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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, the 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, we occasionally hear rumors 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 lateral¹ 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

*¹ 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 property¹ states that the 316 East Buena Vista properties was originally a part of a large tract of land referred to as the Cross Orchard². The Cross Orchard was subsequently divided into several small parcels. Half of the orchard property was acquired by Francis Wilson, and the other half of the orchard by Adeline R. Keaches³ built a home on the western portion of the orchard. The 316 Buena Vista property, acquired by Francis Wilson in July 1909⁴ was between the Keaches and Dorman properties. The Wilson, Keaches and Dorman properties are shown in the 1906 map of downtown Santa Fe by Nat 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 1908 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 1866 map of the downtown area (See Figure 3) shows the Acequia Madre on the north side of the property. The north side of Buena Vista Street is thus 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. The property was the site of extensive gardens. According to the 1930's memoirs of 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 plazita, garden vegetables at the back of the yard on the west side, and two large weeping willows in the front lawn, on the house side of the Acequia Madre, which ran along the front property line.⁵

¹ Corrine P. Sze, Ph.D., Research Service of Santa Fe, December 2, 1993, Pg 8

² Cross originally purchased at least a part of the tract for a Lullit Rivan in 1887.

³ Kings map shows spelling as Ketchy

⁴ Santa Fe County deed shows Francis Wilson purchased property bounded by the Acequia Madre or the "Mother Ditch" of Santa Fe from Villa Heights on Capitol Hill. Buena Visa Street officially opened in 1911, after a long struggle with adjacent property owners.

⁵ Corrine P. Sze, Ph.D., Research Service of Santa Fe, December 2, 1993, Pg 10

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The Wilsons lived at 316 East Buena Vista Street until their death, Francis, 1956; Wilson, 1962. Mrs. Wilson had inherited the properties from 1952 to about 1980. It was the home of the family of former State Geologist William R. Federici. Mrs. Federici was recently contacted 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-60’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. Following the pipe to a two-inch valve we found a pump, full of rust. The well, however, had been up from neglect and the pipes were full of 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 lines running which terminates in the well house where controllers would be installed.”

I examined a survey of the property dated 1955. 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 was sold are reviewed. A study of old maps and the City Geologist Office may contain notation of the well, could be further proof of the age of the well.

The size of the property in 1800's 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 City Geologist Office shows a “Well” and a “windmill” at the top of the hill with a 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 were located. The wells in the area are all fairly shallow. The 1914 survey indicated the property was also 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

1 Telephone conversation with Fran Hill with Mrs. Federici on August 26, 2008. 2 Berkley Mills, circa mid-1990’s 3 Well and Survey for Jim Scott Klein prepared by Juan A. Flores, P.S. No. 10.830, dated January 19, 1995

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that this determination was made not as a result of an actual property survey, but rather because the **Acequia Madre lateral (Ditch11)** no longer existed. With the assistance of an attorney **(1)** 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 the well is a **pre-1907** well, which means that the water rights associated with the property have a special legal status.

**1)** Perry Abernathy, Esquire, kindly researched very complex Court filings located at the Office of the State Engineer.

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