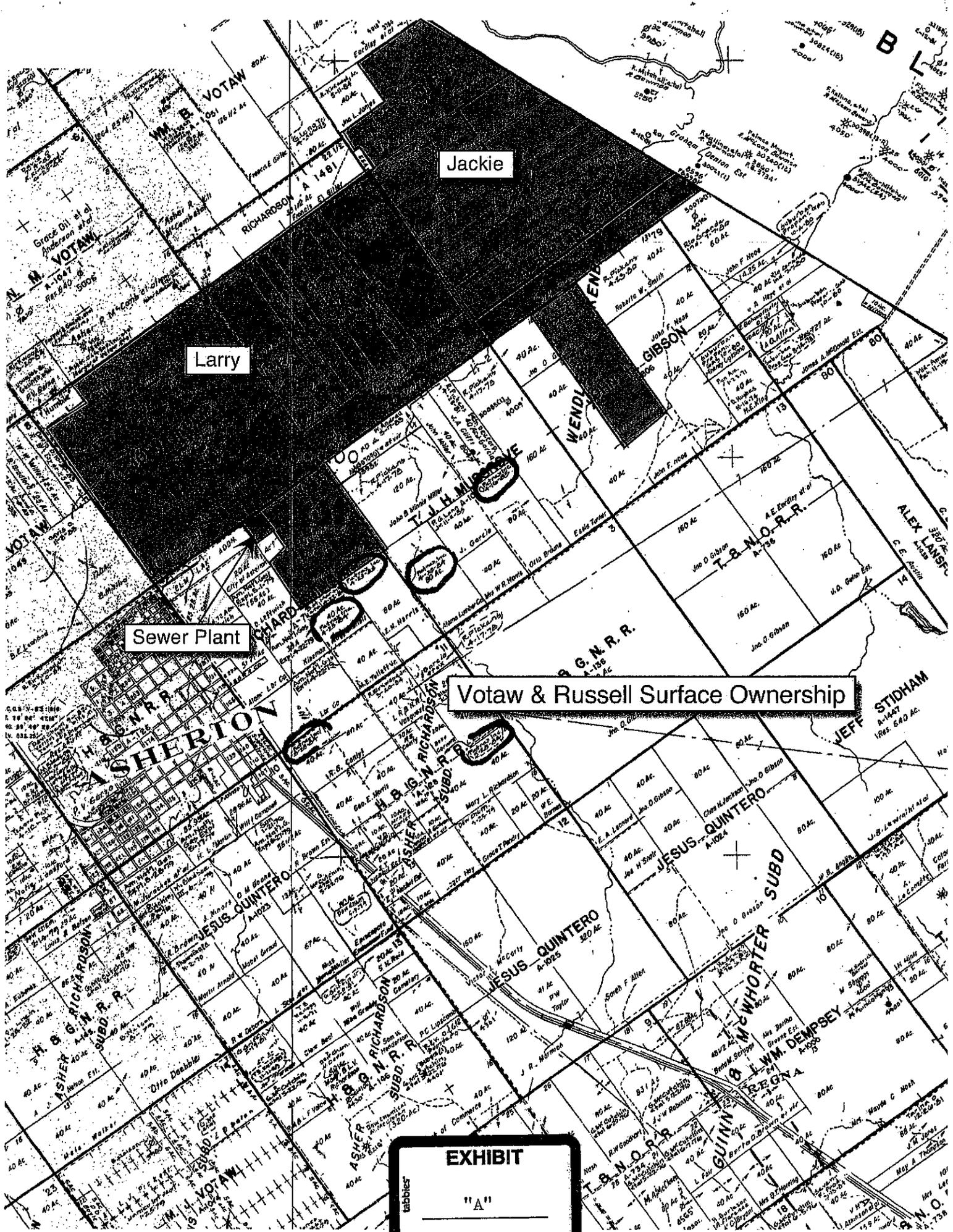
Langley & Banack, Inc.

By: 
Patrick J. Kelly

PJK

cc: City of Asherton
P.O. Box 450
Asherton, Texas 78827

Robert H. Thonhoff
Thonhoff Consulting Engineers, Inc.
1301 Capital of Texas Hwy South, Suite A-236
Austin, Texas 78746



Jackie

Larry

Sewer Plant

Votaw & Russell Surface Ownership

EXHIBIT
"A"

NOV 01 1993

NO. 93-07-08053-CV

AGUSTIN G MARTINEZ, JR.
District Clerk, Dimmit County, Texas

LARRY VOTAW

X
X
X
X
X
X

IN THE DISTRICT COURT County

VS.

365TH JUDICIAL DISTRICT

THE CITY OF ASHERTON

DIMITT COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LARRY VOTAW, who resides in Carrizo Springs, Dimmit County, Texas complaining of THE CITY OF ASHERTON, a municipality situated in Dimmit County, Texas, and for cause of action, would show the Court as follows:

I.

THE CITY OF ASHERTON is hereinafter called "Defendant" and may be served with process by serving its Mayor, SAM GALVAN, JR., at the Mayor's office in Asherton City Hall, 1001 West Carter Street, Asherton, Dimmit County, Texas, in accordance with Section 17.024, Texas Civil Practice and Remedies Code.

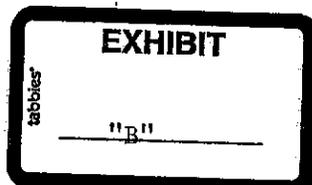
II.

Plaintiff is, and at all times mentioned and material to this action was, the owner in fee simple of approximately 1800 acres of land in Dimmit County, Texas in the Richard Gilliam Survey No. 56. The real property currently affected by the actions of Defendant can be more particularly described as the Southeast quarter of a 153 acre tract of land, more or less, out of Abstract 71, less and except a ten (10) acre tract conveyed by Jackson C. Votaw and Neva Votaw to the City of Asherton in Warranty Deed recorded in Volume 197, Page 540, Deed Records of Dimmit County, Texas, and a seven (7) acre tract conveyed to Plaintiff by the City of Asherton in Warranty Deed recorded in Volume 197, Page 583, Deed Records of Dimmit County, Texas. The above described tract will hereinafter be referred to as "Plaintiff's Property".

III.

Defendant is, and at all times mentioned and material to this action was, the owner of certain real property upon which Defendant operates a sewage treatment plant. Plaintiff's Property is located adjacent to and north of the sewage treatment plant. There exists as part of the operation of the sewage

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treatment plant a holding pond which contains municipal sludge and waste, hereinafter referred to as the "holding pond".

IV.

The holding pond is not sealed properly, and as a result, waste and chemicals from the pond leach into the soil on Plaintiff's adjacent tract. The pond was either improperly installed without a liner, or alternatively, the liner was not properly maintained and failed to contain the sludge and waste within the pond.

V.

The waste and effluent discharge onto Plaintiff's Property by the operations of Defendant contains, among other harmful substances, an extremely high concentration of sodium, calcium, magnesium, potassium and nitrate, factors affecting vegetation growth. Due to the aforementioned high concentrations, Plaintiff's Property has been damaged in that the physical condition of the property is such that water cannot penetrate the soil and internal drainage is limited, thereby proximately causing the inability of vegetation to grow on Plaintiff's Property. The aforesaid soil contamination has resulted in Plaintiff's Property being devoid of vegetation. Defendant's operating of the sewage treatment facility with the holding pond interferes with the use and enjoyment of Plaintiff's Property. Further, the discharge of sewage and municipal waste and pollution onto Plaintiff's Property and the subsurface waters thereof is directly in violation of § 26.121, et. seq., of the Texas Water Quality Control Act for which violation of law and the resulting damages to Plaintiff, the Defendant is strictly liable.

VI.

Plaintiff alleges that it is unreasonable for Defendant to operate a sewage treatment facility with a holding pond that allows waste and chemicals to enter onto Plaintiff's Property. No amount of care will eliminate the substantial interference with the use and enjoyment that results from the holding pond as it is currently designed. The discharge of the waste and chemicals onto Plaintiff's Property occurs under normal operating conditions of the sewage treatment plant with its holding pond. The nuisance does not result from any negligence of the Defendant. Defendant has maintained the condition of the holding pond with full knowledge that the sewage and sludge is entering upon Plaintiff's Property. The nuisance is not permanent in character and can be abated by enlarging and sealing the holding pond. The damages caused by Defendant to Plaintiff's Property are temporary in nature and can be repaired by replacing the eroded soil and resodding the vegetation.

XIII.

The conduct of the Defendant is the proximate cause of temporary injuries to Plaintiff's Property. The reasonable and necessary cost of repairing and restoring Plaintiff's Property to the condition in which it was prior to the injury complained of is \$250,000.00. Plaintiff sues for temporary damages which is the diminution of the fair market rental value of Plaintiff's Property during the time the Plaintiff was injured by Defendant.

Future damage and interference could be avoided by the sealing and enlargement of the holding pond which will prevent future discharge and seepage of waste and sludge onto to Plaintiff's Property and thereby future contamination and erosion.

XIV.

Alternatively, there are permanent damages to Plaintiff's Property proximately caused by Defendant which include a reduction in market value of Plaintiff's Property and renders it unmarketable, such damages far exceeding the minimum jurisdictional limits of this Court in that the injuries to Plaintiff's Property depend upon an intermittent event of discharge and some injuries to Plaintiff's Property can be treated to reverse the adverse effects thus far incurred. The discharge occurs in normal weather conditions and normal operating conditions.

XV.

As a direct and proximate result of Defendant's nuisance, trespass, and statutory violations, as described above, Plaintiff has suffered aggravation, frustration, anxiety, anger, and mental anguish since the occurrences made the basis of this suit. In particular, Plaintiff fears that his property will become a complete wasteland upon which vegetation will be unable to grow in the future. The injuries suffered by Plaintiff and damages therefor far exceed the minimum jurisdictional limits of this Court, for which Plaintiff sues.

XVI.

Defendant's conduct in knowingly permitting municipal waste and sludge to be discharged upon Plaintiff's Property exhibits the kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. In this regard, Defendant's actions have resulted from actual conscious indifference to the rights of Plaintiff and Plaintiff hereby sues for exemplary damages in an amount far in excess of the minimum jurisdictional limits of this Court.

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer herein, and that on final hearing, Plaintiff have judgment for:

1. Actual damages as plead for herein in a sum in excess of the minimum jurisdictional limits of this Court, with interest as provided by law.
2. Exemplary damages in a sum in excess of the minimum jurisdictional limits of this Court.
3. Temporary and permanent injunction against Defendant enjoining Defendant, Defendant's agents, servants, and employees from committing further interference with Plaintiff's use and enjoyment of his property, trespass upon Plaintiff's Property, and violation of the Texas Health Code.
4. All costs of suit.
5. Such other and further relief at law or in equity to which Plaintiff may be justly entitled.

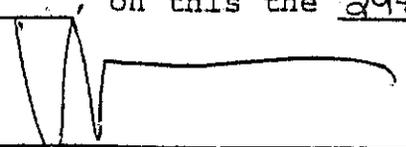
Respectfully submitted,

NOBLES & KLINGEMANN, INC.
109 West Gonzales Street
Seguin, Texas 78155
(210) 379-9445

BY 
WILLIAM L. NOBLES
State Bar No. 11615500
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's First Amended Petition has been sent to Defendant's attorney of record, JAMES B. DAVIS, 310 East Nopal Street, Carrizo Springs, Texas 78834, by certified mail, return receipt requested no. 9394835535, on this the 29th day of October, 1993.


WILLIAM L. NOBLES

SOIL ANALYSIS

FILE: LARRY VOTAK
 FIELD NAME: CARRIZO SPRINGS, TX
 CROP NAME: SENIER PLANT
 DATE: 10/05/93
 LAB #: 3278-89

0 Low
 Marginal
 High

SALT CATIONS ppm

SPECIALIST IN SOIL FERTILITY, PLANT ANALYSIS & CROP PRODUCTION
 Services for Farmers - Since 1838



TEXAS PLANT & SOIL LAB, Inc.
 P.M. 1925, 3 1/2 MI. West of US 281
 Rt. 7, Box 213 Y
 EDINBURG, TEXAS 78539

SOIL-WATER-PLANT ANALYSIS

Esper K. Chondler
 Certified Professional Agronomist/ISS
 (512) 383-0739
 FAX (512) 383-0730

FIELD	TEX. (O.M)	lb per ac NO ₃	lb per ac P ₂ O ₅	pH	CO ₂	Soils		K		Na		Ca		Mg		Ratio Ca/Mg
						E.C.	Moisture	H ₂ O/CO ₂								
1 11 TOP	3-	0.60	36	95	7.3	tr	21.60	101 / 103	624 / 638	1660 / 3078	7 / 569	1 / 91				
2 11 BOTTOM	6-		12	16	7.8	HF	11.52	18 / 23	640 / 674	146 / 1284	170 / 467	5 / 4				
3 12 TOP	4	0.40	21	64	7.7	VL	18.24	51 / 53	736 / 760	479 / 1260	328 / 423	2 / 2				
4 13 TOP	5	0.40	7	23	7.8	M+	21.60	69 / 73	822 / 854	353 / 1316	270 / 435	2 / 3				
5 13 BOTTOM	5+		4	10	7.2	HF+	4.00	31 / 31	372 / 413	100 / 1358	95 / 338	4 / 4				
6 14 TOP	5-	0.40	8	17	7.6	0	13.92	43 / 49	694 / 694	220 / 664	264 / 410	3 / 3				
7 14 BOTTOM	6		5	18	8.0	H-	17.76	20 / 23	790 / 792	219 / 1226	245 / 405	4 / 3				
8 15 TOP	2+	0.50	16	27	6.7	tr	4.41	81 / 89	207 / 276	212 / 1420	144 / 270	1 / 2				
9 16 TOP	2+	0.55	100	54	6.9	tr	43.20	100 / 105	886 / 899	3080 / 3480	837 / 837	1 / 1				
10 16 BOTTOM	5+		12	9	7.4	0	9.60	16 / 18	556 / 570	91 / 440	85 / 163	5 / 7				
11 17 TOP	3-	0.50	104	88	7.6	tr	24.00	119 / 120	800 / 832	683 / 214	270 / 400	1 / 3				
12 17 BOTTOM	5+		10	11	7.3	0	7.20	22 / 26	505 / 530	82 / 338	66 / 131	6 / 8				

*SALT CATIONS: H₂O IS WATER SOLUBLE EXTRACT; CO₂, P₂O₅ AND NO₃ ARE EQUIVALENT TO CARBONIC ACID EXTRACTABLE
 (Plants' roots give off CO₂) THE CATIONS ARE THEN DETERMINED ON ATOMIC ABSORPTION SPECTROPHOTOMETER

EXHIBIT B



GUIDE TO SOIL TEST REPORT

TPST CONTINUALLY UPGRADES ANALYTICAL PROCEDURES SO THAT THE MOST ACCURATE RECOMMENDATIONS CAN BE MADE FOR TEXAS SOILS.

Our Atomic Absorption Spectrophotometer measures the specific cations that make up the salt complex. With this specific information, particularly the levels of Sodium & Calcium, recommendations are much more reliable.

GUIDE TO TPST SOIL TEST REPORT

TEXTURE Range from 1-Sand through 3-Clay to 6 Heavy Clay

O.M. Organic Matter Improves soil physical condition, water and nutrient holding capacity -- the more the better.

EXTRACTING Carbonic acid is formed by the plants in the root zone therefore TPST uses this same acid to obtain perfect values that are more realistic. Most labs extract with each stronger reagent.

NO3 This is highly soluble nitrate ion that moves easily with water and is a constantly changing value.

P2O5 Extracted with CO2 -- amount reported in lbs. per acre for the top foot of soil. Amount reported is available to a crop in a normal growing season. Responses can be expected below 40 lbs. per acre and high requiring crops may respond to additional fertilizers up to 200 lbs. per acre.

K Bottom line is the extractable value (under the CO2 line) -- amount available to the crop in a growing season. 80 ppm at least and up to 120 ppm for crops with high potash needs. Soil availability varies with soil moisture conditions and temperature from soil levels.

pH Acidity measurement. Most crops prefer 6.7-7.5. 7 is neutral -- above is alkaline, below is acid.

E.C. SALTS A measure of total water-soluble salts expressed as Meq/L. E.C. - Electrical Conductivity.

SALT CATIONS UPER water-soluble cations determined on Atomic Absorption Spectrophotometer. Calcium important-should exceed 24 ppm. LONG-CD extracted (Carbonic acid equivalent), below 180 ppm. SOIL is salt extractable and element, should be indicated and want to know to properly manage the salts.

Me/Co L Me/No These ratios help evaluate the salt problem, are indicators of soil's physical condition for water & root penetration of soil. Me/Co ratio should be less than 8. Me/No ratio should be below 20 for regular crops, and below 10 for super producing crops of cantaloupe, citrus, sugar cane, etc....

FAST EXPERIENCED PROFESSIONALS IN CHEMISTRY, AGRONOMY, AND PLANT PHYSIOLOGY ARE AT YOUR SERVICE TO HELP YOU MAXIMIZE PROFITS.

RATING GUIDE TO TPST SOIL TEST REPORT

NITRATE NO3 -15 = very low 16-30 low 31-60 medium 61-99 high 100+ very high

PHOSPHATE P2O5 -10 = very low 10-20 low 21-39 upper low 40-80 medium 81-99 high 100-150 very high 151+ extremely high - caution, seedling injury possible.

POTASH K2O -40 = very low 40-60 low 61-79 medium 80+ high

MAGNESIUM Mg -9/39 very low 10-13/40-60 low 14/50-80 medium +15/+80 good

E.C. SALTS -5 = very low 6-9 low 10-15 medium 16-19 medium 20-39 high 4.0+ affects most crops, treatment needed

SODIUM Na H2O/Na should be over 50% of the CO2/Na so it can leach thru the soil profile. The solubility of the Na is affected by sulfur and soluble calcium.

When the H2O/Na is over 50% of the CO2/Na and the E.C. internal drainage is needed. When CO2/Na is high and the H2O/Na is less than 50% this indicates need for chemical treatment to increase the solubility of the Calcium or adding gypsum that contains soluble Calcium or by compounds such as promesol or Calcium Nitrate that contain soluble Calcium.

THE MOST ACCURATE WAY TO PREDICT THE AVAILABILITY OF SOIL NUTRIENTS IS BY USING THE TPST METHOD OF EXTRACTING WITH CARBON DIOXIDE (CO2). EVEN THIS IS STILL AN ESTIMATE OF AVAILABILITY WHICH CAN BE INFLUENCED BY MANY FIELD CONDITIONS. PLANT ANALYSIS is the only way to determine what nutrients the plants actually get.

PLANT NUTRIENT REQUIREMENTS change with the age and development of the plants. PROPER INTERPRETATIONS OF THE ABOVE INFORMATION ALLOWS THE MOST EFFICIENT USE OF THE FERTILIZER MONEY.

TPST SOIL TEST REPORT, 2010 & 2011, 2012 & 2013, 2014 & 2015, 2016 & 2017, 2018 & 2019, 2020 & 2021, 2022 & 2023, 2024 & 2025, 2026 & 2027, 2028 & 2029, 2030 & 2031, 2032 & 2033, 2034 & 2035, 2036 & 2037, 2038 & 2039, 2040 & 2041, 2042 & 2043, 2044 & 2045, 2046 & 2047, 2048 & 2049, 2050 & 2051, 2052 & 2053, 2054 & 2055, 2056 & 2057, 2058 & 2059, 2060 & 2061, 2062 & 2063, 2064 & 2065, 2066 & 2067, 2068 & 2069, 2070 & 2071, 2072 & 2073, 2074 & 2075, 2076 & 2077, 2078 & 2079, 2080 & 2081, 2082 & 2083, 2084 & 2085, 2086 & 2087, 2088 & 2089, 2090 & 2091, 2092 & 2093, 2094 & 2095, 2096 & 2097, 2098 & 2099, 2100 & 2101, 2102 & 2103, 2104 & 2105, 2106 & 2107, 2108 & 2109, 2110 & 2111, 2112 & 2113, 2114 & 2115, 2116 & 2117, 2118 & 2119, 2120 & 2121, 2122 & 2123, 2124 & 2125, 2126 & 2127, 2128 & 2129, 2130 & 2131, 2132 & 2133, 2134 & 2135, 2136 & 2137, 2138 & 2139, 2140 & 2141, 2142 & 2143, 2144 & 2145, 2146 & 2147, 2148 & 2149, 2150 & 2151, 2152 & 2153, 2154 & 2155, 2156 & 2157, 2158 & 2159, 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TEXAS PLANT & SOIL LAB, Inc.

Route 7, Box 213Y
EDINBURG, TEXAS 78539

SOIL-WATER-PLANT ANALYSIS

SOIL ANALYSIS REPORT

FM 1925, 3.5 Mi. W U.S. 281

Phone 210 383-0739

Fax # 210 383-0730

LARRY VOTAW

CARRIZO SPRINGS - SEWER PLANT

10/05/93

3278-89

SOIL STATUS - 7 Top soil & 5 subsoils samples.

Textures - Top soils are lighter most test light-loamy with good internal drainage, fair to low water holding capacity, and cation exchange capacity. Subsoils are heavier all test medium heavy with slow internal drainage, high water holding capacity and high cation exchange capacity or heavier.

Total Soluble Salts - All are tests too high for crops - must have treatment. Subsoils are a little lower. Major salts is Sodium & Calcium.

Sodium (high Na can interfere with nutrient uptake and should be managed for leaching) - all tests high with most in Soluble (H_2O Na) form which can leach with deep flushing and good internal drainage. After flushing, more soluble calcium (H_2O Ca) may be needed to convert more Sodium to the Soluble form so it can also leach. Sulfur, Promesol, Calcium Nitrate, Gypsum - AND other products can increase Soluble Calcium in the soil.

Calcium - ALL tests show Calcium reserve (CO_2 Ca) levels are High, any form of Sulfur or acidification may be used to solubilize the calcium. The calcium in the Gypsum is not needed in highly calcareous soils. Subsoils are lower on #6 & 7. Free carbonates are highly variable.

Magnesium - All test very high except #1 Top is low soluble ??

Organic Matter (Humus fraction - slow release N at reasonably good levels is the foundation of any good soil fertility - plant nutrition program. This test determines only the humic (well decomposed - available) portion. - - - all test very Low.

pH - Ranges from slightly acid to very alkaline.

Nitrate - Top #7 & 6 are very high - OTHERS mostly Low.

Phosphate - Ranges from high #1 Top to very Low #6 Bottom - Tops are higher levels.

Potash - Ranges from high #1-6-7 Tops to #4 tests very low availability - seeds good rates.

SOIL ANALYSIS REPORT

RECOMMENDATIONS

Organic Matter: levels indicate little decomposition to humus.

NITRATE: levels are highly variable.

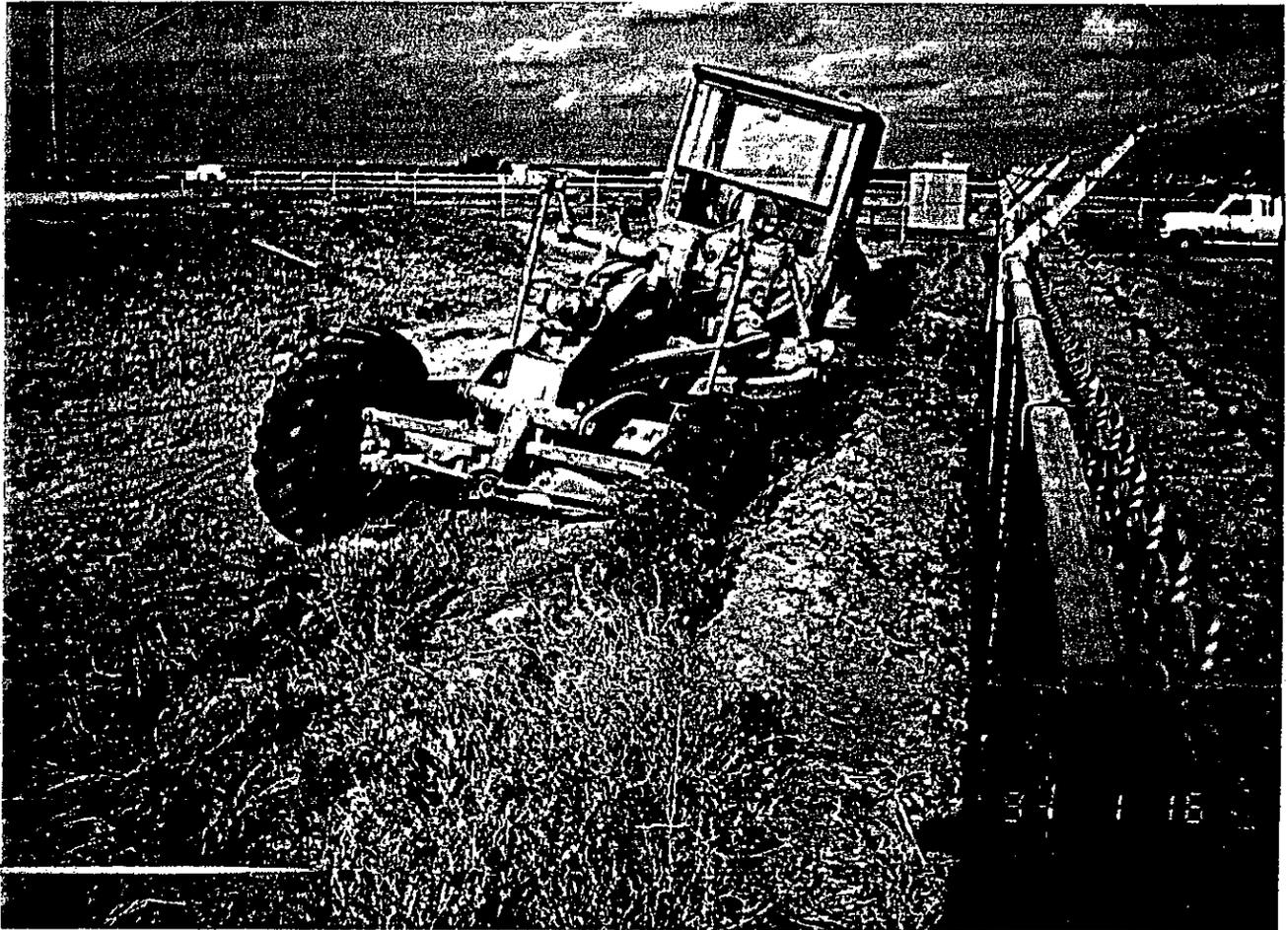
PHOSPHATE: levels are highly variable.

POTASH: also range from high to low.

SALTS: are mostly extremely high with much as Sodium & Calcium.

EXHIBIT "C"

PHOTOGRAPH OF COUNTY MOTORGRADER ON CITY OF
ASHERTON WASTEWATER TREATMENT FACILITY,
JANUARY 16th, 1994



NO. 93-07-08053-CV

LARRY VOTAW

VS.

THE CITY OF ASHERTON

§
§
§
§
§

IN THE DISTRICT COURT

365TH JUDICIAL DISTRICT

DIMMIT COUNTY, TEXAS

ORDER OF DISMISSAL

On April 14, 2000, Plaintiff's Motion for Nonsuit the above action came on to be heard. It appears to the Court that the Motion is well taken and should be granted.

IT IS, THEREFORE, ORDERED that the above action be and it is hereby dismissed without prejudice to the parties right to reinstitute it; that it be removed from the docket of the Court; and that all costs incurred be taxed as the parties have agreed.

SIGNED this 30th day of Aug, 2000.



JUDGE PRESIDING

CHIEF CLERKS OFFICE

2000 JAN 27 PM 12:18

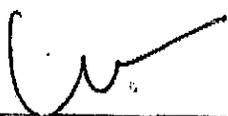
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APPROVED:

KNOBLES & KLINGEMANN, INC.
109 West Gonzales Street
Seguin, Texas 78155
Telephone: (830) 379-9445
Facsimile: (830) 379-3714

LAW OFFICE OF JAMES B. DAVIS
310 East Nopal Street
Carrizo Springs, Texas 78834
Telephone: (830) 876-3525
Facsimile: (830) 876-5200

BY



WILLIAM L. KNOBLES
State Bar No. 11615500
Attorney for Plaintiff



JAMES B. DAVIS
State Bar No. 05503000
Attorney for Defendant

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WLK 91-5200

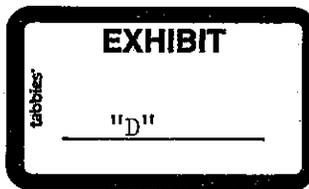
FILED FOR RECORD
At 4:00 O'clock P M

AUG 30 2000

ALICIA LOPEZ MARTINEZ
District Clerk, Dimmit County, Texas
By [Signature]

Vol. 10 pg. 450

EXHIBIT
"C"



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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NO. 93-07-08053-CV

LARRY VOTAW

VS.

THE CITY OF ASHERTON

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CHIEF CLERKS OFFICE
IN THE DISTRICT COURT

365TH JUDICIAL DISTRICT

DIMMIT COUNTY, TEXAS

AGREEMENT

This Agreement is entered into on this the 29th day of March, 1999, by and between LARRY VOTAW and THE CITY OF ASHERTON, TEXAS.

1. Definitions.

For the purposes of this Agreement, the following definitions shall apply:

- 1.1 "*Votaw*" shall mean and include Larry Votaw, his heirs, successors and assigns.
- 1.2 "*Asherton*" shall mean the City of Asherton, Texas, its successors, agents and assigns.
- 1.3 The "*Lawsuit*" shall mean the pending lawsuit filed by Votaw against Asherton as styled and numbered above.
- 1.4 The "*Old Facility*" shall mean the now existing waste water treatment plan operated by Asherton, including, but not limited to, a facultative pond, two (2) oxidation/aerobic ponds, an out fall pipe into an unnamed tributary of El Moro Creek, and associated appurtenances located in Dimmit County, Texas, and formerly under permit 11801-001 administered by the Texas Natural Resource Conservation Commission. The "*Old Facility*" is described in a Deed dated May 27, 1982 from Jackson C. Votaw, et ux to the City of Asherton, recorded in Volume 197, Page 550, Deed Records of Dimmit County, Texas, which Deed describes 15 acres and is enclosed by a chain link fence. The "*Old Facility*" is located adjacent to lands owned by Votaw.
- 1.5 The "*New Facility*" is a waste water treatment plant to be constructed on a 51.377 acre tract described in attached Exhibit "A" hereto, which tract is to be conveyed by Votaw to Asherton by specially warranted deed in the form shown on Exhibit "A" contemporaneously with the execution of this agreement.
- 1.6 The "*Easement*" shall mean the outflow easement from the New Facility granted by Votaw to Asherton, in the form of Exhibit "B" hereto.

2. Purpose.

The purpose of this Agreement is to address operational issues concerning the Old Facility pending the completion of the New Facility, to provide for an orderly termination of treatment of municipal sewage at the Old Facility and to provide for the sale and exchange of certain property

by Votaw to Asherton for the construction of the New Facility. The lawsuit will be dismissed without prejudice to refile and any applicable limitations will be tolled, however, presuming that the above-stated purposes are accomplished, the causes of action as stated in the lawsuit will be released.

3. Consideration.

- 3.1 The consideration for this Agreement includes the dismissal, without prejudice, of the Lawsuit by Votaw, the covenants contained in this Agreement, and the following monies to be paid to Votaw by Asherton in consideration for the damages to Votaw's lands from the construction of the pipeline in the easement and for the execution of the deed for the New Facility.
- 3.2 Upon execution of this Agreement by the parties, and of the Easement and Deed by Votaw, and delivery of same to Asherton, Asherton shall pay Votaw the sum of \$50,000.00 for land described in Exhibit "A" attached hereto and incorporated herein and outflow easement acquisition.
- 3.3 In addition, Asherton will convey by specially warranted deed the Old Facility to Votaw, less and except approximately one and one-half (1-1/2) acres on its northwest side which includes the old pump station and new lift pump ("Retained Acreage"). The configuration of the Retained Acreage will be determined by survey commissioned by Southwest Engineers, Inc. In addition, Asherton may retain, if necessary, an underground easement along said Northwest boundary for a pipeline connecting the New Facility, such easement and its location to be determined by survey commissioned by Southwest Engineers, Inc. The deed from Asherton to Votaw of the Old Facility (less and except the Retained Acreage) will be held in escrow as stated in Paragraph Four (4) below.
- 3.4 In addition, Votaw will procure and deliver to Asherton the Easement over and across Votaw's and/or adjacent lands owned by Jackie Votaw Russell for an underground outflow pipe.

4. The Old Facility.

- 4.1 Asherton shall cease to operate the Old Facility when the New Facility is completed, operational and permitted for operations, with the exception that Asherton may continue to use the pump station at the Old Facility on the Retained Acreage to force wastewater and sewage to the New Facility. The Old Facility shall remain fenced during Asherton's occupancy with a substantial chain link fence capable of keeping the Old Facility secure from trespass by individuals and cattle.
- 4.2 The closure of the Old Facility shall be strictly in accordance with the applicable rules and regulations of the Texas Natural Resource Conservation Commission, and/or those of other governmental agencies with jurisdiction thereof. However, any remediation of the Old Facility shall be accomplished only from grant funds and not from the general funds of Asherton. Asherton does agree to utilize any such grant funds dedicated for remediation purposes to remediate the Old Facility. Votaw agrees not to compel, by civil

action nor complaint filed with the Texas Natural Resource Conservation Commission, remediation of the Old Facility by expenditure of tax revenue funds by Asherton, except to the extent that funds for such closure and remediation are allocated, dedicated and provided by grant.

- 4.3 Prior to its conveyance to Votaw and the delivery of the Deed, the Old Facility shall never be used for a municipal or private dump or landfill, nor will it be used for disposal of debris, trash, or toxic or hazardous substances, nor shall the Old Facility be used for a junk yard, storage of inoperable vehicles, shooting range, or for hunting or fishing. These prohibitions of use shall constitute a use restriction on the Old Facility and be a covenant running with the land until the escrowed Deed is delivered to Votaw in accordance with 4:5 below.
- 4.4 It is understood that pending the construction of the New Facility, and its commencement of operations, that the Old Facility will be used only to treat municipal sewage by the City of Asherton through its collection system.
- 4.5 The Deed from Asherton to Votaw of the Old Facility (less the Retained Acreage) shall be held in escrow by Margie Dean, Elliott & Waldron Abstract Co., pending the closure of the Old Facility and the construction and permitting of the New Facility. When the New Facility is constructed and a permit issued for its operation, the Deed will be delivered to Votaw.
- 4.6 Operation of the Old Facility pending completion and permitting of the New Facility shall be in accord with the permits issued for same, however, it is understood that Asherton may not be able to operate within permit effluent standards at all times. For four (40 years) from the date of this agreement, Votaw agrees not to file a civil action nor a complaint with the Texas Natural Resource Conservation Commission concerning operation of the Old Facility outside of effluent standards unless and until there is a substantial deviation from such standards and permit requirements.

5. The New Facility.

- 5.1 The New Facility shall be completed and operated in accordance with the permits issued for same and according to the laws of the State of Texas.
- 5.2 The New Facility shall be used solely for construction and operation of a sewage treatment facility for the City of Asherton and appurtenant functions. The New Facility shall not be used for hunting or fishing or other recreational uses.
- 5.3 Prior to construction of the improvements on the New Facility, Asherton agrees to fence the 51.277 acre tract with an Eight foot (8') chain link or other deer proof fence as a portion of funds granted for the New Facility and thereafter to maintain said fence to keep game and livestock from crossing onto said 51.277 acre tract.
- 5:4 Asherton agrees to proceed diligently with the construction and permitting of the New Facility as soon as grant funds are made available to Asherton.

- 5.5 If the New Facility is not built and/or permitted, and Asherton decides to sell such facility, Votaw retains a First Right of Refusal to purchase said 51.277 acres back from Asherton at the price and under the terms of any bona fide earnest money contract entered into by Asherton. Votaw will have ninety (90) days from receipt of a proposed and bona fide earnest money contract to complete said purchase. If Votaw fails or refuses to purchase the 51.277 acres, Asherton may sell same pursuant to said earnest money contract forever free and clear of the use restrictions stated in 5.2 above. If, however, Asherton does not sell the 51.277 acres pursuant to said proposed earnest money contract, and thereafter enters into a new or revised earnest money contract to sell the 51.277 acres, the First Right of Refusal shall survive and any new or revised earnest money contract shall be resubmitted to Votaw.

6. Nonsuit.

- 6.1 The parties understand and agree that the claims asserted in the Lawsuit are disputed and have settled such disputes by compromise to avoid further litigation, presuming that the New Facility is constructed and permitted as set forth herein.
- 6.2 It is the intention of the parties that the claims brought in the Lawsuit will be ultimately settled and released when (1) the New Facility is completed and a permit to operate same is issued by the Texas Natural Resources Conservation Commission, or any successor agency charged with issuing permits for the construction and operation of a municipal sewage treatment plant, and as a result, (2) Asherton ceases to use the Old Facility and the escrowed Deed is delivered to Votaw. Rather than leave the Lawsuit pending, the parties have agreed to dismiss same without prejudice to file, maintaining all causes of action that each may have. The parties specifically agree that any applicable statute of limitations which would otherwise bar the bringing and prosecution of any claims is hereby tolled for four (4) years from the date hereof. Asherton hereby agrees that it will not assert as a defense any statute of limitations or laches as a bar to such lawsuit when or if same is refiled, if refiled during the tolling period.
- 6.3 By the execution of this Agreement, the parties hereto do not release any of the claims brought in the Lawsuit. When the Escrowed Deed is delivered to Votaw, Votaw will deliver to Asherton a release of the claims stated in the Lawsuit.
- 6.4 The parties hereto mutually and simultaneously authorize and direct their respective attorneys to execute and deliver for entry into the records of the Court such instruments as may be necessary to obtain dismissal of the Lawsuit without prejudice to the rights of all parties as herein stated, taxing the costs of such litigation to the party who incurred same.

7. Miscellaneous.

- 7.1 Words of any gender used in this agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 7.2 This agreement shall be construed under and in accordance with the laws of the State of

Texas, and all obligations of the parties created hereunder are performable in Dimmit County, Texas.

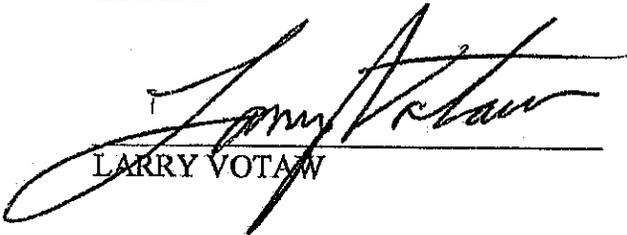
- 7.3 In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 7.4 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 7.5 This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- 7.6 All notices provided to be given under this agreement shall be given by certified mail or registered mail, addressed to the proper party, at the following address:
- | | |
|------------------------------|-----------------------|
| Larry Votaw | City of Asherton |
| P.O. Box 486 | P.O. Box 450 |
| Carrizo Springs, Texas 78834 | Asherton, Texas 78827 |
- 7.7 The word person herein shall be defined in accordance with the Uniform Commercial Code as enacted and amended in the State of Texas.
- 7.8 If there be more than one person named herein and such persons comprise collectively one party to this agreement, the obligations hereunder imposed upon such party shall be joint and several. If there be a guarantor of such party's obligations hereunder, the obligations hereunder imposed upon such party shall be the joint and several obligations of such party and such guarantor and the remaining party need not first proceed against such party hereunder before proceeding against such guarantor, nor shall any such guarantor be released from its guaranty for any reason whatsoever, including without limitation, in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.
- 7.9 The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- 7.10 No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this agreement shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.
- 7.11 In the event either party breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so

incurred by such other party.

7.12 Neither party shall be required to perform any term, condition, or covenant in this agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of either party and which by the exercise of due diligence either party is unable, wholly or in part, to prevent or overcome.

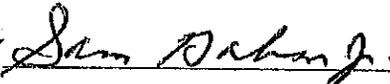
7.13 Time is of the essence of this agreement.

VOTAW:


LARRY VOTAW

ASHERTON:

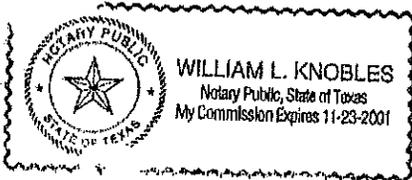
THE CITY OF ASHERTON

BY 
Its Mayor

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by LARRY VOTAW on the 15 day of June, 2000.

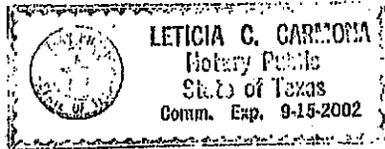



Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by Sam Galvan, JR
Mayor of the CITY OF ASHERTON, on behalf of the CITY OF
ASHERTON on the 29th day of March, 2000.



Leticia C. Camora
Notary Public, State of Texas

EXHIBIT "A"

LARRY VOTAW TO THE CITY OF ASHERTON

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DIMMIT §

That LARRY VOTAW, joined pro forma by JUDY VOTAW, hereinafter called Grantor, whether one or more, of the County of Dimmit, and State of Texas, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto THE CITY OF ASHERTON, hereinabove and hereinafter called Grantee, whether one or more, of P.O. Box 450, Asherton, Texas 78827, all of the following described real property in Dimmit County, Texas, to-wit:

A 51.377 acre tract of land situated in Dimmit County, Texas being a portion of those tracts conveyed to Larry Votaw by Deeds of record in Volume 237, Page 588 and Volume 238, Page 279 of the Deed Records of Dimmit County, Texas; said 51.377 acres being more particularly described by metes and bounds on attached Exhibit "A" hereto.

LESS AND EXCEPT, and there is hereby reserved unto Grantor, his heirs and assigns forever, all of the oil, gas and other minerals in, and ground water, on, under, and that may be produced from the aforesaid property, however, Grantor, for himself, his heirs and assigns, does hereby waive the right to use the surface of the aforesaid property for drilling, exploration or other surface operations associated with the oil, gas and other minerals and groundwater reserved herein and Grantee shall have the right to drill water wells and produce groundwater from the aforesaid tract which wells produce less than 25,000 gallons per day.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, Grantee's heirs, assigns, and/or successors forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors, and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs, assigns, and/or successors against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance is made and accepted subject to any visible or apparent roadways or easements over or across the subject property, and subject to any and all conditions, easements, restrictions, and reservations, if any, appearing of record relating to the above described property.

"This conveyance is made on an "AS IS, "WHERE IS and "WITH ALL FAULTS" basis. Grantee acknowledges that it is not relying upon any representation, statement or other assertion with respect to the Property condition, but is relying upon its examination of the Property. Except for the warranty of title expressly made herein, Grantor has not made, and does not make any representations, warranties or covenants of any kind or charac-

ter whatsoever, whether express or implied, with respect to the quality or condition of the Property conveyed herein (including, but not limited to, improvements, furniture, fixtures and appliances)("the Property"), the suitability of the Property for any and all activities and uses which Grantee may conduct thereon, or of the HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES. FURTHER, GRANTOR DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS CONCERNING DESIGN, QUALITY, LAYOUT, FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATION, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT)OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY. GRANTEE HEREBY FURTHER ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES AS TO WATER, SOIL OR GEOLOGY OF THE SUBJECT PROPERTY AND AS TO INCOME TO BE DERIVED FROM THE SUBJECT PROPERTY. WITHOUT LIMITING THE FOREGOING, GRANTOR DOES NOT AND HAS NOT MADE ANY WARRANTIES REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (as hereinafter defined) ON, UNDER OR ABOUT THE SUBJECT PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE SUBJECT PROPERTY WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT, THE RESOURCE CONSERVATION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, THE TEXAS NATURAL RESOURCES CODE, THE TEXAS WATER CODE, THE SPILL PREVENTION AND CONTROL ACT, ANY SO-CALLED FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPERLIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY) OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES (collectively, the "Hazardous Substance Laws"). For purposes of this Contract, the term "HAZARDOUS" and TOXIC SUBSTANCES" shall mean and include those elements or compounds which are contained on the list of HAZARDOUS SUBSTANCES adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. GRANTEE HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE SUBJECT PROPERTY BY GRANTEE. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS INSPECTED THE SUBJECT PROPERTY AND ACCEPTS THE SUBJECT PROPERTY "AS IS", "WHERE IS" AND "WITH ALL FAULTS".

This Deed is subject to the terms and conditions of a Settlement Agreement of even date herewith by and between the parties hereto.

EXECUTED this _____ day of _____, 2000.

LARRY VOTAW

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by LARRY VOTAW
on _____, 2000.

Notary Public, State of Texas
Notary's Name printed:

My Commission expires: _____

90-4149.doc/11-11
WLK 90-4149

51.377 ACRES
DIMMIT COUNTY, TEXAS
VOTAW TRACTS

EXHIBIT "A"

99-001.DOC (PTR)
14 APRIL, 1999

DESCRIPTION

OF A 51.377 ACRE TRACT OF LAND SITUATED IN DIMMIT COUNTY, TEXAS BEING A PORTION OF THOSE TRACTS CONVEYED TO LARRY VOTAW BY DEEDS OF RECORD IN VOLUME 237, PAGE 588 AND VOLUME 238, PAGE 279 OF THE DEED RECORDS OF DIMMIT COUNTY, TEXAS; SAID 51.377 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the southeasterly line of a 40' county road, same being the northwesterly line of said Votaw tract (Vol. 238, Pg. 279) for the westernmost corner hereof, and from which an 8' steel fence post found for the westernmost corner of said Votaw tract (Vol. 238, Pg. 279) bears S55°13'41"W, a distance of 1051.15 feet;

THENCE, along the southeasterly line of said 40' county road, same being the northwesterly line of said Votaw tract (Vol. 238, Pg. 279), the following six (6) courses and distances

- 1) N55°13'48"E, a distance of 693.98 feet to an angle point;
- 2) S38°23'12"E, a distance of 59.26 feet to an angle point;
- 3) N58°53'11"E, a distance of 170.02 feet to an angle point;
- 4) N24°12'29"W, a distance of 40.49 feet to an angle point;
- 5) N14°37'21"E, a distance of 46.37 feet to an angle point;
- 6) N55°13'48"E, a distance of 339.98 feet to a point for the northernmost corner hereof;

THENCE, S35°05'50"E, leaving the southeasterly line of said 40' county road, over and across said Votaw tract (Vol. 238, Pg. 279), passing at a distance of 924.65 feet a wooden fence post found in the southeasterly line of said Votaw tract (Vol. 238, Pg. 279), same being the westernmost corner of that tract conveyed to Larry Votaw by deed of record in Volume 252, Page 319 of said Deed Records, and continuing for a total distance of 1800.00 feet to a point for the easternmost corner hereof;

THENCE, S55°13'48"W, leaving the westerly line of said Votaw tract (Vol. 252, Pg. 319) over and across said Votaw tract (Vol. 237, Pg. 588), a distance of 1250.00 feet to a point for the southernmost corner hereof;

14 APRIL, 1999
99-001.DOC
PAGE 2 OF 2

THENCE, N35°05'50"W, continuing over and across said Votaw tract (Vol. 237, Pg. 588), passing at a distance of 873.85 feet the common line of said Votaw tracts, and from which point an 8' steel fence post found for the southernmost corner of said Votaw tract (Vol. 238, Pg. 279) bears S55°09'41"W, a distance of 1086.43 feet, and continuing for a total distance of 1800.00 feet to the POINT OF BEGINNING, containing an area of 51.377 acres of land, more or less, within these metes and bounds.

I, PAUL T. ROSS, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A BOUNDARY SURVEY WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

Paul T. Ross 14 APR 99
PAUL T. ROSS — DATE
R.P.L.S #5158
STATE OF TEXAS



EXHIBIT B

JACKIE VOTAW RUSSELL and LARRY VOTAW TO THE CITY OF ASHERTON

RIGHT OF WAY AGREEMENT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DIMMIT §

That the undersigned (hereinafter called "Grantor", whether one or more) for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby GRANT, BARGAIN and CONVEY unto THE CITY OF ASHERTON, whose address is P.O. Box 450, Asherton, Texas 78827, its successors and assigns (hereinafter called "Grantee"), the right to construct, lay, inspect, maintain, repair, operate and remove one (1) pipeline only, being Nine inches (9") in outside diameter for the transportation of waste water and municipal sewage from its collection system to Grantee's waste water treatment plant, under the following described lands of Grantor, located in Dimmit County, Texas, to-wit:

The legal description of said right-of-way and easement granted herein is attached hereto as Exhibit "A".

The property described in Exhibit "A", attached hereto and made a part hereof, is a Fifteen foot (15') permanent easement and right-of-way (subject to termination by abandonment as set forth below); and a Ten foot (10') temporary workspace easement as depicted on attached Exhibit "B" hereto. The Ten foot (10') temporary workspace easement shall expire when construction of the Pipeline is completed, or ten (10) years from the date hereof, whichever first occurs.

The Grantee shall have the right of ingress and egress over and across said right-of-way and easement, and is limited to reasonable times and places for the carrying out the intent of the rights granted hereby to Grantee, the right to inspect, patrol, maintain, and replace the pipeline, and the right from time to time to cut and remove trees, underbrush and other obstructions that may injure said pipeline and appurtenances or interfere with the operation and maintenance thereof, except for crops and improved or native grasses. Grantor shall reasonably designate the gates and roads to be used to access the easement. However, after construction of the pipeline, Grantee, its agents and representatives shall enter said right-of-way only after 24 hours notice to and accompaniment by Grantor, except in cases of bona fide emergency. If after such notice, Grantor does not make himself available to accompany Grantee, Grantee may enter the easement to effect repairs and maintenance. If entry is made by reason of emergency, Grantee shall notify Grantor of the entry within twenty-four (24) hours.

Grantee will not damage or remove large trees, except as is necessary to install the Pipeline. This grant does not permit Grantee to install any surface facilities of any nature on Grantor's lands, except for pipeline markers.

No fences are to be cut without the express written consent of Grantor. If any fence is cut with such consent, the fence shall first be braced with minimum four and one-half inch (4-1/2") heavy wall pipe braces imbedded in cement a minimum of five feet (5'), configured in accordance with Farm Service Agency recommendations, so as to prevent sagging of the wire. While such fence is down or cut, Grantee shall maintain a guard or watchman at such opening to prevent cattle from escaping or mixing into other pastures. All fences which are cut by Grantee shall be restored to a good, or better condition as before. A fifteen-foot (15') metal gate will be installed at any fence crossing and will be kept locked at all times.

Grantee is strictly liable to Grantor for all damages to Grantor's property and livestock caused by Grantee, its agents, employees, and contractors, or by the operation of the pipeline and appurtenant facilities.

Grantor, Grantor's heirs, successors and assigns reserve the right to fully use and enjoy the surface of the said right-of-way and easement hereinabove described, however, Grantor shall not place any building or structure on the permanent easement.

The top of Grantee's pipeline and underground fittings and/or underground appurtenant facilities in the right-of-way will be buried and shall be maintained buried at least thirty-six inches (36") below the ground so that it will not interfere with the use of said property.

Grantee shall backfill the ditch into which the pipe is placed at intervals of every one thousand feet (1,000') at least fifty feet (50') in width so as to permit cattle and vehicles to move across the easement right-of-way during construction of the pipeline. Once Grantee begins construction of the pipeline, Grantee shall prosecute said construction with diligence so that any ditch opened by Grantee for the laying of the pipeline shall be closed, backfilled and leveled within fifteen (15) days from the opening of said ditch, subject to force majeure.

If any livestock or wildlife are killed during the construction, maintenance, operation or removal of the pipeline by any of Grantee's agents, servants, employees, or other person who enters the land in furtherance of Grantee's business, or if livestock or wildlife are unlawfully injured in any manner including injury resulting from the ditch into which the pipe is placed, the Grantor shall be reimbursed by Grantee the fair market value of the loss of the killed or injured animal. During construction, and if cattle are present on the property, Grantee shall erect temporary barriers or fences or electric fences, to prevent cattle from entering the ditch.

Within fifteen (15) days after construction of the pipeline is completed, and after any activities, including but not limited to, repairing, maintaining, or removing the pipeline, which disturb the surface of the right-of-way, Grantee will:

1. disc and seed the easement right-of-way with buffel grass; and
2. fill and grade the right-of-way so as to restore the same to its original level as nearly as possible.

In regard to construction, maintenance, repair or removal of the pipeline and restoration of the surface thereto, Grantee shall employ double ditching. Grantee agrees to first remove the topsoil of the affected area and place same in one location and then remove the subsoil and place it at a separate location. Grantee agrees to replace the subsoil first and then replace the topsoil last immediately thereafter,

3. build and maintain such water diversion terraces as are required to Grantor's reasonable satisfaction to prevent soil erosion on the easement right-of-way and Grantee agrees to employ such other means as are necessary to prevent erosion on the easement occasioned by its use and operation of same and as are necessary to reasonably control the drainage of water across and along the easement;
4. remove from the premises all broken or discarded material, machinery, spent welding rods, trash, or debris left from Grantee's activities and maintain right-of-way clean of same at all times. Under no circumstances will Grantee be allowed to bury debris, trash or foreign materials of any kind on any of Grantor's lands;
5. rake up and burn (or, at Grantee's option, chip and spread) all brush removed from the right-of-way and bury all rock located in or shoveled out of the right-of-way. If conditions do not permit brush to be burned, then Grantee will chip or remove all brush removed from the right-of-way.
6. plant or sprig the easement right-of-way with buffel grass seed;
7. Should Grantee cross any roads of Grantor with the pipeline, Grantee will install gravel, road base, or caliche over said crossing, compacting same so that such crossing does not subside. If the crossing subsides, Grantee will fill such crossing to grade with gravel, road base, or caliche so that same remains passable by ordinary passenger vehicle.

Grantee further agrees to mow said right-of-way at least twice a year. Grantee agrees to maintain and repair any damage done to Grantor's roads, culverts, fences, gates and cattle guards by Grantee, within a reasonable period of time (not to exceed fifteen (15) days from each occurrence). Grantee shall be liable for any commingling of livestock resulting from Grantee's use of such right-of-way.

The consideration paid to Grantor at the time this easement is executed includes full and final payment for any and all damages to growing crops, pasturage, timber (trees or brush), fences, buildings or other improvements of Grantor located on the easement (but not on Grantor's other lands) which result from the exercise of the rights granted during initial construction, but

subject to remediation as set forth herein, and Grantor, for himself, his heirs, representatives and assigns, hereby releases Grantee from any and all such liability. Thereafter, Grantee shall promptly assume all responsibility for accidents and damages which may arise out of its use of said easement and Grantee hereby agrees to pay any and all claims and damages which may arise from laying, constructing, repairing, inspecting, maintaining, operating and removing said pipeline and agrees to pay all costs and expenses, loss and damage, to persons or property including, but not limited to, growing crops, wildlife, livestock, cattle, water wells and pipelines, stock tanks, roads, fences, timber, buildings, native or improved grasses, groundcover, trees or brush. Any such damages shall be due and payable within thirty (30) days from notice to Grantee of such damages. This covenant to pay such damages shall be a continuing covenant and run with the land.

Grantee, or the agents, servants, employees, contractors, and/or subcontractors of Grantee will, while upon the land of Grantor, pursuant to the terms of this agreement, display their company name upon their vehicles and, upon request, will stop and identify themselves, their destination and the purpose of their presence upon the lands of Grantor.

Should this pipeline develop a leak on Grantor's property, Grantee shall immediately proceed to effect repairs and mitigate any and all damages resulting therefrom. Such mitigation shall include all emergency measures necessary to minimize the spread of the product into the soil and ground water. Should Grantor notice a leak, Grantor will promptly notify the Grantee of same.

Any contractors hired by the Grantee shall, prior to entry, tender to Grantor evidence of general liability insurance with \$100,000.00/\$300,000.00 limits and at least a \$1,000,000.00 umbrella.

The pipeline right-of-way and easement herein granted may be used by Grantee or its successors or assigns for transportation of waste water and municipal sewage from Grantee's collection system to Grantee's waste water treatment facility only, for ~~four (4)~~ ^{Ten Years} years from date hereof and so long thereafter as Grantee transmits such products through said line without cessation of more than four (4) years, but if after the expiration of ~~four (4)~~ ^{Ten Years} years from date hereof, Grantee or its successors or assigns, fail for any reason to transmit such products through said line for four (4) years, then this grant shall terminate as to all parties, and all rights herein granted shall automatically revert to Grantor or its successors or assigns.

A condition to the granting of this easement and its continuation is that no employee, representative or contractor of Grantee or any other person allowed to come upon said land by Grantee shall be permitted to consume alcoholic beverages or illegal drugs, hunt, fish, swim, camp or picnic on said land, and no dogs, guns, cameras, firearms, motorcycles, three or four wheelers, fishing equipment or other sporting paraphernalia of this type will be permitted on the premises or Grantor's adjacent lands. Further, a 20-mph speed limit shall be strictly enforced as to grantee, its contractors, agents, and representatives. If any of Grantee's representatives or employees violate this provision or become objectionable to Grantor, Grantor has the right to eject such party from said lands and thereafter prohibit such party from entering upon said lands. If any of Grantee's agents, guests, employees, contractors or representatives are caught with game or wildlife killed or otherwise taken from Grantor's lands, as well as any other property taken, including, but not limited to, mesquite, skulls, deer antlers, petrified wood, arrowheads, cactus and artifacts, then Grantee shall compensate Grantor in an amount equal to the fair market value thereof.

Prior to commencement of construction Grantee shall advise Grantor of its intention to commence by telephone at (830) 876-5163. No surveying or construction shall take place during deer and quail season or when the premises are wet.

Grantee may not grant access, ingress or egress over said right-of-way to third parties other than employees, representatives or contractors, who do not hold this right-of-way grant. The rights herein granted shall be exercised in such a manner as does not interfere with Grantor's use of its lands described herein or adjacent to the right-of-way. Grantor may grant other easements and rights-of-way so long as such rights are in conjunction with or do not disrupt or interfere with Grantee's use, possession and occupancy of same. Grantor also reserves the right to grant surface and subsurface leases and agreement to third parties without the need for consent or joinder of Grantee.

In the event of the breach of any provision of this easement, Grantee shall pay to Grantor all costs and expenses reasonably incurred including reasonable attorney's fees and costs of court incurred by Grantor for the enforcement of the provisions of this easement. Venue for any cause of action or any other assertion of a right under and of the terms of this easement shall be in Dimmit County, in the State of Texas. It is controllingly agreed and understood that time is of the essence in the performing of each responsibility under the terms of this easement.

This right-of-way easement is made subject to any valid leases, mortgages, and right-of-way easements covering said lands as shown or record in Dimmit County, Texas.

All notices to be sent to Grantee shall be sent to the following address:

The City of Asherton
P.O. Box 450
Asherton, Texas 78827

All notices to be sent to Grantor shall be sent to the following address:

Larry Votaw
P.O. Box 486
Carrizo Springs, Texas 78834

Either party hereto may from time to time designate in writing a different address or agent for the giving of any notice hereunder.

All notices sent forth herein shall be in writing. Written notices shall be sent by the following means:

- a.) U.S. Mail, Certified, Return Receipt Requested;
- b.) Telefax, followed buy U.S. Mail, Certified, Return Receipt Requested;
- c.) Overnight Express Service (Federal Express, Airborne, etc.).

TO HAVE AND TO HOLD the said right-of-way and easement unto Grantee, its successors and assigns, for four (4) years from the date hereof, and as long thereafter as waste water and effluent is transported through said pipeline without cessation or more than twenty-four (24) consecutive months; as hereinabove provided, and the undersigned hereby bind themselves, their heirs, executors and administrators, successors an assigns, to warrant and forever defend all and singular said premises unto Grantee, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through and under Grantor, but not otherwise.

With Grantor's consent, the Grantee shall have the right to assign this grant in whole or in part, however, Grantee and each subsequent grantee, shall notify Grantor by mail within thirty (30) days of each such future assignment. Consent to assign shall not be unreasonably withheld by Grantor. No assignment of this easement shall release Grantee from liability for breach of any obligation occurring prior to such assignment, or the aforesaid notice of assignment to Grantor, whichever date is later in time. The terms and provisions hereof shall inure to the benefit of and be binding upon Grantor and Grantee and their respective heirs, representatives, successors or assigns.

Executed this the _____ day of _____, 2000.

THE CITY OF ASHERTON

BY Sam R. [Signature]
Its Mayor

LARRY VOTAW

Jackie Votaw Russell
JACKIE VOTAW RUSSELL

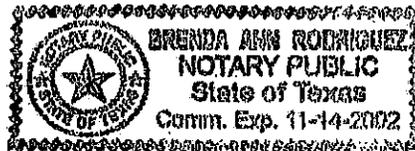
STATE OF TEXAS §
COUNTY OF DIMMIT §

This instrument was acknowledged before me on _____, 2000 by
LARRY VOTAW.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF DIMMIT §

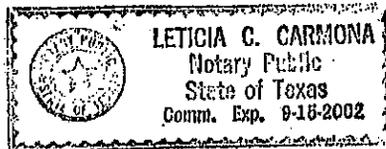
This instrument was acknowledged before me on May 8, 2000 by
JACKIE VOTAW RUSSELL.



Brenda Ann Rodriguez
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Dimmit §

This instrument was acknowledged before me on March 29, 2000 by
Sam Salvan, JR, Mayor of THE
CITY OF ASHERTON.



Leticia C. Carmona
Notary Public, State of Texas

EXHIBIT "A"

The easement centerline out of Tract No. 3

BEGINNING at a point on the southwest line of the H&GNRR Survey #1, Block 1, Abstract No. 142 located South 35° East approximately 994.00 feet from the west corner of the said Survey and also South 35° East 7.5 feet from the south corner of a 41.12 acre tract referred to in the 548.33 acre Tract No. 3 set aside to John Bader, et al;

THENCE with the easement centerline parallel to and 7.5 feet southeast of the southeast line of the 41.12 acre tract North 55° East approximately 1,952 feet to a point;

THENCE with the easement centerline parallel to and 7.5 feet northeast of the northeast line of the 41.12 acre tract North 35° West approximately 911.00 feet to a point 7.5 feet southeast of the northwest line of the said 548.33 acre Tract No. 3;

THENCE with the easement centerline parallel to and 7.5 feet southeast of the northwest line of the 548.33 acre Tract No. 3 North 55° East approximately 3,326 feet to a point on the northeast line of the 548.33 acre tract containing approximately 5.69 acres of land, more or less.

CLARENCE L. LITTLEFIELD, P.E.
PRESIDENT

SOUTHWEST ENGINEERS, INC.

ENGINEERS - PLANNERS

307 St. Lawrence Street
Gonzales, Texas 78629

Phone 830-672-7546
Fax 830-672-2034

January 25, 2006

Mr. Gilberto Gonzalez, Jr., Mayor
City of Asherton
P. O. Box 450
Asherton, TX 78827

Re: Asherton, Texas
Wastewater Treatment Plant
TWDB Grant No. G19300/G19400/1635
SEI Project No. 0211-001-96

Dear Mr. Gonzalez:

This letter pertains to Asherton's wastewater treatment plant and further describes the plan we proposed in our letter of January 4, 2006, and discussed during the City Commission meeting of January 16, 2006. I have attached a preliminary budget for that plan.

We propose that part of the remaining, approximately \$650,000, Economically Distressed Areas Program funding be used to purchase the remaining quarter section of land on which the existing wastewater plant is located. The attached map illustrates this land. The reason for this acquisition is three fold.

The existing treatment plant does not meet the State's requirements, so with future funding, the City would use the land to construct a new wastewater plant. Texas Commission on Environmental Quality requires the lagoons to be watertight. It has been alleged that the existing lagoons leak, and evidence has been produced that could substantiate that claim. Documents from original construction indicate little effort was made to make the lagoons watertight. Consequently, it would be difficult for an engineer to certify that the lagoons comply with the States leakage limitations. Reconstructing the lagoons to the condition required by the State so that an engineer could make such a certification would be difficult and expensive.

CHIEF CLERKS OFFICE

2014 JAN 27 PM 12:18

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXHIBIT

tabbles

"E"

The permit for the plant limits the biochemical oxygen demand to 30 mg/l, as well as other limitations. Computations indicate that the existing lagoons should be adequate for that limit, at least for the current service load. However, in the past the effluent has far exceeded the biochemical oxygen demand limitation. The City would use the land to dispose its effluent by irrigation of pastureland, and avoid releasing water from the lagoons that does not meet the required limitations.

The adjoining property owner filed a lawsuit claiming damage to his property due to leakage from the lagoons. That suit has been withdrawn because the City intended to construct a new plant. If the City owns this land, the basis for damage and reinstating the lawsuit would be removed.

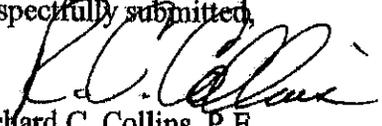
We propose that part of the remaining funding be used to install an irrigation system for effluent disposal by land application. As previously discussed the intent would be to avoid permit violations and penalties for discharging effluent that does not meet the water quality standards. This would include clearing and sprigging an area for irrigation, center pivot irrigation equipment, a pump and irrigation line to draw water from the lagoons and pump it to the center pivot irrigation equipment, intake lines in the last two lagoons and related electrical and site work.

We propose to use the remainder of the funding to construct a leakage collection system around the lagoons. This would consist of a trench partially filled with gravel, partway around the lagoons and about twelve feet deep. A 4-inch perforated pipe would be installed near the bottom of the trench and graded to a sump near the northeast corner of the lagoons. A small submersible wastewater pump would be installed in the sump to pump leakage through a 3-inch pipe back to the first pond. The intent of these improvements would be to collect any leakage which may occur and return it to the plant. Another intent would be to lower the water table below the elevation of the water course along the eastern boundary of the site. The result would be classified as rapid infiltration, a very effective treatment technique.

Please call Clarence L. Littlefield, P.E. or me if you have any questions concerning this matter, we will be happy to meet with you to discuss the City's project.

Please let me know how you wish to proceed.

Respectfully submitted,


Richard C. Collins, P.E.

Attachments

01/25/06
 Asherton, Texas
 Wastewater Treatment Plant

Estimate for acquiring land adjoining the existing plant, improving and irrigation area, installing irrigation piping and equipment and constructing a leakage collection system.

1.	40	ac	Clearing and Grubbing	@	\$300.00	\$12,000
2.	35	ac	Sprigging Coastal Bermuda Grass	@	\$300.00	10,500
3.	2	ls	12" Lagoon Outlet	@	\$8,000.00	16,000
4.	1,100	lf	8" Irrigation Line	@	\$12.00	13,200
5.	1,600	lf	Power Line	@	\$4.50	7,200
6.	1	ls	400 gpm Irrigation Pump	@	\$35,000.00	35,000
7.	1	ls	670' Center Pivot Irrigation System	@	\$60,000.00	<u>60,000</u>
Subtotal Irrigation Improvements						153,900
8.	2,580	lf	Collection Trench W/ 4" Perforated Pipe and Gravel Fill		\$50.00	129,000
9.	700	lf	3" Effluent Line		\$7.00	4,900
10.	1	ls	Pump Well and Pump		\$28,000.00	28,000
11.	1,200	lf	Buried Power Cable		\$4.50	<u>5,400</u>
Subtotal Leakage Collection System						167,300
Subtotal						\$321,200
Contingencies						32,100
Basic Engineering Services						42,400
Other Engineering Services ¹						106,000
Fiscal, Legal, Administrative, Etc.						<u>25,100</u>
Total Preliminary Budget Estimate						\$526,800

Site Acquisition
 Less Existing Site 51 ac.

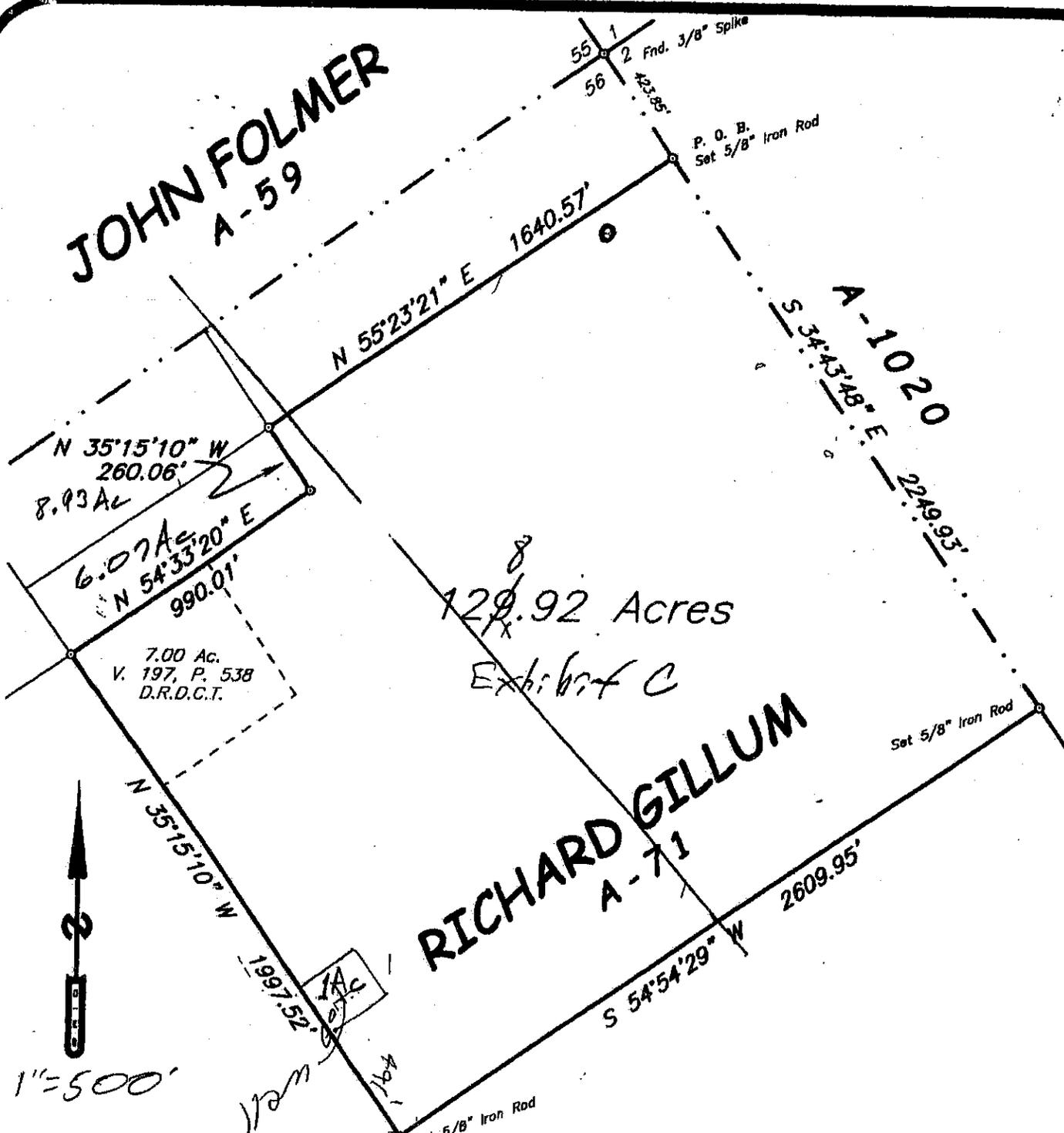
Reconciliation of expenditures to date with the budget has not been completed at this time; however, from preliminary tabulation, approximately \$650,000 remain uncommitted. The remaining funding includes \$26,000 in loan funds for which the bonds have not been issued.

¹ Site Acquisition \$15,000; Site Surveying \$4,000; Geotechnical \$4,000; Inspection \$10,000; Facility Plan And Environmental Report Amendments \$7,000; Pollution Prevention Plan \$4,000; Wastewater Permit Amendment \$12,000; Previous Engineering Efforts \$50,000.

78.92

1,580.00
 125,000.00
 Keep water pit
 use of shop
 & operator

JOHN FOLMER
A-59



RICHARD GILLUM
A-71

129.92 Acres
Exhibit C

PLOT DATE: 12-21-04 2:42 PM

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AS SURVEYED ON THE GROUND, BY ME ON DECEMBER 2, 2004.

Jarrel L. Moore
JARREL L. MOORE
REGISTERED PROFESSIONAL LAND SURVEYOR
LICENSE NO. 4854

JERRY MOORE
LAND SURVEYING

Land Surveying/Mapping
606 N. Caranochua, #808
Corpus Christi, TX 78478
(361) 882-0434 Fax (361) 882-0440



PLAT OF

129.92 acres of land out of the RICHARD GILLUM Survey No. 56, A-71, Dimmit County, Texas, and being all that 7.00 acre tract described in Vol. 197, Pg. 538, of the Deed Records of Dimmit County, Texas, and a portion of that 153.00 acre tract described in Vol. 125, Pg. 171, of the Deed Records of Dimmit County, Texas.

Completion Date: 12/21/04	File Name: 041201VA.DWG
Scale: 1" = 500'	Surveyed by: JLM, ALM
Drawn by: JLM	Checked by: JLM

POSTNET

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01/23/2014
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LANGLEY & BANACK, INC.
Attorneys and Counselors at Law
401 QUARRY STREET
EAGLE PASS, TEXAS 79833

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TCBQ
P.O. Box 13087
Austin, TX 78711-3087

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UNITED STATES



LANGLEY & BANACK
INCORPORATED

Attorneys and Counselors at Law

August 6, 2013

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P.O. Box 13087
Austin, Texas 78711-3087

MWD
8778

REVIEWED

AUG 08 2013

By

CHIEF CLERKS OFFICE

2013 AUG -8 AM 10:04

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Regarding: City of Asherton
Permit Number: WQ0013746001

Comments to City of Asherton's Request to Amend their Permit and Request for a Contested Case Hearing

Dear Executive Director;

Please be advised that Langley & Banack, Inc. represents Larry Votaw (P.O. Box 486, Carrizo Springs, Texas 78834) who owns property immediately adjacent to and surrounding the City of Asherton's domestic wastewater treatment facility. Please accept this correspondence as Mr. Votaw's comments on this proposed project and Mr. Votaw's request for a contested case hearing.

Mr. Votaw's property abuts the current wastewater treatment facility on the north, east and south sides. Mr. Votaw also owns property to the immediate northeast of the facility. *Please see Exhibit "A" – Mr. Votaw's Property.* Mr. Votaw has experienced numerous issues with flooding and contamination arising from the current wastewater treatment facility as the discharge flows onto his property. Mr. Votaw's sister, Jackie Lynn Russell, who is located on Mr. Votaw's east boundary has also experienced similar problems.

Due to the flooding and contamination issues, Mr. Votaw filed suit against the City of Asherton in 1993 in *Larry Votaw v. The City of Asherton*, Cause Number 93-0708053-CV in the 365th Judicial District Court in Dimmit County, Texas. *Please see Exhibit "B" – Amended Petition and Soil Analysis Report.* That suit was ultimately dismissed in 2000. *Please see Exhibit "C" – Order of Dismissal.* Mr. Votaw and the City of Asherton reached an agreement whereby the existing wastewater treatment facility would be decommissioned and a new facility would be put in place to address the issues raised in the lawsuit. The City of Asherton breached the settlement agreement as they never constructed the new facility as set forth in the agreement. *Please see Exhibit "D" – Agreement.*

PETRY BUILDING • 4TH & HOUSTON • P.O. DRAWER 218
CARRIZO SPRINGS, TEXAS 78834 • T 830.876.2431 • F 830.876.5451
WWW.LANGLEYBANACK.COM

SAN ANTONIO • CARRIZO SPRINGS • EAGLE PASS • KARNES CITY • CASTROVILLE

Although the City of Asherton never complied with the settlement agreement entered into with Mr. Votaw, the City proposed in 2006 that additional acreage be purchased from Mr. Votaw in which a pivot irrigation system would be installed. *Please see Exhibit "E" – Proposal from Southwest Engineers to the City of Asherton.* Mr Votaw would have had the right to lease the land back at a nominal fee and would operate the pivot irrigation system at the City's expenses. Again, the City failed to follow through with their agreement with Mr. Votaw.

Since first filing suit in 1993, Mr. Votaw has attempted get the City of Asherton to comply with their permits and state laws regarding effluent discharge. Mr. Votaw has entered into agreements for the City to construct new facilities and alternative methods of handling the discharge; however, the City has never followed through with the agreements. All the while, Mr. Votaw and Ms. Russell have had to deal with flooding and effluent discharge from the City's facility. Once again, the City is attempting to submit a new proposal to TCEQ.

The effluent discharge is contrary to what the City indicated in their application. The discharge is not down an unnamed tributary to El Moro Creek. The discharge is across the surface and subsurface of Mr. Votaw's property and Ms. Russell's property. Because of the permeability of the surface, the water is quickly absorbed. However, the subsoil is impermeable thus resulting in the discharge traveling just below the surface. Such characteristic makes the surface appear solid when in fact the subsurface is soaked.

Mr. Votaw has two (2) fresh water wells in the immediate vicinity of the discharge. Such effluent discharge has the potential to contaminate the fresh water bearing sands. If the effluent enters the fresh water bearing sands, such effluent material will have the potential to contaminate various other water sources.

The effluent discharge affects ranching operations and makes roadways impassible. Because of such conditions property values are likely to be decreased.

The effluent discharge is also likely to have an adverse effect on the health and safety of the property owners as well as their families, employees, and guests. The current level of contamination is unknown as well as the adverse effects of exposure to such contamination.

Mr. Votaw also operates a deer breeding program. The consumption of the effluent discharge may have an adverse effect on the quality of the animals Mr. Votaw is raising as well and the meat product after such animal is harvested. It is also unknown what effect on humans may result if such animals are consumed.

Mr. Votaw has tried to work with the City of Asherton on numerous occasions to remedy this situation. The best solution would be to install the pivot irrigations system so that the water could be properly absorbed into the subsoil.

However, if such discharge continues to damage the surface of Mr. Votaw's and Ms. Russell's property, it is likely that they will be left with no other option than litigation. For these reasons, Mr. Votaw and Ms. Russell hereby protest the request to amend the permit and respectfully request a contested case hearing.

If you should have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

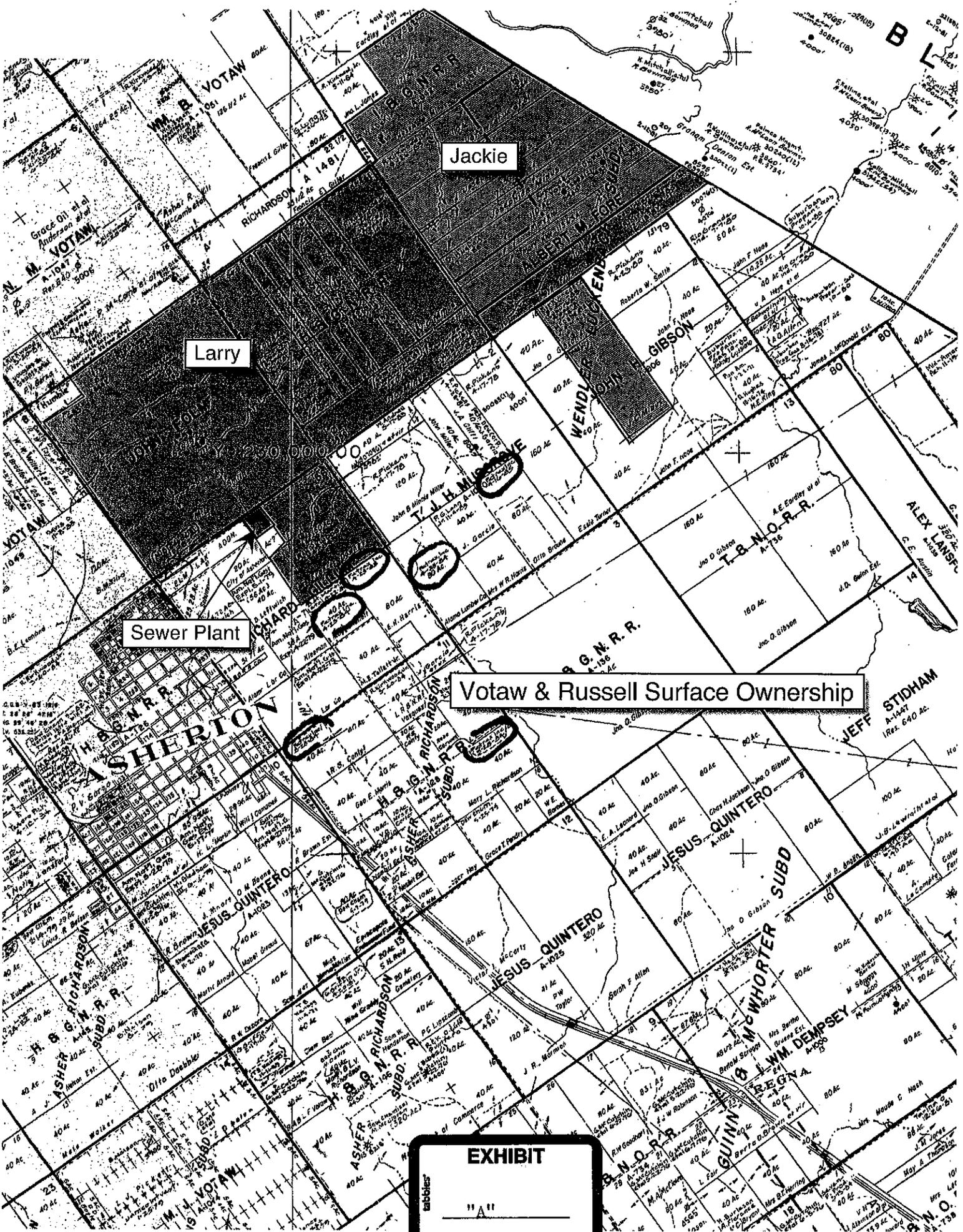
Langley & Banack, Inc.

By: 
Patrick J. Kelly

PJK

cc: City of Asherton
P.O. Box 450
Asherton, Texas 78827

Robert H. Thonhoff
Thonhoff Consulting Engineers, Inc.
1301 Capital of Texas Hwy South, Suite A-236
Austin, Texas 78746



Jackie

Larry

Sewer Plant

Votaw & Russell Surface Ownership

EXHIBIT
11
tabbles

NOV 01 1993

NO. 93-07-08053-CV

AGUSTIN G MARTINEZ, JR.
District Clerk, Dimmit County, Texas

LARRY VOTAW

X
X
X
X
X
X

IN THE DISTRICT COURT Deputy

VS.

365TH JUDICIAL DISTRICT

THE CITY OF ASHERTON

DIMITT COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LARRY VOTAW, who resides in Carrizo Springs, Dimmit County, Texas complaining of THE CITY OF ASHERTON, a municipality situated in Dimmit County, Texas, and for cause of action, would show the Court as follows:

I.

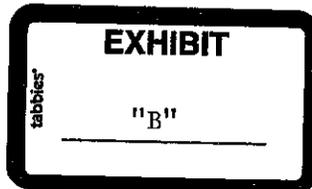
THE CITY OF ASHERTON is hereinafter called "Defendant" and may be served with process by serving its Mayor, SAM GALVAN, JR., at the Mayor's office in Asherton City Hall, 1001 West Carter Street, Asherton, Dimmit County, Texas, in accordance with Section 17.024, Texas Civil Practice and Remedies Code.

II.

Plaintiff is, and at all times mentioned and material to this action was, the owner in fee simple of approximately 1800 acres of land in Dimmit County, Texas in the Richard Gilliam Survey No. 56. The real property currently affected by the actions of Defendant can be more particularly described as the Southeast quarter of a 153 acre tract of land, more or less, out of Abstract 71, less and except a ten (10) acre tract conveyed by Jackson C. Votaw and Neva Votaw to the City of Asherton in Warranty Deed recorded in Volume 197, Page 540, Deed Records of Dimmit County, Texas, and a seven (7) acre tract conveyed to Plaintiff by the City of Asherton in Warranty Deed recorded in Volume 197, Page 583, Deed Records of Dimmit County, Texas. The above described tract will hereinafter be referred to as "Plaintiff's Property".

III.

Defendant is, and at all times mentioned and material to this action was, the owner of certain real property upon which Defendant operates a sewage treatment plant. Plaintiff's Property is located adjacent to and north of the sewage treatment plant. There exists as part of the operation of the sewage



treatment plant a holding pond which contains municipal sludge and waste, hereinafter referred to as the "holding pond".

IV.

The holding pond is not sealed properly, and as a result, waste and chemicals from the pond leach into the soil on Plaintiff's adjacent tract. The pond was either improperly installed without a liner, or alternatively, the liner was not properly maintained and failed to contain the sludge and waste within the pond.

V.

The waste and effluent discharge onto Plaintiff's Property by the operations of Defendant contains, among other harmful substances, an extremely high concentration of sodium, calcium, magnesium, potassium and nitrate, factors affecting vegetation growth. Due to the aforementioned high concentrations, Plaintiff's Property has been damaged in that the physical condition of the property is such that water cannot penetrate the soil and internal drainage is limited, thereby proximately causing the inability of vegetation to grow on Plaintiff's Property. The aforesaid soil contamination has resulted in Plaintiff's Property being devoid of vegetation. Defendant's operating of the sewage treatment facility with the holding pond interferes with the use and enjoyment of Plaintiff's Property. Further, the discharge of sewage and municipal waste and pollution onto Plaintiff's Property and the subsurface waters thereof is directly in violation of § 26.121, et. seq., of the Texas Water Quality Control Act for which violation of law and the resulting damages to Plaintiff, the Defendant is strictly liable.

VI.

Plaintiff alleges that it is unreasonable for Defendant to operate a sewage treatment facility with a holding pond that allows waste and chemicals to enter onto Plaintiff's Property. No amount of care will eliminate the substantial interference with the use and enjoyment that results from the holding pond as it is currently designed. The discharge of the waste and chemicals onto Plaintiff's Property occurs under normal operating conditions of the sewage treatment plant with its holding pond. The nuisance does not result from any negligence of the Defendant. Defendant has maintained the condition of the holding pond with full knowledge that the sewage and sludge is entering upon Plaintiff's Property. The nuisance is not permanent in character and can be abated by enlarging and sealing the holding pond. The damages caused by Defendant to Plaintiff's Property are temporary in nature and can be repaired by replacing the eroded soil and resodding the vegetation.

XIII.

The conduct of the Defendant is the proximate cause of temporary injuries to Plaintiff's Property. The reasonable and necessary cost of repairing and restoring Plaintiff's Property to the condition in which it was prior to the injury complained of is \$250,000.00. Plaintiff sues for temporary damages which is the diminution of the fair market rental value of Plaintiff's Property during the time the Plaintiff was injured by Defendant.

Future damage and interference could be avoided by the sealing and enlargement of the holding pond which will prevent future discharge and seepage of waste and sludge onto to Plaintiff's Property and thereby future contamination and erosion.

XIV.

Alternatively, there are permanent damages to Plaintiff's Property proximately caused by Defendant which include a reduction in market value of Plaintiff's Property and renders it unmarketable, such damages far exceeding the minimum jurisdictional limits of this Court in that the injuries to Plaintiff's Property depend upon an intermittent event of discharge and some injuries to Plaintiff's Property can be treated to reverse the adverse effects thus far incurred. The discharge occurs in normal weather conditions and normal operating conditions.

XV.

As a direct and proximate result of Defendant's nuisance, trespass, and statutory violations, as described above, Plaintiff has suffered aggravation, frustration, anxiety, anger, and mental anguish since the occurrences made the basis of this suit. In particular, Plaintiff fears that his property will become a complete wasteland upon which vegetation will be unable to grow in the future. The injuries suffered by Plaintiff and damages therefor far exceed the minimum jurisdictional limits of this Court, for which Plaintiff sues.

XVI.

Defendant's conduct in knowingly permitting municipal waste and sludge to be discharged upon Plaintiff's Property exhibits the kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. In this regard, Defendant's actions have resulted from actual conscious indifference to the rights of Plaintiff and Plaintiff hereby sues for exemplary damages in an amount far in excess of the minimum jurisdictional limits of this Court.

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer herein, and that on final hearing, Plaintiff have judgment for:

1. Actual damages as plead for herein in a sum in excess of the minimum jurisdictional limits of this Court, with interest as provided by law.
2. Exemplary damages in a sum in excess of the minimum jurisdictional limits of this Court.
3. Temporary and permanent injunction against Defendant enjoining Defendant, Defendant's agents, servants, and employees from committing further interference with Plaintiff's use and enjoyment of his property, trespass upon Plaintiff's Property, and violation of the Texas Health Code.
4. All costs of suit.
5. Such other and further relief at law or in equity to which Plaintiff may be justly entitled.

Respectfully submitted,

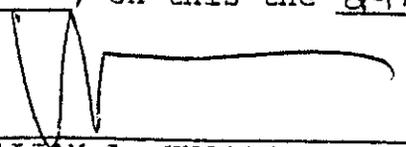
NOBLES & KLINGEMANN, INC.
109 West Gonzales Street
Seguin, Texas 78155
(210) 379-9445

BY 

WILLIAM L. NOBLES
State Bar No. 11615500
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's First Amended Petition has been sent to Defendant's attorney of record, JAMES B. DAVIS, 310 East Nopal Street, Carrizo Springs, Texas 78834, by certified mail, return receipt requested no. P394835535, on this the 29th day of October, 1993.


WILLIAM L. NOBLES

WLK21/d/7-11
WLK 91-5500

SOIL ANALYSIS

FILE: LARRY VOTAM
 FIELD NAME: CARRIZO SPRINGS, TX
 CROP NAME: SEWER PLANT
 DATE: 10/05/93
 LAB #: 3278-89

0 Low
 Marginal
 High

SALT CATIONS† ppm



SPECIALIST IN SOIL FERTILITY, PLANT ANALYSIS & CROP PRODUCTION
 Services for Farmers "Since 1938"
TEXAS PLANT & SOIL LAB, Inc.
 F.M. 1925, 3 1/2 MI. West of US 281
 Rt. 7, Box 213 Y
 EDINBURG, TEXAS 78539
 (512) 383-0739
 FAX (512) 383-0730
Esper K. Chandler
 Certified Professional Agronomist/SS

FIELD	TEX	O.M	lb per ac NO ₃	lb per ac P ₂ O ₅	pH	CO ₂	Soils E.C.		K		Na		Ca		Mg		Ratio No ₃ / Ca/Mg
							H ₂ O/CO ₂										
1 #1 TOP	3-	0.60	36	95	7.3	tr	21.60	101 / 103	624 / 638	1660 / 3078	7 / 569	1 / 91					
2 #1 BOTTOM	6-		12	16	7.8	H+	11.52	18 / 23	640 / 674	146 / 1284	170 / 467	5 / 4					
3 #2 TOP	4	0.40	24	64	7.7	VL	18.24	51 / 53	736 / 760	479 / 1260	328 / 423	2 / 2					
4 #3 TOP	5	0.40	7	23	7.8	M+	21.60	69 / 79	822 / 854	353 / 1316	270 / 435	2 / 3					
5 #3 BOTTOM	5+		4	18	7.2	H+	4.80	34 / 51	372 / 413	100 / 1358	95 / 338	4 / 4					
6 #4 TOP	5-	0.40	8	17	7.6	0	13.92	43 / 49	694 / 694	220 / 664	264 / 410	3 / 3					
7 #4 BOTTOM	6		5	18	8.0	H-	17.76	20 / 23	790 / 792	219 / 1226	245 / 485	4 / 3					
8 #5 TOP	2+	0.50	18	27	6.7	tr	4.41	81 / 89	207 / 276	242 / 1420	144 / 270	1 / 2					
9 #6 TOP	2+	0.55	100	54	6.9	tr	43.20	100 / 105	886 / 899	3080 / 3480	837 / 837	1 / 1					
10 #6 BOTTOM	5+		12	9	7.4	0	9.60	16 / 18	556 / 570	91 / 440	85 / 163	5 / 7					
11 #7 TOP	3-	0.50	104	88	7.6	tr	24.00	119 / 120	800 / 832	683 / 214	270 / 400	1 / 3					
12 #7 BOTTOM	5+		10	11	7.3	0	7.20	22 / 26	505 / 530	82 / 338	66 / 131	6 / 8					

*SALT CATIONS: H₂O IS WATER SOLUBLE EXTRACT; CO₂, P₂O₅ AND NO₃ ARE EQUIVALENT TO CARBONIC ACID EXTRACTABLE
 (Plants' roots give off CO₂) THE CATIONS ARE THEN DETERMINED ON ATOMIC ABSORPTION SPECTROPHOTOMETER

EXHIBIT B



GUIDE TO SOIL TEST REPORT

TPESL CONTINUALLY UPGRADES ANALYTICAL PROCEDURES SO THAT THE MOST ACCURATE RECOMMENDATIONS CAN BE MADE FOR TEXAS SOILS.

Our Atomic Absorption Spectrophotometer measures the specific cations that make up the salt complex. With this specific information, particularly the levels of Sodium & Calcium, recommendations are much more reliable.

GUIDE TO TPESL SOIL TEST REPORT

TEXTURE Range from 1-Sand through 3-Loam to 6 Heavy Clay

O.M. Organic Matter Improves soil physical condition, water and nutrient holding capacity -- the more the better.

EXTRACTINS Carbonic acid is formed by the plants in the root zone therefore TPESL uses this same acid to obtain nutrient values that are more realistic. Root lab extract with much stronger reagents.

NO₃ This is highly soluble nitrate ion that moves easily with water and is a constantly changing value.

P₂O₅ Extracted with CO₂ -- amount reported in lbs. per acre for the top foot of soil. Amount reported is available to a crop in a normal growing season. Responses can be expected below 40 lbs. per acre and high requiring crops may respond to additional fertilizers up to 200 lbs. per acre.

K Bottom line is the extractable value (under the CO₂ line) -- amount available to the crop in a growing season. 80 ppm minimum and up to 120 ppm for crops with high potassium needs. Soil availabilities vary with soil moisture conditions and interference from sodium levels. Acidity measurement. Most crops prefer 6.7-7.5. 7 is neutral -- above is alkaline, below is acid.

E.C. SALTS A measure of total water-soluble salts expressed as Meq/L. E.C. = Electrical Conductivity.

SALT CATIONS UPPER-After-soluble cations determined on Atomic Absorption Spectrophotometer. Calcium important-should exceed 24 ppm. LOWER-CO₂ extracted (Carbonic acid equivalent) below 100 ppm. The amount of extractable calcium reserves in the soil is also indicated and must be known to properly manage the salts.

Mg/Ca & No./Mg These ratios help evaluate the salt problem; are indicators of soil's physical condition for water & root penetration of soil. Mg/Ca ratio should be less than 6. No./Mg ratio should be below 20 for regular crops and below 10 for sugar producing crops of cantaloupe, citrus, sugar cane, etc....

TPESL EXPERIENCED PROFESSIONALS IN CHEMISTRY, AGRONOMY, AND PLANT PHYSIOLOGY are at your service to help you maximize profits.

Chemistry Field Laboratory, 10000 E. 10th Street, Suite 100, Irving, Texas 75039

RATING GUIDE TO TPESL SOIL TEST REPORT

NITRATE NO₃ -15 = very low
16-30 low
31-60 medium
61-99 high
100+ very high -- caution, seedling injury possible.

PHOSPHATE P₂O₅ -10 = very low
10-20 low
21-39 upper low
40-80 medium
81-99 high
100-150 very high
151+ extremely high - micros may tie up.

POTASH K₂O -40 = very low
40-60 low
61-79 medium
80+ high
MAGNESIUM Mg -9/39 very low
10-13/40-60 low
14/60-80 medium
15/+80 good

E.C. SALTS -5 = very low
6-19 low
20-39 medium
40-59 high
60+ affects most crops, treatment needed
SODIUM Na H₂O/Na should be over 50% of the CO₂/Na so it can leach thru the soil profile. The solubility of the Na is affected by Sulfur and soluble Calcium.
When the H₂O/Na is over 50% of the CO₂/Na and the E.C. (total soluble salt) is high this indicates that better internal drainage is needed.

When CO₂/Na is high and the H₂O/Na is less than 50% this indicates need for chemical treatment to increase the solubility of the Calcium or adding gypsum that contains soluble Calcium or by compounds such as Promesol or Calcium Nitrate that contain soluble Calcium.

THE MOST ACCURATE WAY TO PREDICT THE AVAILABILITY OF SOIL NUTRIENTS IS BY USING THE TPESL METHOD OF EXTRACTING WITH CARBON DIOXIDE (CO₂). EVEN THIS IS STILL AN ESTIMATE OF AVAILABILITY WHICH CAN BE INFLUENCED BY MANY FIELD CONDITIONS.
PLANT ANALYSIS is the only way to determine what nutrients the plants actually get.

PLANT NUTRIENT REQUIREMENTS change with the age and development of the plants. PROPER INTERPRETATIONS OF THE ABOVE INFORMATION ALLOWS THE MOST EFFICIENT USE OF THE FERTILIZER MONEY.

TEXAS PLANT & SOIL LAB, Inc.
Route 7, Box 2131
EDINBURG, TEXAS 78539

SOIL-WATER-PLANT ANALYSIS

SOIL ANALYSIS REPORT

FM 1925, 3.5 Mi. W U.S. 281
Phone 210 383-0739
Fax # 210 383-0730

LARRY VOTAW

CARRIZO SPRINGS - SEWER PLANT

10/05/93
3278-89

SOIL STATUS - 7 Top soil & 5 subsoils samples.

Textures - Top soils are lighter most test: light-loamy with good internal drainage, fair to low water holding capacity, and cation exchange capacity. Subsoils are heavier all test medium heavy with slow internal drainage, high water holding capacity and high cation exchange capacity or heavier.

Total Soluble Salts - All are tests too high for crops - must have treatment. Subsoils are a little lower. Major salts is Sodium & Calcium.

Sodium (high Na can interfere with nutrient uptake and should be managed for leaching) - all tests high with most in Soluble (H_2O Na) form which can leach with deep flushing and good internal drainage. After flushing, more soluble calcium (H_2O Ca) may be needed to convert more Sodium to the Soluble form so it can also leach. Sulfur, Promesol, Calcium Nitrate, Gypsum - AND other products can increase Soluble Calcium in the soil.

Calcium - ALL tests show Calcium reserve (CO_2 Ca) levels are High, any form of Sulfur or acidification may be used to solubilize the calcium. The calcium in the Gypsum is not needed in highly calcareous soils. Subsoils are lower on #6 & 7. Free carbonates are highly variable.

Magnesium - All test very high except #1 Top is low soluble ??

Organic Matter (Humus fraction - slow release N at reasonably good levels is the foundation of any good soil fertility - plant nutrition program. This test determines only the humic (well decomposed - available) portion. - - - - all test very Low.

pH - Ranges from slightly acid to very alkaline.

Nitrate - Top #7 & 6 are very high - OTHERS mostly Low.

Phosphate - Ranges from high #1 Top to very Low #6 Bottom - Tops are higher levels.

Potash - Ranges from high #1-6-7 Tops to #4 tests very low availability - seeds good rates.

RECOMMENDATIONS

Organic Matter: levels indicate little decomposition to humus.

NITRATE: levels are highly variable.

PHOSPHATE: levels are highly variable.

POTASH: also range from high to low.

SALTS: are mostly extremely high with much as Sodium & Calcium.

EXHIBIT "C"

PHOTOGRAPH OF COUNTY MOTORGRADER ON CITY OF
ASHERTON WASTEWATER TREATMENT FACILITY,
JANUARY 16th, 1994



NO. 93-07-08053-CV

LARRY VOTAW

VS.

THE CITY OF ASHERTON

§ IN THE DISTRICT COURT
§
§ 365TH JUDICIAL DISTRICT
§
§ DIMMIT COUNTY, TEXAS

ORDER OF DISMISSAL

On April 14, 2000, Plaintiff's Motion for Nonsuit the above action came on to be heard. It appears to the Court that the Motion is well taken and should be granted.

IT IS, THEREFORE, ORDERED that the above action be and it is hereby dismissed without prejudice to the parties right to reinstitute it; that it be removed from the docket of the Court; and that all costs incurred be taxed as the parties have agreed.

SIGNED this 30th day of Aug, 2000.



JUDGE PRESIDING

APPROVED:

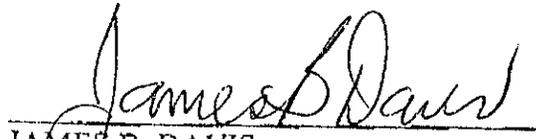
KNOBLES & KLINGEMANN, INC.
109 West Gonzales Street
Seguin, Texas 78155
Telephone: (830) 379-9445
Facsimile: (830) 379-3714

LAW OFFICE OF JAMES B. DAVIS
310 East Nopal Street
Carrizo Springs, Texas 78834
Telephone: (830) 876-3525
Facsimile: (830) 876-5200

BY



WILLIAM L. KNOBLES
State Bar No. 11615500
Attorney for Plaintiff

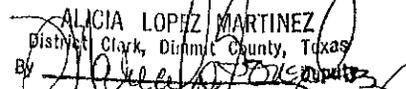


JAMES B. DAVIS
State Bar No. 05503000
Attorney for Defendant

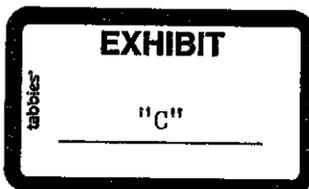
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WLK 91-5200

FILED FOR RECORD
At 4:00 O'clock P M

AUG 30 2000

ALICIA LOPEZ MARTINEZ
District Clerk, Dimmit County, Texas
By 

Vol. 10 pg. 450





NO. 93-07-08053-CV

LARRY VOTAW	§	IN THE DISTRICT COURT
VS.	§	
	§	365 TH JUDICIAL DISTRICT
	§	
THE CITY OF ASHERTON	§	DIMMIT COUNTY, TEXAS

AGREEMENT

This Agreement is entered into on this the 29th day of March, 1999, by and between LARRY VOTAW and THE CITY OF ASHERTON, TEXAS.

1. Definitions.

For the purposes of this Agreement, the following definitions shall apply:

- 1.1 "*Votaw*" shall mean and include Larry Votaw, his heirs, successors and assigns.
- 1.2 "*Asherton*" shall mean the City of Asherton, Texas, its successors, agents and assigns.
- 1.3 The "*Lawsuit*" shall mean the pending lawsuit filed by Votaw against Asherton as styled and numbered above.
- 1.4 The "*Old Facility*" shall mean the now existing waste water treatment plan operated by Asherton, including, but not limited to, a facultative pond, two (2) oxidation/aerobic ponds, an out fall pipe into an unnamed tributary of El Moro Creek, and associated appurtenances located in Dimmit County, Texas, and formerly under permit 11801-001 administered by the Texas Natural Resource Conservation Commission. The "*Old Facility*" is described in a Deed dated May 27, 1982 from Jackson C. Votaw, et ux to the City of Asherton, recorded in Volume 197, Page 550, Deed Records of Dimmit County, Texas, which Deed describes 15 acres and is enclosed by a chain link fence. The "*Old Facility*" is located adjacent to lands owned by Votaw.
- 1.5 The "*New Facility*" is a waste water treatment plant to be constructed on a 51.377 acre tract described in attached Exhibit "A" hereto, which tract is to be conveyed by Votaw to Asherton by specially warranted deed in the form shown on Exhibit "A" contemporaneously with the execution of this agreement.
- 1.6 The "*Easement*" shall mean the outflow easement from the New Facility granted by Votaw to Asherton, in the form of Exhibit "B" hereto.

2. Purpose.

The purpose of this Agreement is to address operational issues concerning the Old Facility pending the completion of the New Facility, to provide for an orderly termination of treatment of municipal sewage at the Old Facility and to provide for the sale and exchange of certain property

by Votaw to Asherton for the construction of the New Facility. The lawsuit will be dismissed without prejudice to refile and any applicable limitations will be tolled, however, presuming that the above-stated purposes are accomplished, the causes of action as stated in the lawsuit will be released.

3. Consideration.

- 3.1 The consideration for this Agreement includes the dismissal, without prejudice, of the Lawsuit by Votaw, the covenants contained in this Agreement, and the following monies to be paid to Votaw by Asherton in consideration for the damages to Votaw's lands from the construction of the pipeline in the easement and for the execution of the deed for the New Facility.
- 3.2 Upon execution of this Agreement by the parties, and of the Easement and Deed by Votaw, and delivery of same to Asherton, Asherton shall pay Votaw the sum of \$50,000.00 for land described in Exhibit "A" attached hereto and incorporated herein and outflow easement acquisition.
- 3.3 In addition, Asherton will convey by specially warranted deed the Old Facility to Votaw, less and except approximately one and one-half (1-1/2) acres on its northwest side which includes the old pump station and new lift pump ("Retained Acreage"). The configuration of the Retained Acreage will be determined by survey commissioned by Southwest Engineers, Inc. In addition, Asherton may retain, if necessary, an underground easement along said Northwest boundary for a pipeline connecting the New Facility, such easement and its location to be determined by survey commissioned by Southwest Engineers, Inc. The deed from Asherton to Votaw of the Old Facility (less and except the Retained Acreage) will be held in escrow as stated in Paragraph Four (4) below.
- 3.4 In addition, Votaw will procure and deliver to Asherton the Easement over and across Votaw's and/or adjacent lands owned by Jackie Votaw Russell for an underground outflow pipe.

4. The Old Facility.

- 4.1 Asherton shall cease to operate the Old Facility when the New Facility is completed, operational and permitted for operations, with the exception that Asherton may continue to use the pump station at the Old Facility on the Retained Acreage to force wastewater and sewage to the New Facility. The Old Facility shall remain fenced during Asherton's occupancy with a substantial chain link fence capable of keeping the Old Facility secure from trespass by individuals and cattle.
- 4.2 The closure of the Old Facility shall be strictly in accordance with the applicable rules and regulations of the Texas Natural Resource Conservation Commission, and/or those of other governmental agencies with jurisdiction thereof. However, any remediation of the Old Facility shall be accomplished only from grant funds and not from the general funds of Asherton. Asherton does agree to utilize any such grant funds dedicated for remediation purposes to remediate the Old Facility. Votaw agrees not to compel, by civil

action nor complaint filed with the Texas Natural Resource Conservation Commission, remediation of the Old Facility by expenditure of tax revenue funds by Asherton, except to the extent that funds for such closure and remediation are allocated, dedicated and provided by grant.

- 4.3 Prior to its conveyance to Votaw and the delivery of the Deed, the Old Facility shall never be used for a municipal or private dump or landfill, nor will it be used for disposal of debris, trash, or toxic or hazardous substances, nor shall the Old Facility be used for a junk yard, storage of inoperable vehicles, shooting range, or for hunting or fishing. These prohibitions of use shall constitute a use restriction on the Old Facility and be a covenant running with the land until the escrowed Deed is delivered to Votaw in accordance with 4:5 below.
- 4.4 It is understood that pending the construction of the New Facility, and its commencement of operations, that the Old Facility will be used only to treat municipal sewage by the City of Asherton through its collection system.
- 4.5 The Deed from Asherton to Votaw of the Old Facility (less the Retained Acreage) shall be held in escrow by Margie Dean, Elliott & Waldron Abstract Co., pending the closure of the Old Facility and the construction and permitting of the New Facility. When the New Facility is constructed and a permit issued for its operation, the Deed will be delivered to Votaw.
- 4.6 Operation of the Old Facility pending completion and permitting of the New Facility shall be in accord with the permits issued for same, however, it is understood that Asherton may not be able to operate within permit effluent standards at all times. For four (40 years) from the date of this agreement, Votaw agrees not to file a civil action nor a complaint with the Texas Natural Resource Conservation Commission concerning operation of the Old Facility outside of effluent standards unless and until there is a substantial deviation from such standards and permit requirements.

5. The New Facility.

- 5.1 The New Facility shall be completed and operated in accordance with the permits issued for same and according to the laws of the State of Texas.
- 5.2 The New Facility shall be used solely for construction and operation of a sewage treatment facility for the City of Asherton and appurtenant functions. The New Facility shall not be used for hunting or fishing or other recreational uses.
- 5.3 Prior to construction of the improvements on the New Facility, Asherton agrees to fence the 51.277 acre tract with an Eight foot (8') chain link or other deer proof fence as a portion of funds granted for the New Facility and thereafter to maintain said fence to keep game and livestock from crossing onto said 51.277 acre tract.
- 5.4 Asherton agrees to proceed diligently with the construction and permitting of the New Facility as soon as grant funds are made available to Asherton.

- 5.5 If the New Facility is not built and/or permitted, and Asherton decides to sell such facility, Votaw retains a First Right of Refusal to purchase said 51.277 acres back from Asherton at the price and under the terms of any bona fide earnest money contract entered into by Asherton. Votaw will have ninety (90) days from receipt of a proposed and bona fide earnest money contract to complete said purchase. If Votaw fails or refuses to purchase the 51.277 acres, Asherton may sell same pursuant to said earnest money contract forever free and clear of the use restrictions stated in 5.2 above. If, however, Asherton does not sell the 51.277 acres pursuant to said proposed earnest money contract, and thereafter enters into a new or revised earnest money contract to sell the 51.277 acres, the First Right of Refusal shall survive and any new or revised earnest money contract shall be resubmitted to Votaw.

6. Nonsuit.

- 6.1 The parties understand and agree that the claims asserted in the Lawsuit are disputed and have settled such disputes by compromise to avoid further litigation, presuming that the New Facility is constructed and permitted as set forth herein.
- 6.2 It is the intention of the parties that the claims brought in the Lawsuit will be ultimately settled and released when (1) the New Facility is completed and a permit to operate same is issued by the Texas Natural Resources Conservation Commission, or any successor agency charged with issuing permits for the construction and operation of a municipal sewage treatment plant, and as a result, (2) Asherton ceases to use the Old Facility and the escrowed Deed is delivered to Votaw. Rather than leave the Lawsuit pending, the parties have agreed to dismiss same without prejudice to file, maintaining all causes of action that each may have. The parties specifically agree that any applicable statute of limitations which would otherwise bar the bringing and prosecution of any claims is hereby tolled for four (4) years from the date hereof. Asherton hereby agrees that it will not assert as a defense any statute of limitations or laches as a bar to such lawsuit when or if same is refiled, if refiled during the tolling period.
- 6.3 By the execution of this Agreement, the parties hereto do not release any of the claims brought in the Lawsuit. When the Escrowed Deed is delivered to Votaw, Votaw will deliver to Asherton a release of the claims stated in the Lawsuit.
- 6.4 The parties hereto mutually and simultaneously authorize and direct their respective attorneys to execute and deliver for entry into the records of the Court such instruments as may be necessary to obtain dismissal of the Lawsuit without prejudice to the rights of all parties as herein stated, taxing the costs of such litigation to the party who incurred same.

7. Miscellaneous.

- 7.1 Words of any gender used in this agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 7.2 This agreement shall be construed under and in accordance with the laws of the State of

Texas, and all obligations of the parties created hereunder are performable in Dimmit County, Texas.

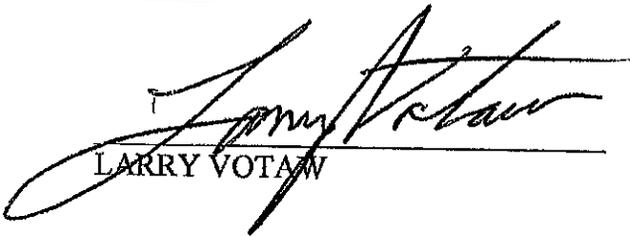
- 7.3 In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 7.4 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 7.5 This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- 7.6 All notices provided to be given under this agreement shall be given by certified mail or registered mail, addressed to the proper party, at the following address:
- | | |
|------------------------------|-----------------------|
| Larry Votaw | City of Asherton |
| P.O. Box 486 | P.O. Box 450 |
| Carrizo Springs, Texas 78834 | Asherton, Texas 78827 |
- 7.7 The word person herein shall be defined in accordance with the Uniform Commercial Code as enacted and amended in the State of Texas.
- 7.8 If there be more than one person named herein and such persons comprise collectively one party to this agreement, the obligations hereunder imposed upon such party shall be joint and several. If there be a guarantor of such party's obligations hereunder, the obligations hereunder imposed upon such party shall be the joint and several obligations of such party and such guarantor and the remaining party need not first proceed against such party hereunder before proceeding against such guarantor, nor shall any such guarantor be released from its guaranty for any reason whatsoever, including without limitation, in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.
- 7.9 The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- 7.10 No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this agreement shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.
- 7.11 In the event either party breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so

incurred by such other party.

7.12 Neither party shall be required to perform any term, condition, or covenant in this agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of either party and which by the exercise of due diligence either party is unable, wholly or in part, to prevent or overcome.

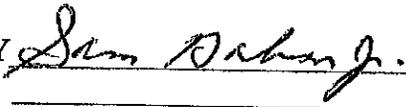
7.13 Time is of the essence of this agreement.

VOTAW:


LARRY VOTAW

ASHERTON:

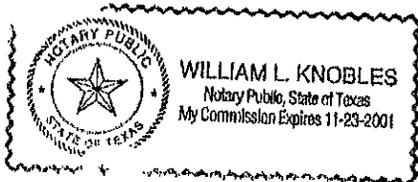
THE CITY OF ASHERTON

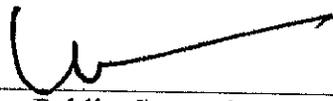
BY 
Its Mayor

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by LARRY VOTAW on the 15 day of July, 2000.




Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by Sam Galvan, JR.
Mayor of the CITY OF ASHERTON, on behalf of the CITY OF
ASHERTON on the 29th day of March, 2000.



Leticia C. Camora
Notary Public, State of Texas

EXHIBIT "A"

LARRY VOTAW TO THE CITY OF ASHERTON

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DIMMIT §

That LARRY VOTAW, joined pro forma by JUDY VOTAW, hereinafter called Grantor, whether one or more, of the County of Dimmit, and State of Texas, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto THE CITY OF ASHERTON, hereinabove and hereinafter called Grantee, whether one or more, of P.O. Box 450, Asherton, Texas 78827, all of the following described real property in Dimmit County, Texas, to-wit;

A 51.377 acre tract of land situated in Dimmit County, Texas being a portion of those tracts conveyed to Larry Votaw by Deeds of record in Volume 237, Page 588 and Volume 238, Page 279 of the Deed Records of Dimmit County, Texas; said 51.377 acres being more particularly described by metes and bounds on attached Exhibit "A" hereto.

LESS AND EXCEPT, and there is hereby reserved unto Grantor, his heirs and assigns forever, all of the oil, gas and other minerals in, and ground water, on, under, and that may be produced from the aforesaid property, however, Grantor, for himself, his heirs and assigns, does hereby waive the right to use the surface of the aforesaid property for drilling, exploration or other surface operations associated with the oil, gas and other minerals and groundwater reserved herein and Grantee shall have the right to drill water wells and produce groundwater from the aforesaid tract which wells produce less than 25,000 gallons per day.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, Grantee's heirs, assigns, and/or successors forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors, and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs, assigns, and/or successors against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance is made and accepted subject to any visible or apparent roadways or easements over or across the subject property, and subject to any and all conditions, easements, restrictions, and reservations, if any, appearing of record relating to the above described property.

"This conveyance is made on an "AS IS, "WHERE IS and "WITH ALL FAULTS" basis. Grantee acknowledges that it is not relying upon any representation, statement or other assertion with respect to the Property condition, but is relying upon its examination of the Property. Except for the warranty of title expressly made herein, Grantor has not made, and does not make any representations, warranties or covenants of any kind or charac-

ter whatsoever, whether express or implied, with respect to the quality or condition of the Property conveyed herein (including, but not limited to, improvements, furniture, fixtures and appliances) ("the Property"), the suitability of the Property for any and all activities and uses which Grantee may conduct thereon, or of the HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES. FURTHER, GRANTOR DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS CONCERNING DESIGN, QUALITY, LAYOUT, FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATION, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT) OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY. GRANTEE HEREBY FURTHER ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES AS TO WATER, SOIL OR GEOLOGY OF THE SUBJECT PROPERTY AND AS TO INCOME TO BE DERIVED FROM THE SUBJECT PROPERTY. WITHOUT LIMITING THE FOREGOING, GRANTOR DOES NOT AND HAS NOT MADE ANY WARRANTIES REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (as hereinafter defined) ON, UNDER OR ABOUT THE SUBJECT PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE SUBJECT PROPERTY WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT, THE RESOURCE CONSERVATION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, THE TEXAS NATURAL RESOURCES CODE, THE TEXAS WATER CODE, THE SPILL PREVENTION AND CONTROL ACT, ANY SO-CALLED FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPERLIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY) OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES (collectively, the "Hazardous Substance Laws"). For purposes of this Contract, the term "HAZARDOUS" and "TOXIC SUBSTANCES" shall mean and include those elements or compounds which are contained on the list of HAZARDOUS SUBSTANCES adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. GRANTEE HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE SUBJECT PROPERTY BY GRANTEE. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS INSPECTED THE SUBJECT PROPERTY AND ACCEPTS THE SUBJECT PROPERTY "AS IS", "WHERE IS" AND "WITH ALL FAULTS".

This Deed is subject to the terms and conditions of a Settlement Agreement of even date herewith by and between the parties hereto.

EXECUTED this _____ day of _____, 2000.

LARRY VOTAW

STATE OF TEXAS §

COUNTY OF DIMMIT §

This instrument was acknowledged before me by LARRY VOTAW
on _____, 2000.

Notary Public, State of Texas
Notary's Name printed:

My Commission expires: _____

90-4149.doc/11-13
WLK 90-4149

51.377 ACRES
DIMMIT COUNTY, TEXAS
VOTAW TRACTS

EXHIBIT "A"

99-001.DOC (PTR)
14 APRIL, 1999

DESCRIPTION

OF A 51.377 ACRE TRACT OF LAND SITUATED IN DIMMIT COUNTY, TEXAS BEING A PORTION OF THOSE TRACTS CONVEYED TO LARRY VOTAW BY DEEDS OF RECORD IN VOLUME 237, PAGE 588 AND VOLUME 238, PAGE 279 OF THE DEED RECORDS OF DIMMIT COUNTY, TEXAS; SAID 51.377 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the southeasterly line of a 40' county road, same being the northwesterly line of said Votaw tract (Vol. 238, Pg. 279) for the westernmost corner hereof, and from which an 8' steel fence post found for the westernmost corner of said Votaw tract (Vol. 238, Pg. 279) bears S55°13'41"W, a distance of 1051.15 feet;

THENCE, along the southeasterly line of said 40' county road, same being the northwesterly line of said Votaw tract (Vol. 238, Pg. 279), the following six (6) courses and distances

- 1) N55°13'48"E, a distance of 693.98 feet to an angle point;
- 2) S38°23'12"E, a distance of 59.26 feet to an angle point;
- 3) N58°53'11"E, a distance of 170.02 feet to an angle point;
- 4) N24°12'29"W, a distance of 40.49 feet to an angle point;
- 5) N14°37'21"E, a distance of 46.37 feet to an angle point;
- 6) N55°13'48"E, a distance of 339.98 feet to a point for the northernmost corner hereof;

THENCE, S35°05'50"E, leaving the southeasterly line of said 40' county road, over and across said Votaw tract (Vol. 238, Pg. 279), passing at a distance of 924.65 feet a wooden fence post found in the southeasterly line of said Votaw tract (Vol. 238, Pg. 279), same being the westernmost corner of that tract conveyed to Larry Votaw by deed of record in Volume 252, Page 319 of said Deed Records, and continuing for a total distance of 1800.00 feet to a point for the easternmost corner hereof;

THENCE, S55°13'48"W, leaving the westerly line of said Votaw tract (Vol. 252, Pg. 319) over and across said Votaw tract (Vol. 237, Pg. 588), a distance of 1250.00 feet to a point for the southernmost corner hereof;

14 APRIL, 199.
99-001.DOC
PAGE 2 OF 2

THENCE, N35°05'50"W, continuing over and across said Votaw tract (Vol. 237, Pg. 588), passing at a distance of 873.85 feet the common line of said Votaw tracts, and from which point an 8' steel fence post found for the southernmost corner of said Votaw tract (Vol. 238, Pg. 279) bears S55°09'41"W, a distance of 1086.43 feet, and continuing for a total distance of 1800.00 feet to the POINT OF BEGINNING, containing an area of 51.377 acres of land, more or less, within these metes and bounds.

I, PAUL T. ROSS, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A BOUNDARY SURVEY WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

Paul T. Ross 14 APR 99
PAUL T. ROSS DATE
R.P.L.S #5158
STATE OF TEXAS



EXHIBIT B

JACKIE VOTAW RUSSELL and LARRY VOTAW TO THE CITY OF ASHERTON

RIGHT OF WAY AGREEMENT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DIMMIT §

That the undersigned (hereinafter called "Grantor", whether one or more) for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby GRANT, BARGAIN and CONVEY unto THE CITY OF ASHERTON, whose address is P.O. Box 450, Asherton, Texas 78827, its successors and assigns (hereinafter called "Grantee"), the right to construct, lay, inspect, maintain, repair, operate and remove one (1) pipeline only, being Nine inches (9") in outside diameter for the transportation of waste water and municipal sewage from its collection system to Grantee's waste water treatment plant, under the following described lands of Grantor, located in Dimmit County, Texas, to-wit:

The legal description of said right-of-way and easement granted herein is attached hereto as Exhibit "A".

The property described in Exhibit "A", attached hereto and made a part hereof, is a Fifteen foot (15') permanent easement and right-of-way (subject to termination by abandonment as set forth below); and a Ten foot (10') temporary workspace easement as depicted on attached Exhibit "B" hereto. The Ten foot (10') temporary workspace easement shall expire when construction of the Pipeline is completed, or ten (10) years from the date hereof, whichever first occurs.

The Grantee shall have the right of ingress and egress over and across said right-of-way and easement, and is limited to reasonable times and places for the carrying out the intent of the rights granted hereby to Grantee, the right to inspect, patrol, maintain, and replace the pipeline, and the right from time to time to cut and remove trees, underbrush and other obstructions that may injure said pipeline and appurtenances or interfere with the operation and maintenance thereof, except for crops and improved or native grasses. Grantor shall reasonably designate the gates and roads to be used to access the easement. However, after construction of the pipeline, Grantee, its agents and representatives shall enter said right-of-way only after 24 hours notice to and accompaniment by Grantor, except in cases of bona fide emergency. If after such notice, Grantor does not make himself available to accompany Grantee, Grantee may enter the easement to effect repairs and maintenance. If entry is made by reason of emergency, Grantee shall notify Grantor of the entry within twenty-four (24) hours.

Grantee will not damage or remove large trees, except as is necessary to install the Pipeline. This grant does not permit Grantee to install any surface facilities of any nature on Grantor's lands, except for pipeline markers.

No fences are to be cut without the express written consent of Grantor. If any fence is cut with such consent, the fence shall first be braced with minimum four and one-half inch (4-1/2") heavy wall pipe braces imbedded in cement a minimum of five feet (5'), configured in accordance with Farm Service Agency recommendations, so as to prevent sagging of the wire. While such fence is down or cut, Grantee shall maintain a guard or watchman at such opening to prevent cattle from escaping or mixing into other pastures. All fences which are cut by Grantee shall be restored to a good, or better condition as before. A fifteen-foot (15') metal gate will be installed at any fence crossing and will be kept locked at all times.

Grantee is strictly liable to Grantor for all damages to Grantor's property and livestock caused by Grantee, its agents, employees, and contractors, or by the operation of the pipeline and appurtenant facilities.

Grantor, Grantor's heirs, successors and assigns reserve the right to fully use and enjoy the surface of the said right-of-way and easement hereinabove described, however, Grantor shall not place any building or structure on the permanent easement.

The top of Grantee's pipeline and underground fittings and/or underground appurtenant facilities in the right-of-way will be buried and shall be maintained buried at least thirty-six inches (36") below the ground so that it will not interfere with the use of said property.

Grantee shall backfill the ditch into which the pipe is placed at intervals of every one thousand feet (1,000') at least fifty feet (50') in width so as to permit cattle and vehicles to move across the easement right-of-way during construction of the pipeline. Once Grantee begins construction of the pipeline, Grantee shall prosecute said construction with diligence so that any ditch opened by Grantee for the laying of the pipeline shall be closed, backfilled and leveled within fifteen (15) days from the opening of said ditch, subject to force majeure.

If any livestock or wildlife are killed during the construction, maintenance, operation or removal of the pipeline by any of Grantee's agents, servants, employees, or other person who enters the land in furtherance of Grantee's business, or if livestock or wildlife are unlawfully injured in any manner including injury resulting from the ditch into which the pipe is placed, the Grantor shall be reimbursed by Grantee the fair market value of the loss of the killed or injured animal. During construction, and if cattle are present on the property, Grantee shall erect temporary barriers or fences or electric fences, to prevent cattle from entering the ditch.

Within fifteen (15) days after construction of the pipeline is completed, and after any activities, including but not limited to, repairing, maintaining, or removing the pipeline, which disturb the surface of the right-of-way, Grantee will:

1. disc and seed the easement right-of-way with buffel grass; and
2. fill and grade the right-of-way so as to restore the same to its original level as nearly as possible.

In regard to construction, maintenance, repair or removal of the pipeline and restoration of the surface thereto, Grantee shall employ double ditching. Grantee agrees to first remove the topsoil of the affected area and place same in one location and then remove the subsoil and place it at a separate location. Grantee agrees to replace the subsoil first and then replace the topsoil last immediately thereafter,

3. build and maintain such water diversion terraces as are required to Grantor's reasonable satisfaction to prevent soil erosion on the easement right-of-way and Grantee agrees to employ such other means as are necessary to prevent erosion on the easement occasioned by its use and operation of same and as are necessary to reasonably control the drainage of water across and along the easement;
4. remove from the premises all broken or discarded material, machinery, spent welding rods, trash, or debris left from Grantee's activities and maintain right-of-way clean of same at all times. Under no circumstances will Grantee be allowed to bury debris, trash or foreign materials of any kind on any of Grantor's lands;
5. rake up and burn (or, at Grantee's option, chip and spread) all brush removed from the right-of-way and bury all rock located in or shoveled out of the right-of-way. If conditions do not permit brush to be burned, then Grantee will chip or remove all brush removed from the right-of-way.
6. plant or sprig the easement right-of-way with buffel grass seed;
7. Should Grantee cross any roads of Grantor with the pipeline, Grantee will install gravel, road base, or caliche over said crossing, compacting same so that such crossing does not subside. If the crossing subsides, Grantee will fill such crossing to grade with gravel, road base, or caliche so that same remains passable by ordinary passenger vehicle.

Grantee further agrees to mow said right-of-way at least twice a year. Grantee agrees to maintain and repair any damage done to Grantor's roads, culverts, fences, gates and cattle guards by Grantee, within a reasonable period of time (not to exceed fifteen (15) days from each occurrence). Grantee shall be liable for any commingling of livestock resulting from Grantee's use of such right-of-way.

The consideration paid to Grantor at the time this easement is executed includes full and final payment for any and all damages to growing crops, pasturage, timber (trees or brush), fences, buildings or other improvements of Grantor located on the easement (but not on Grantor's other lands) which result from the exercise of the rights granted during initial construction, but

subject to remediation as set forth herein, and Grantor, for himself, his heirs, representatives and assigns, hereby releases Grantee from any and all such liability. Thereafter, Grantee shall promptly assume all responsibility for accidents and damages which may arise out of its use of said easement and Grantee hereby agrees to pay any and all claims and damages which may arise from laying, constructing, repairing, inspecting, maintaining, operating and removing said pipeline and agrees to pay all costs and expenses, loss and damage, to persons or property including, but not limited to, growing crops, wildlife, livestock, cattle, water wells and pipelines, stock tanks, roads, fences, timber, buildings, native or improved grasses, groundcover, trees or brush. Any such damages shall be due and payable within thirty (30) days from notice to Grantee of such damages. This covenant to pay such damages shall be a continuing covenant and run with the land.

Grantee, or the agents, servants, employees, contractors, and/or subcontractors of Grantee will, while upon the land of Grantor, pursuant to the terms of this agreement, display their company name upon their vehicles and, upon request, will stop and identify themselves, their destination and the purpose of their presence upon the lands of Grantor.

Should this pipeline develop a leak on Grantor's property, Grantee shall immediately proceed to effect repairs and mitigate any and all damages resulting therefrom. Such mitigation shall include all emergency measures necessary to minimize the spread of the product into the soil and ground water. Should Grantor notice a leak, Grantor will promptly notify the Grantee of same.

Any contractors hired by the Grantee shall, prior to entry, tender to Grantor evidence of general liability insurance with \$100,000.00/\$300,000.00 limits and at least a \$1,000,000.00 umbrella.

The pipeline right-of-way and easement herein granted may be used by Grantee or its successors or assigns for transportation of waste water and municipal sewage from Grantee's collection system to Grantee's waste water treatment facility only, for ~~four (4)~~ ^{Ten Years} years from date hereof and so long thereafter as Grantee transmits such products through said line without cessation of more than four (4) years, but if after the expiration of ~~four (4)~~ ^{Ten Years} years from date hereof, Grantee or its successors or assigns, fail for any reason to transmit such products through said line for four (4) years, then this grant shall terminate as to all parties, and all rights herein granted shall automatically revert to Grantor or its successors or assigns.

A condition to the granting of this easement and its continuation is that no employee, representative or contractor of Grantee or any other person allowed to come upon said land by Grantee shall be permitted to consume alcoholic beverages or illegal drugs, hunt, fish, swim, camp or picnic on said land, and no dogs, guns, cameras, firearms, motorcycles, three or four wheelers, fishing equipment or other sporting paraphernalia of this type will be permitted on the premises or Grantor's adjacent lands. Further, a 20-mph speed limit shall be strictly enforced as to grantee, its contractors, agents, and representatives. If any of Grantee's representatives or employees violate this provision or become objectionable to Grantor, Grantor has the right to eject such party from said lands and thereafter prohibit such party from entering upon said lands. If any of Grantee's agents, guests, employees, contractors or representatives are caught with game or wildlife killed or otherwise taken from Grantor's lands, as well as any other property taken, including, but not limited to, mesquite, skulls, deer antlers, petrified wood, arrowheads, cactus and artifacts, then Grantee shall compensate Grantor in an amount equal to the fair market value thereof.

Prior to commencement of construction Grantee shall advise Grantor of its intention to commence by telephone at (830) 876-5163. No surveying or construction shall take place during deer and quail season or when the premises are wet.

Grantee may not grant access, ingress or egress over said right-of-way to third parties other than employees, representatives or contractors, who do not hold this right-of-way grant. The rights herein granted shall be exercised in such a manner as does not interfere with Grantor's use of its lands described herein or adjacent to the right-of-way. Grantor may grant other easements and rights-of-way so long as such rights are in conjunction with or do not disrupt or interfere with Grantee's use, possession and occupancy of same. Grantor also reserves the right to grant surface and subsurface leases and agreement to third parties without the need for consent or joinder of Grantee.

In the event of the breach of any provision of this easement, Grantee shall pay to Grantor all costs and expenses reasonably incurred including reasonable attorney's fees and costs of court incurred by Grantor for the enforcement of the provisions of this easement. Venue for any cause of action or any other assertion of a right under and of the terms of this easement shall be in Dimmit County, in the State of Texas. It is controllingly agreed and understood that time is of the essence in the performing of each responsibility under the terms of this easement.

This right-of-way easement is made subject to any valid leases, mortgages, and right-of-way easements covering said lands as shown or record in Dimmit County, Texas.

All notices to be sent to Grantee shall be sent to the following address:

The City of Asherton
P.O. Box 450
Asherton, Texas 78827

All notices to be sent to Grantor shall be sent to the following address:

Larry Votaw
P.O. Box 486
Carrizo Springs, Texas 78834

Either party hereto may from time to time designate in writing a different address or agent for the giving of any notice hereunder.

All notices sent forth herein shall be in writing. Written notices shall be sent by the following means:

- a.) U.S. Mail, Certified, Return Receipt Requested;
- b.) Telefax, followed buy U.S. Mail, Certified, Return Receipt Requested;
- c.) Overnight Express Service (Federal Express, Airborne, etc.).

TO HAVE AND TO HOLD the said right-of-way and easement unto Grantee, its successors and assigns, for four ~~(4)~~ years from the date hereof, and as long thereafter as waste water and effluent is transported through said pipeline without cessation or more than twenty-four (24) consecutive months; as hereinabove provided, and the undersigned hereby bind themselves, their heirs, executors and administrators, successors an assigns, to warrant and forever defend all and singular said premises unto Grantee, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through and under Grantor, but not otherwise.

With Grantor's consent, the Grantee shall have the right to assign this grant in whole or in part, however, Grantee and each subsequent grantee, shall notify Grantor by mail within thirty (30) days of each such future assignment. Consent to assign shall not be unreasonably withheld by Grantor. No assignment of this easement shall release Grantee from liability for breach of any obligation occurring prior to such assignment, or the aforesaid notice of assignment to Grantor, whichever date is later in time. The terms and provisions hereof shall inure to the benefit of and be binding upon Grantor and Grantee and their respective heirs, representatives, successors or assigns.

Executed this the _____ day of _____, 2000.

THE CITY OF ASHERTON

BY *Sam Asherton*
Its Mayor

LARRY VOTAW

Jackie Votaw Russell
+ JACKIE VOTAW RUSSELL

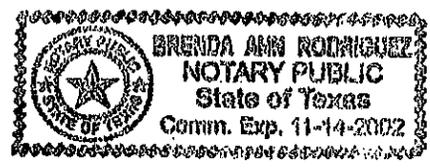
STATE OF TEXAS §
COUNTY OF DIMMIT §

This instrument was acknowledged before me on _____, 2000 by
LARRY VOTAW.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF DIMMIT §

This instrument was acknowledged before me on May 8, 2000 by
JACKIE VOTAW RUSSELL.

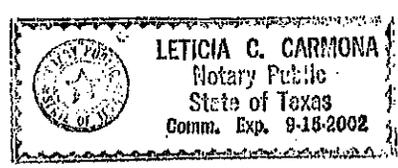


Brenda Ann Rodriguez

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Dimmit §

This instrument was acknowledged before me on March 29, 2000 by
Sam Salvan, JR, Mayor of THE
CITY OF ASHERTON.



Leticia C. Carmona

Notary Public, State of Texas

EXHIBIT "A"

The easement centerline out of Tract No. 3

BEGINNING at a point on the southwest line of the H&GNRR Survey #1, Block 1, Abstract No. 142 located South 35° East approximately 994.00 feet from the west corner of the said Survey and also South 35° East 7.5 feet from the south corner of a 41.12 acre tract referred to in the 548.33 acre Tract No. 3 set aside to John Bader, et al;

THENCE with the easement centerline parallel to and 7.5 feet southeast of the southeast line of the 41.12 acre tract North 55° East approximately 1,952 feet to a point;

THENCE with the easement centerline parallel to and 7.5 feet northeast of the northeast line of the 41.12 acre tract North 35° West approximately 911.00 feet to a point 7.5 feet southeast of the northwest line of the said 548.33 acre Tract No. 3;

THENCE with the easement centerline parallel to and 7.5 feet southeast of the northwest line of the 548.33 acre Tract No. 3 North 55° East approximately 3,326 feet to a point on the northeast line of the 548.33 acre tract containing approximately 5.69 acres of land, more or less.



CLARENCE L. LITTLEFIELD, P.E.
PRESIDENT

SOUTHWEST ENGINEERS, INC.

ENGINEERS - PLANNERS
307 St. Lawrence Street Phone 830-672-7546
Gonzales, Texas 78629 Fax 830-672-2034

January 25, 2006

Mr. Gilberto Gonzalez, Jr., Mayor
City of Asherton
P. O. Box 450
Asherton, TX 78827

Re: Asherton, Texas
Wastewater Treatment Plant
TWDB Grant No. G19300/G19400/1635
SEI Project No. 0211-001-96

Dear Mr. Gonzalez:

This letter pertains to Asherton's wastewater treatment plant and further describes the plan we proposed in our letter of January 4, 2006, and discussed during the City Commission meeting of January 16, 2006. I have attached a preliminary budget for that plan.

We propose that part of the remaining, approximately \$650,000, Economically Distressed Areas Program funding be used to purchase the remaining quarter section of land on which the existing wastewater plant is located. The attached map illustrates this land. The reason for this acquisition is three fold.

The existing treatment plant does not meet the State's requirements, so with future funding, the City would use the land to construct a new wastewater plant. Texas Commission on Environmental Quality requires the lagoons to be watertight. It has been alleged that the existing lagoons leak, and evidence has been produced that could substantiate that claim. Documents from original construction indicate little effort was made to make the lagoons watertight. Consequently, it would be difficult for an engineer to certify that the lagoons comply with the States leakage limitations. Reconstructing the lagoons to the condition required by the State so that an engineer could make such a certification would be difficult and expensive.

EXHIBIT

"E"

The permit for the plant limits the biochemical oxygen demand to 30 mg/l, as well as other limitations. Computations indicate that the existing lagoons should be adequate for that limit, at least for the current service load. However, in the past the effluent has far exceeded the biochemical oxygen demand limitation. The City would use the land to dispose its effluent by irrigation of pastureland, and avoid releasing water from the lagoons that does not meet the required limitations.

The adjoining property owner filed a lawsuit claiming damage to his property due to leakage from the lagoons. That suit has been withdrawn because the City intended to construct a new plant. If the City owns this land, the basis for damage and reinstating the lawsuit would be removed.

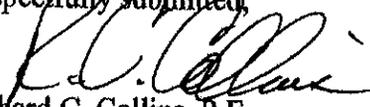
We propose that part of the remaining funding be used to install an irrigation system for effluent disposal by land application. As previously discussed the intent would be to avoid permit violations and penalties for discharging effluent that does not meet the water quality standards. This would include clearing and sprigging an area for irrigation, center pivot irrigation equipment, a pump and irrigation line to draw water from the lagoons and pump it to the center pivot irrigation equipment, intake lines in the last two lagoons and related electrical and site work.

We propose to use the remainder of the funding to construct a leakage collection system around the lagoons. This would consist of a trench partially filled with gravel, partway around the lagoons and about twelve feet deep. A 4-inch perforated pipe would be installed near the bottom of the trench and graded to a sump near the northeast corner of the lagoons. A small submersible wastewater pump would be installed in the sump to pump leakage through a 3-inch pipe back to the first pond. The intent of these improvements would be to collect any leakage which may occur and return it to the plant. Another intent would be to lower the water table below the elevation of the water course along the eastern boundary of the site. The result would be classified as rapid infiltration, a very effective treatment technique.

Please call Clarence L. Littlefield, P.E. or me if you have any questions concerning this matter, we will be happy to meet with you to discuss the City's project.

Please let me know how you wish to proceed.

Respectfully submitted,


Richard C. Collins, P.E.

Attachments

01/25/06
 Asherton, Texas
 Wastewater Treatment Plant

Estimate for acquiring land adjoining the existing plant, improving and irrigation area, installing irrigation piping and equipment and constructing a leakage collection system.

1.	40	ac	Clearing and Grubbing	@	\$300.00	\$12,000
2.	35	ac	Sprigging Coastal Bermuda Grass	@	\$300.00	10,500
3.	2	ls	12" Lagoon Outlet	@	\$8,000.00	16,000
4.	1,100	lf	8" Irrigation Line	@	\$12.00	13,200
5.	1,600	lf	Power Line	@	\$4.50	7,200
6.	1	ls	400 gpm Irrigation Pump	@	\$35,000.00	35,000
7.	1	ls	670' Center Pivot Irrigation System	@	\$60,000.00	<u>60,000</u>

Subtotal Irrigation Improvements 153,900

8.	2,580	lf	Collection Trench W/ 4" Perforated Pipe and Gravel Fill		\$50.00	129,000
9.	700	lf	3" Effluent Line		\$7.00	4,900
10.	1	ls	Pump Well and Pump		\$28,000.00	28,000
11.	1,200	lf	Buried Power Cable		\$4.50	<u>5,400</u>

Subtotal Leakage Collection System 167,300

Subtotal						\$321,200
Contingencies						32,100
Basic Engineering Services						42,400
Other Engineering Services ¹						106,000
Fiscal, Legal, Administrative, Etc.						<u>25,100</u>

Total Preliminary Budget Estimate \$526,800

Site Acquisition
 Less Existing Site 51 ac.

Reconciliation of expenditures to date with the budget has not been completed at this time; however, from preliminary tabulation, approximately \$650,000 remain uncommitted. The remaining funding includes \$26,000 in loan funds for which the bonds have not been issued.

¹ Site Acquisition \$15,000; Site Surveying \$4,000; Geotechnical \$4,000; Inspection \$10,000; Facility Plan And Environmental Report Amendments \$7,000; Pollution Prevention Plan \$4,000; Wastewater Permit Amendment \$12,000; Previous Engineering Efforts \$50,000.

78.92

1,580.00

225,000.00

Keep Water Ret. use of Storage & operation

JOHN FOLMER
A-59

55 1
56 2 Fnd. 3/8" Spike
423.85'

P. O. B.
Set 5/8" Iron Rod

N 55°23'21" E 1640.57'

A-1020

N 35°15'10" W
260.06'

8.93 Ac

6.07 Ac
N 54°33'20" E
990.01'

7.00 Ac.
V. 197, P. 538
D.R.D.C.T.

129.92 Acres
Exhibit C

RICHARD GILLUM
A-71

Set 5/8" Iron Rod

N 35°15'10" W



1" = 500'

197.52' 1 Ac

S 54°54'29" W 2609.95'

Set 5/8" Iron Rod

PLOT DATE: 12-21-04 2:42 PM

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AS SURVEYED ON THE GROUND, BY ME ON DECEMBER 2, 2004.

Jerry Moore
JARREL L. MOORE
REGISTERED PROFESSIONAL LAND SURVEYOR
LICENSE NO. 4854

JERRY MOORE
LAND SURVEYING

Land Surveying/Mapping
608 N. Carancahua, #808
Corpus Christi, TX 78478
(361) 882-0434 Fax (361) 882-0440



PLAT OF

129.92 acres of land out of the RICHARD GILLUM Survey No. 56, A-71, Dimmit County, Texas, and being all that 7.00 acre tract described in Vol. 197, Pg. 538, of the Deed Records of Dimmit County, Texas, and a portion of that 153.00 acre tract described in Vol. 125, Pg. 171, of the Deed Records of Dimmit County, Texas.

Completion Date: 12/21/04	File Name: 041201VA.DWG
Scale: 1" = 500'	Surveyed by: JLM, ALM
Drawn by: JLM	Checked by: JLM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2013 AUG 08 10:03

CHIEF CLERKS OFFICE

08/08/2013

US POSTAGE

\$02.12



ZIP 78834
041110230087

LANGLEY & BANACK, INC.

4TH & HOUSTON • P.O. DRAWER 218 • CARRIZO SPRINGS, TX 78834

RECEIVED

AUG 08 2013

TCEQ MAIL CENTER
MM

Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE

2013 AUG 08 10:03

