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## MEMORANDUM

To: Michael and Chantel Waldron, Fran Hill

Subject: Property at 316 East Buena Vista

Date: August 27, 2008

I met with you and Fran on August 8, 2008 to discuss the use of an old well, as well as water right issues relating to a parcel of property you are proposing to acquire. Figure 1 shows a 1995 survey of the property over a recent aerial photo. The property is located at 316 E. Buena Vista Street. I will summarize my findings and research to-date.

The well on the property is what can be referred to as a pre-basin well. This means that the well was drilled prior to the State Engineer declaring the Rio Grande Basin on November 29, 1956. Because the well is a pre-basin well, no diversion permit is needed from the State Engineer. In the future, however, this well could fall under the jurisdiction of the State Engineer. As an example, if the well had to be re-drilled in a new location because the casing failed, then drilling a replacement would invoke the jurisdiction of the State Engineer. At this time, you would file a declaration of the well, identifying it as a pre-basin well. You would also need to include pertinent information establishing that the well was indeed pre-basin. Additionally, in Santa Fe, occasionally neighbors file complaints with the State Engineer relating to wells. If this were to happen, the State Engineer would probably invoke his jurisdiction and investigate the complaint. Again, you would file a declaration with the State Engineer claiming it was a pre-basin well.

My belief that the well is a pre-basin well is based on a number of facts. Photographs taken in August 2008 show a well house around the well. The well house is constructed of a type of structural clay tile brick which was probably manufactured no later than the mid-1940's.

Further, although there was a lateral<sup>1</sup> from the Acequia Madre, the property is actually higher than the lateral and irrigation water could not have been diverted off the ditch onto the property by gravity. In the late 1800's and the very early

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<sup>1</sup> Referred to as Ditch 11 on the State Engineer 1977 Hydrographic Survey

1900's, where there is evidence of an orchard and landscaping irrigation being done on the property, pumps were not common. It would seem reasonable that the well on the property was probably a hand-dug well to provide water for an early orchard, then used for the landscaping. A well approximately 15 to 25 feet deep would have encountered water.

A history of the property<sup>2</sup> states that the 316 East Buena Vista properties was originally a part of a large tract of land referred to as the Cross Orchard<sup>3</sup>. The Cross Orchard was subsequently divided into several smaller parcels. H. H. Dorman became the owner of land originally encompassing the eastern half of the orchard. Adeline R. Keachie<sup>4</sup> built a home on the western portion of the orchard. The 316 Buena Vista property, acquired by Francis Wilson in July 1909<sup>5</sup>, was between the Keachie and Dorman properties. The Wilson, Keachie and Dorman properties are shown on a historic property document referred to as the "King's Map", a map drawn in 1912 of the downtown area of Santa Fe by Nat King (See Figure 2). The same map also shows Cross Street coming from the south and terminating into the Dorman property. Cross Street may have been the original entrance into the Cross Orchard, as Buena Vista Street did not yet exist and therefore access from the north was not possible.

The 1909 deed of the property, when Wilson acquired it, states that the property was bounded on the north by the Acequia Madre. Old maps show that this description makes sense. An 1886 map of the downtown area (See Figure 3) indicates that the Acequia Madre originally did flow in the approximate area of Buena Vista Street. This is further documented in another 1912 Nate King map (See Figure 4) of the downtown area.

After the Wilson acquired their portion of the former Cross Orchard, they began extensive landscaping of their property. The Sze history states<sup>6</sup>: "Charlotte Wilson, wife of Francis Wilson, was one of Santa Fe's outstanding gardeners. The sloping land was terraced and irrigated by a unique system of sluiceways which took water from one level to the next. In addition to the remains of the old orchard, including apple, pear, plum, and a very large apricot tree, there were roses, lilies, nasturtiums, and so on in the placita, garden vegetables at the back of the yard, on the west side different berries, and a thick stand of currant bushes on the house side of the Acequia Madre, which ran along the front property line."

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<sup>2</sup> Corrine P. Sze, Ph.D., Research Service of Santa Fe, December 2, 1993, pg 8

<sup>3</sup> Cross originally purchased at least a part of the tract for a Luis Rivas in 1887.

<sup>4</sup> Kings map shows spelling as Ketchy

<sup>5</sup> Santa Fe County deed shows that the Wilsons purchase property bounded by the Acequia Madre on the north in an area known as Buena Vista Heights on Capitol Hill. Buena Visa Street officially opened in 1911, after a long struggle with adjacent property owners.

<sup>6</sup> Corrine P. Sze, Ph.D., Research Service of Santa Fe, December 2, 1993, pg 10

The Wilsons lived at 316 East Buena Vista Street until their death, Francis Wilson in 1952 and Charlotte Wilson 1954. The house was sold in about 1956 by the Wilson heirs to Richard R. Sprier, a geologist. From 1958 to about 1980 it was the home of the family of former Justice William R. Federici. Mrs. Federici was recently contacted<sup>7</sup> and she stated that the well was on the property when they moved in and that they used it for landscape irrigation.

The property was purchased in the mid-90's by David Kent and Margaret Love, the owners of Berkley Mills, a California furniture maker. A history prepared by them states: "The garden is full of rare and unusual plants, more of which show up every year! When we first saw the garden it had been neglected for many years and was entirely covered with elm trees which almost hid the house! Underneath the brush we noticed a two-inch irrigation pipe running along the fence line. Feeding this was an old agricultural well in the rear of the property. Unfortunately, the pump had frozen up from neglect and the pipes were full of rust. The well, however, turns out to be a great old one which produces a steady 15 to 20 gallons per minute! We have run new two-inch polypropylene feeder lines to key parts of the property. These lines are four feet down with irrigation system wiring which terminates in the well house where controllers would be installed."<sup>8</sup>

I examined a survey of the property dated 1995<sup>9</sup>. This survey shows a "pump house" in the location of the current well and well house. To further establish the date of the well, it would be helpful if property surveys of each time the house transferred ownership could be acquired. These property surveys, if they contain notation of the well, could be further proof of the age of the well.

The Sze history of the property indicates that the property was probably used as an orchard in the late 1800's. A color-coded 1912 King's Map located at the State Engineer's office shows that the property was irrigated from the Acequia Madre running along the north side of the property. A survey in 1914 by the State Engineer showed that a portion of the property was irrigated from hydrants (See Figure 5). This hydrant irrigation notion by the State Engineer is not well understood as no supporting documents describing field surveys or how it was determined could be located in old State Engineer records. It may true that a portion of the property was occasionally irrigated by hydrants in 1914, but as the City of Santa Fe grew, this practice was terminated as the water was needed for homes instead. Today, it is simply not possible to irrigate any land from a City owned fire hydrant.

A hydrographic survey done by the State Engineer on the property in 1977 shows no irrigation occurring on the property. However, the survey also notes

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<sup>7</sup> Telephone conversation with Fran Hill with Mrs. Federici on August 26, 2008.

<sup>8</sup> Berkley Mills, circa mid-1990's

<sup>9</sup> Plat of Survey for A. Scott Kelso, prepared by Juan A. Flores, P.S. No. 10,830, dated January 19, 1995

that this determination was made not as a result of an actual property survey, but rather because the Acequia Madre lateral (Ditch 11) no longer existed. With the assistance of an attorney<sup>10</sup> from the Office of the State Engineer's, we researched to determine if what is called an "Offer of Judgment" was entered into the Santa Fe District Court. The "Offer of Judgment" would show the amount and the priority date of any water rights appurtenant to the land. No "Offer of Judgment" was found. A possible reason for not finding the document is simply that the property was somehow overlooked in the Santa Fe Water Right Adjudication.

Figure 6 shows the property on top of a 1977 State Engineer Hydrographic Survey. The property is included under two Tract Numbers—Tract 11.145 and Tract 11.144. The Acequia Madre lateral can be seen on the north side of the property.

The State Engineer 1977 Hydrographic Survey is based partially on the King's Map as well as a Hydrographic Survey completed by the State Engineer in 1914. It would appear that the western portion of the property was acquired from Lot 10 which was owned by Mrs. Keachie. The footprint of the house shown on the 1995 Flores Survey does not exactly match the house as it exists today.

The color coding on the King's Map showing irrigation off the Acequia Madre Lateral is not well understood. As stated previously, the property is actually higher than the Acequia Madre and the water could not have been diverted by gravity off the ditch.

I believe it would be possible at a future date to acquire water rights through the Santa Fe District Court. The Court case is still active and is currently assigned to Judge Daniel Sanchez.

To present the case to the Court, you would have to work through an attorney. If former Justice Federici would do it, it would be helpful as he is familiar with the property. There will have to be additional research done on the Cross Orchard to understand better how it was irrigated. Also further research into Wilson's irrigation practices need to be researched. This research could help to further establish the age of the well. It is entirely possible that this well is a pre-1907 well, which means that the water rights associated with the property have a special legal status.

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<sup>10</sup> Perry Abernathy, Esquire, kindly researched very complex Court filings located at the Office of the State Engineer.



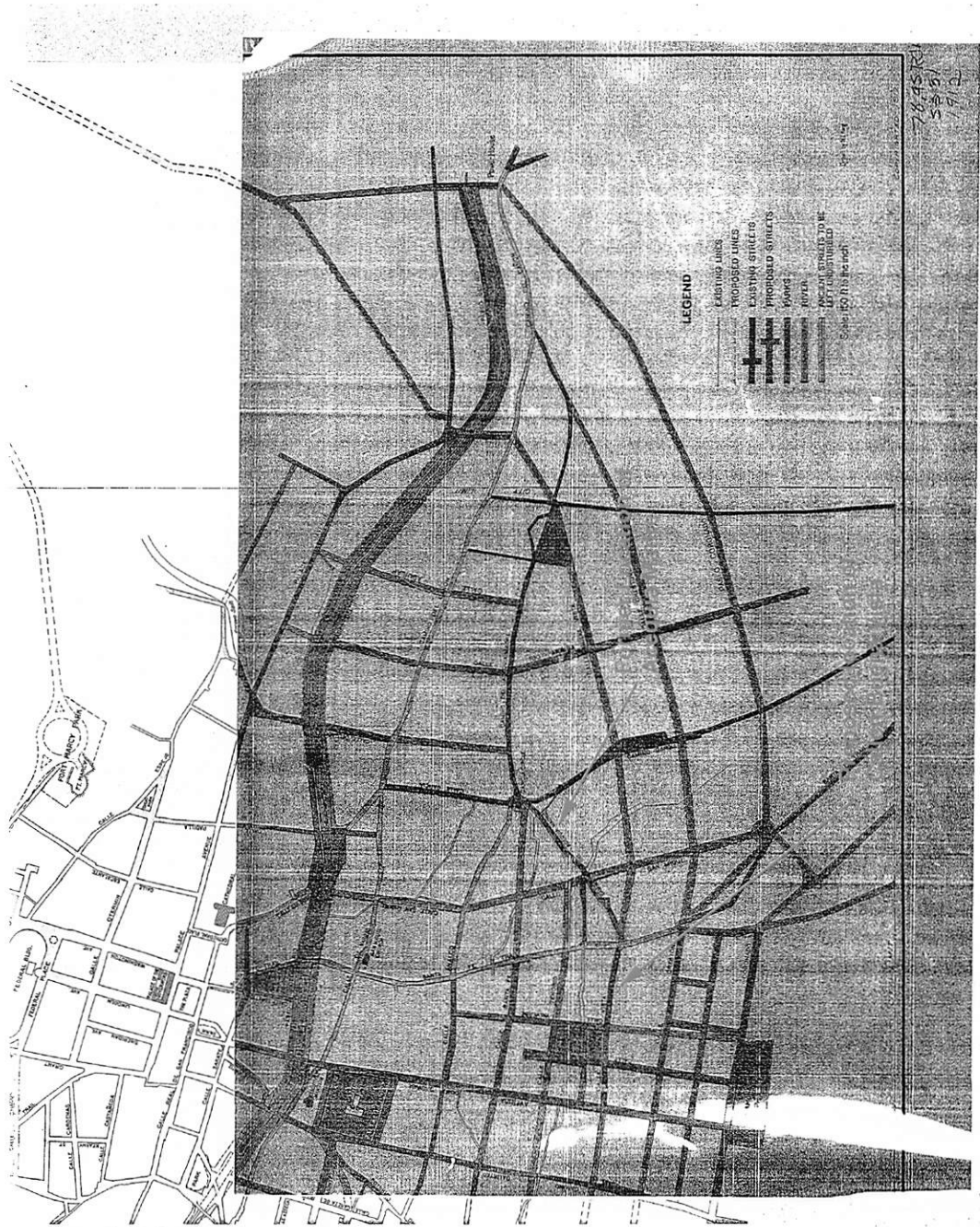


**Figure 1**  
Juan Flores 1995 Survey of the 316 East Buena Vista Street property over a 2005 aerial photograph



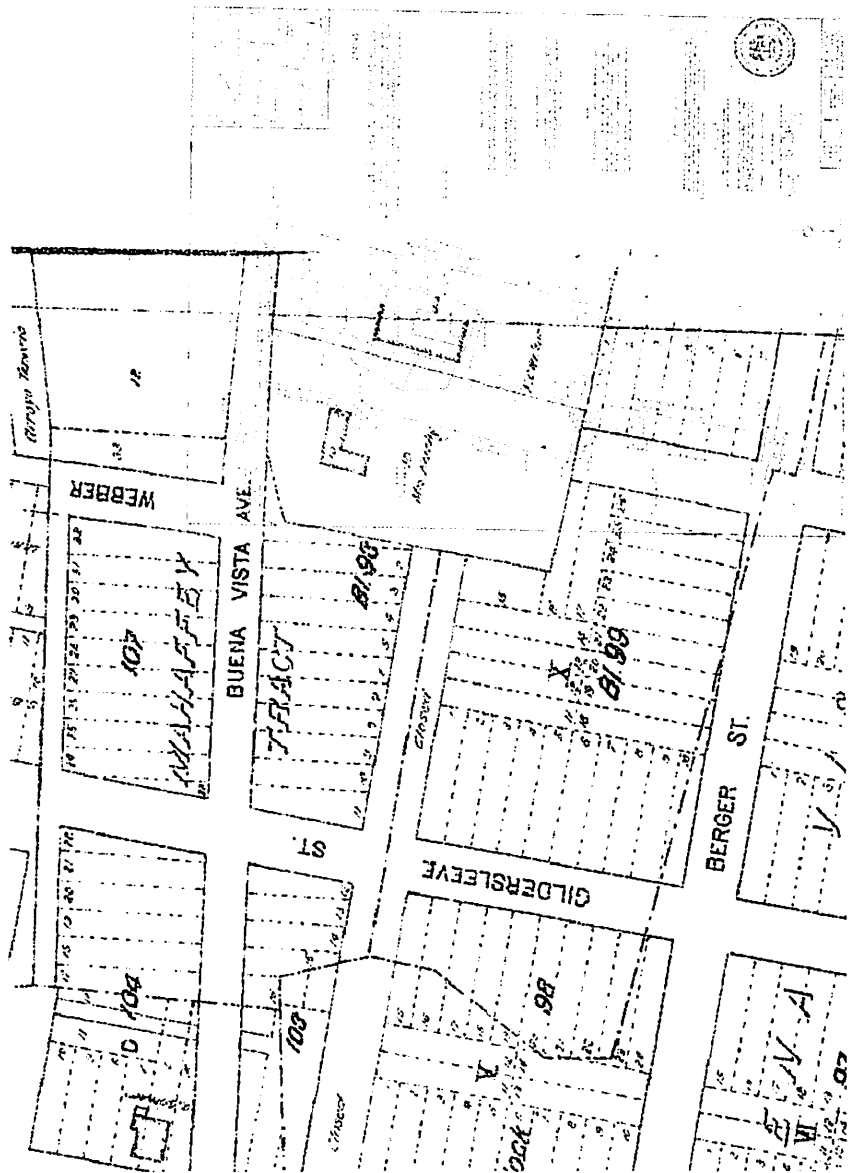
Figure 2

1886 Map showing early location of the Acequia Madre. The Acequia Madre was located approximately along the current alignment of the Arroyo Tenorio Street



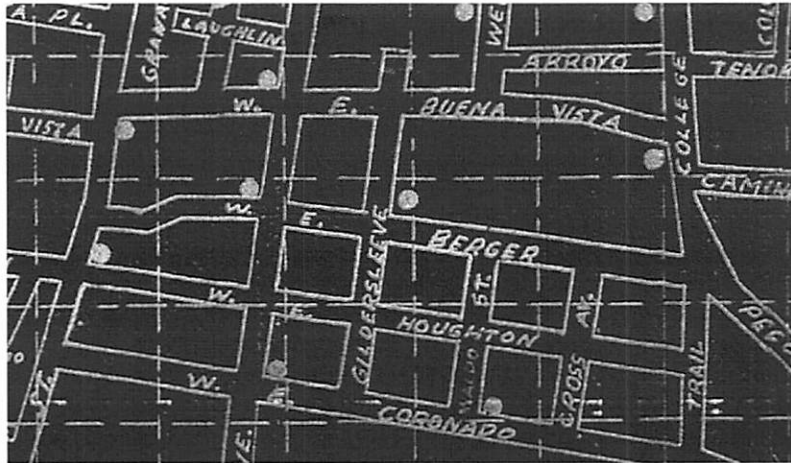
**Figure 3**

1912 Nat King Map large scale map showing the Acequia Madre and proposed Calle Buena Vista

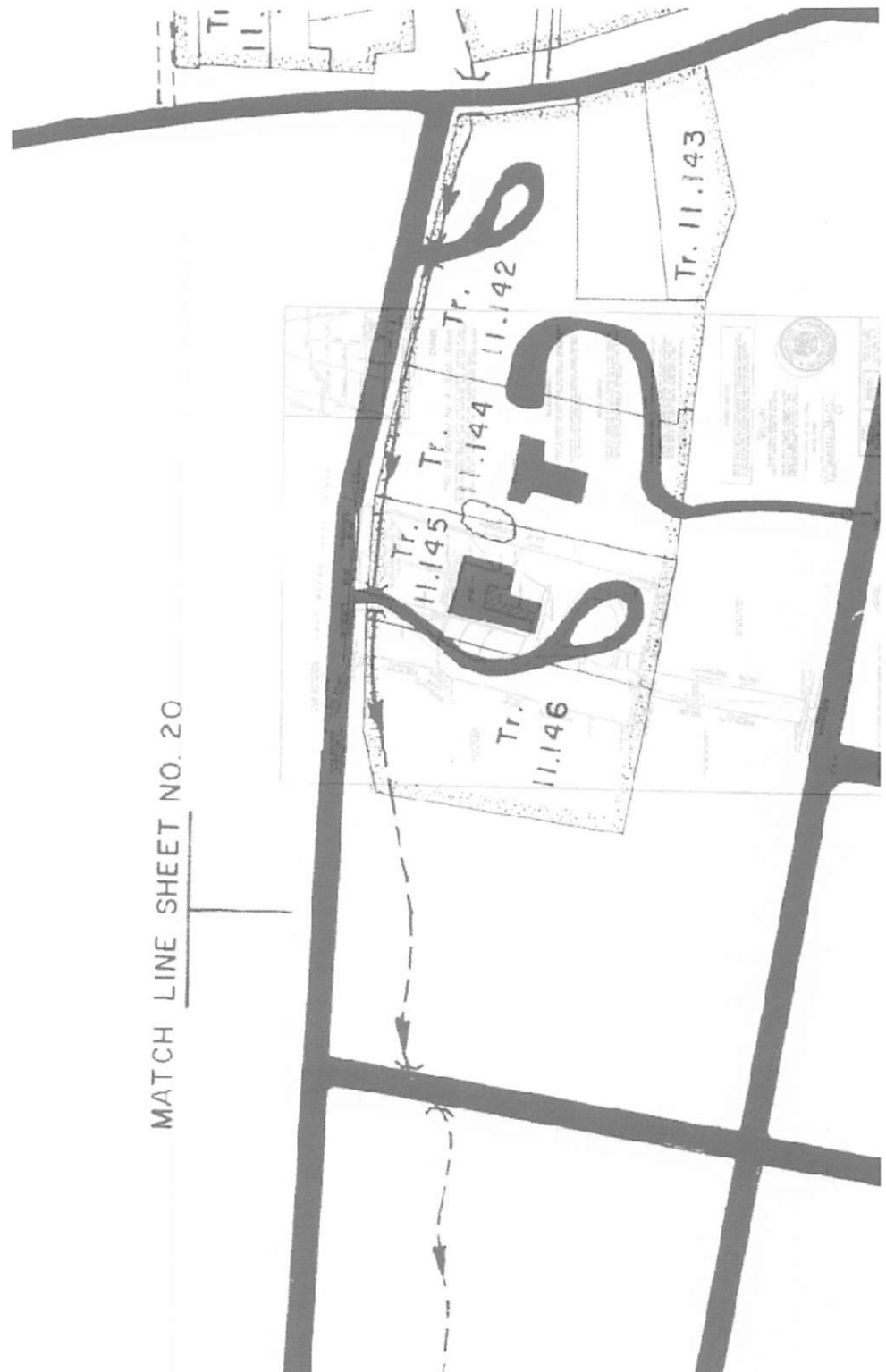


**Figure 4**  
 Juan Flores 1995 Survey of the property over 1912 King's Map





**Figure 5**  
City of Santa Fe Map showing location of hydrants, circa 1920

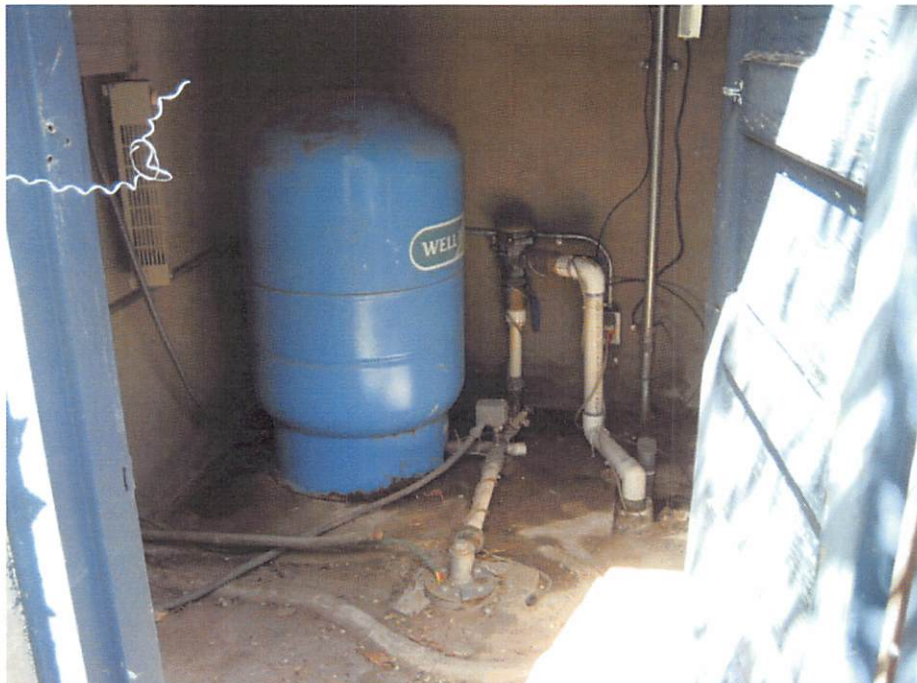


**Figure 6**  
 Juan Flores 1995 property survey over State Engineer 1977 Hydrographic Survey. Note Ditch 11, shown as a dashed line with arrows, on north side of property



**Figure 7**

Well house behind house. Well house is accessed through wooden gate. Note reddish colored structural clay tile brick used to construct well house.



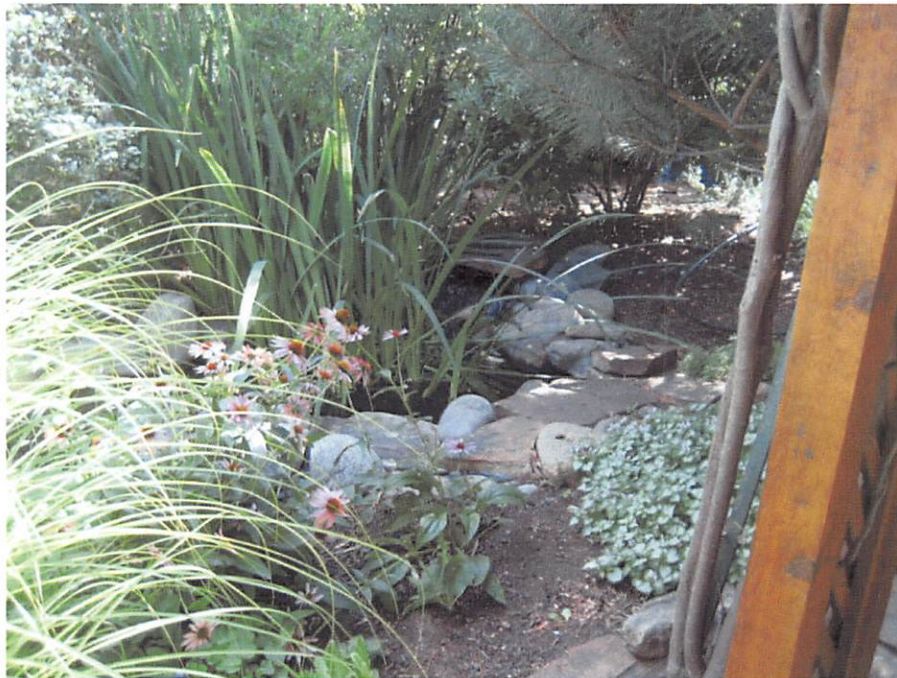
**Figure 8**

Interior of Well House showing submersible pump, pressure tank, and well controls





**Figure 9**  
Landscaping on property August 15, 2008



**Figure 10**  
Landscaping on property August 15, 2008





**Figure 11**  
Landscaping on property August 15, 2008