

M6SP  
P.O. Box 563  
Minden, NV  
89423

**AGREEMENT**

**BETWEEN**

**MINDEN-GARDNEVILLE SANITATION DISTRICT**

**And**

**BENTLY FAMILY LIMITED PARTNERSHIP**

**May 7, 2002**

0541676

BK0502PG02436

## TABLE OF CONTENTS

<b>BASIC TERMS</b>	<b>4</b>
1. Term and Timing of Commencement of Deliveries of Effluent	4
2. Owner's Duty to Build Facilities	5
3. Owner's Ownership and Right to Use and Obligation to Take Effluent	7
4. Right to Effluent Under Prior Contract	7
5. Charge for Effluent	8
6. District's Obligations to Construct	11
7. District's Obligations to Maintain Storage	11
8. District's Obligations to Maintain Pressure	11
9. District Not Responsible for Owner's Improvements	12
10. District's Obligations to Contribute to Owner-Constructed Facilities	12
11. District's Right to Oversize	12
12. Duty to Deliver and Accept Wastewater Effluent	13
a. District	13
b. Owner's Obligations to Comply with Law	13
13. Warranties	14
14. Conditions Precedent	15
a. Receipt of Permits	15
15. Termination	15
16. Indemnification	17
a. District and Owner	17
b. Claims for Indemnity	17
c. Defense of Claims	18
17. Assignability	20
18. Insurance	20
19. Miscellaneous	21
a. Notices	21
b. Consent	21
c. Entire Agreement	22
d. Choice of Law	22
e. Waiver	22
f. Attorney's Fees	22
g. Right to Remedy and Injunction Relief Available	23
h. Time of Essence	24
i. Captions	24
j. Binding on Successors	24
k. Executive of Additional Documents	24
l. Counterparts	24
m. Authorship	24
n. Authority	25

0541676

BK 0502 PG 02437

## AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 7<sup>th</sup> day of May, 2002, by and between MINDEN GARDNERVILLE SANITATION DISTRICT (hereinafter referred to as "District") and BENTLY FAMILY LIMITED PARTNERSHIP (hereinafter referred to as "Owner").

### WITNESSETH:

**WHEREAS**, the District is a general improvement district formed and organized pursuant to the provisions of the Nevada Revised Statutes; and

**WHEREAS**, the District does presently own and operate a wastewater treatment and effluent reuse system in the area of Douglas County, Nevada; and

**WHEREAS**, the District has previously constructed and is presently operating and maintaining pump stations and other facilities for the treatment and disposal of wastewater from the District's works and treatment facilities at or near Minden, Nevada; and

**WHEREAS**, Owner is the owner of certain real property located in Douglas County, Nevada, commonly known as The Bently Property (same consisting of approximately five thousand (5,000) acres), a portion of which is shown on Exhibit A, which is attached hereto and incorporated herein by reference, said real property and improvements and Facilities to be constructed and located thereon, for the purposes of transporting, storing, applying, and monitoring the

effluent provided for hereunder, said real property, Facilities and improvements hereinafter all referred to collectively as the "Project"; and

**WHEREAS**, because the District generates and uses wastewater effluent for irrigation of its own property, and has a continuing need and desire to dispose thereof; and

**WHEREAS**, Owner desires to receive said wastewater effluent from District and to cause it to be transported to and stored on and/or applied to the Project for agricultural irrigation or other legally permitted uses; and

**WHEREAS**, the District currently provides treated wastewater effluent to properties other than the Project for irrigation purposes under and pursuant to a written contract, which expires on September 15, 2008 (the "Prior Contract"); and

**WHEREAS**, Owner is one of three parties to the Prior Contract and is obligated and entitled to take a share of the wastewater effluent provided for under said contract for application on property owned by Owner other than the Project; and

**WHEREAS**, District proposes to deliver to the Point of Delivery ("POD") described in Section 2.c, and Owner proposes to receive treated wastewater effluent as specified herein at the POD, under the terms and conditions stated herein; and

**WHEREAS**, after execution of this Agreement, District will promptly commence the application process with the Nevada Division of Environmental Protection ("NDEP") with the cooperation of Owner for an Authorization to Discharge permit ("Permit") allowing and approving the implementation of this Agreement to the end that District is permitted to deliver at the POD and Owner is obligated to take

and authorized to receive at the POD and transport to and utilize, apply to acreage and/or store the treated wastewater effluent which is the subject hereof on the Project on terms and conditions set out in this Agreement; and

**WHEREAS**, after execution of this Agreement, District will promptly commence the application process with the Nevada State Engineers Office with the cooperation of Owner for the issuance of a permit for a secondary water right pursuant to the provisions of NRS § 533.440 so that Owner will be authorized under Nevada's water law to transport, receive, store, irrigate, and apply on the Project treated sewage effluent in accordance with the terms of this Agreement; and

**WHEREAS**, promptly after execution of this Agreement, District, with the cooperation of Owner, shall prepare and submit to NDEP for approval an effluent management plan (the "Plan"), which incorporates the provisions of this Agreement; and

**WHEREAS**, promptly after execution of this Agreement, District, with the cooperation of Owner, shall seek a special use permit from Douglas County, Nevada, authorizing Owner to receive and beneficially use the treated wastewater effluent in accordance with the terms of this Agreement; and

**WHEREAS**, the Parties hereto are desirous of entering into a mutually beneficial agreement to provide for the delivery of treated wastewater effluent from the District's effluent transmission main and to provide for the acceptance and use of said wastewater effluent during the periods as hereinafter provided, to assure the protection of the health and welfare of the residents of Douglas County and the State of Nevada and to promote the beneficial utilization and conservation of water.

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions contained herein, the Parties do agree as follows:

### **BASIC TERMS**

1. Term and Timing of Commencement of Deliveries of Effluent.

Subject to the exceptions, limitations, and terms and conditions of this Agreement, including, but not limited to Section 4(a) herein, District shall deliver to the POD and Owner shall take at the POD, all treated effluent generated by District not otherwise delivered to other Parties under the Prior Contract or stored by District in its current, substitute replacement or additional reservoirs or used by District for its own irrigation purposes on District owned land, not to exceed 100 acres. Deliveries shall commence as soon as practicable after the first date permitted under the Permit, Plan and Special Use Permit. This Agreement shall continue for a period beginning on the execution of this Agreement, and shall expire on January 1, 2072 ("Initial Term"). Beginning on January 1, 2065 and ending on January 1, 2072, subject to Owner's right of first refusal as hereinafter set forth, District shall be permitted to negotiate, and enter into a contract with any third party or entity to take, commencing on January 2, 2072, some or all of the deliveries provided to Owner under this Agreement. In the event such contract is entered into, Owner shall have the right to obtain such effluent offered under the same terms and conditions as have been accepted by such other Party or entity. District shall offer Owner the right to match or exceed such offer within 90 days of the acceptance of such offer by

District, which acceptance shall be subject to this right of first refusal, and Owner shall have 90 days to accept such offer on the same terms and conditions. In the event written acceptance is not received by District within 90 days of making such offer, the offer shall be deemed denied and District shall be free to enter into a binding contract with a third party. Owner's right of first refusal shall expire on January 1, 2072, however, should District accept an offer from a third person within two years after the date of expiration, Owner's right of refusal shall attach.

2. Owner's Duty to Build Facilities.

a. In order to receive the effluent provided for in this Agreement, Owner will, at its expense, and subject to District's contribution as hereinafter set forth, own, construct, and maintain adequate storage facilities and/or provide summer and winter application for all effluent delivered by District under this Agreement.

b. Owner will, at all times, provide, restrict for the purposes of enabling it to perform its obligations under this Agreement, set aside, and make available suitable and adequate acreage on the Project for disposal of all effluent for the full term of the contract, and/or maintain adequate storage on the Project, to the end that Owner will at all times under this Agreement have the ability to store on the Project or apply to acreage on the Project all effluent provided by District under this Agreement. With the prior written consent of the District, which consent will not be unreasonably withheld, Owner may have all or any portion of the acreage designated on Exhibit A released from the easements, covenants, and obligations of this Agreement

by setting aside, restricting, and making available an equal area of land suitable for ground application, irrigation, or storage hereunder (the "Substitute Land"). Owner shall be responsible for all costs and expenses associated with obtaining such a release and for obtaining all permits and approvals required to allow use of wastewater effluent for irrigation or storage on the Substitute Land. The rights and obligations set forth in Paragraph 2(b) shall be covenants running with the land, which covenants shall be evidenced by recording this instrument or a notice thereof.

c. Promptly after the first date permitted under the Permit, Plan and Special Use Permit, Owner will construct, maintain at its expense for the entire duration of this Agreement, and retain ownership of all transmission, storage and disposal improvements ("Facilities") east of U.S. Highway 395 east of the wastewater treatment plant owned by District. The point at which Owner's Facilities connect with District's Facilities east of U.S. Highway 395 shall be the Point of Delivery ("POD"). For the sole and exclusive purpose of insuring that effluent is being transported and delivered in accordance with the terms of this Agreement, District shall, at reasonable times over the term of this Agreement and any extensions thereof, have an easement and right of access and use to, on, in, over, and through Owner's Facilities.

d. Owner will construct, maintain at its expense, and retain ownership of all monitoring improvements required by the Plan as accepted by NDEP, but for the sole and exclusive purpose of insuring that effluent is properly monitored, District shall have the same easement rights over, on,

and to said improvements as are set forth in Section 2.3.c above, including reasonable rights of egress and ingress.

3. Owner's Ownership and Right to Use and Obligation to Take Effluent

Owner shall, at all times, comply with all requirements of the Permit and Plan and all laws, rules, and regulations of any governmental agency or entity having jurisdiction over the premises relating to the transmission, application, monitoring and/or storage of effluent on the Project. Provided that and subject to the continuing condition that Owner complies with all requirements of the Permit and Plan and all applicable laws, rules, and regulations relating to the transmission, application, storage, and monitoring of effluent on the Project, Owner will have full control of all effluent for the term of the contract and all renewals, and may use it in any manner meeting federal, state, and local requirements. Subject to paragraph 13(b), Owner shall be responsible for and will construct, maintain, at it expense, and make any and all improvements, alterations, or enhancements in operations, and process any NDEP permits or Plan changes or requirements, whether initiated by the state or by owner, which may be required by Owner, federal, state, or local laws, rules and regulations, and are necessary or required in order to take all effluent provided for under this Agreement and receive, store, or apply it on the Project.

4. Right to Effluent Under Prior Contract

a. After expiration of the Prior Contract, Owner shall have the right and obligation to take at the POD and receive on the Project (in addition to all other effluent provided for under other terms and conditions of this contract) all effluent generated by District presently allocated under the Prior Contract

above or in excess of 750 acre feet reserved by District ("Reserved Amount"), as such amounts become available on the same terms and conditions as are contained in this Agreement, and except for such amounts as are needed and used by the District for irrigation purposes on its own land, not to exceed 100 acres. At District's option, Owner shall also be obligated to take any and all effluent allocated under the Prior Contract to expiration of the Prior Contract and, at any time after expiration, all or any portion of the Reserved Amount.

5. Charge for Effluent.

a. During the Initial Term of this Agreement, District shall deliver to the POD, and Owner shall accept at the POD and transport to Project, all effluent delivered by District without charge by District for any effluent delivered. Owner shall pay to District, beginning on January 1, 2032, and expiring on January 1, 2042, and for each additional or incremental 10-year period thereafter until expiration of the full term, an amount per gallon of effluent delivered as shall be negotiated or mediated, and in the event the Parties or their successors are unable to reach agreement by negotiation or mediation, then by binding arbitration between the Parties based on the following factors:

i. The degree to which the Owner or Owner's successor has recovered its capital, and a reasonable return on its capital for all Facilities constructed to perform this Agreement over the duration of the Project, together with recovery of any continuing capital expenditures reasonably required to be made to continue performance

of Owner's obligation under this Agreement until January 1, 2042, and with respect to each additional incremental period, the amounts applicable to such period, and a reasonable return on any such expected capital expenditures. As used herein, reasonable return on capital expenditures shall be determined by the return to be expected in other local agricultural enterprises with like kind of risks as apply to such enterprises.

ii. Operating and maintenance costs incurred by both Parties to deliver, transport, pump, receive, and/or store effluent provided for under this Agreement.

iii. The fair market value of the effluent at the time the notice to extend is given.

b. The object of any mediation shall be to provide a price which shall first allow (1) Owner to recover all of its reasonable capital expenditures and reasonable return on such capital, together with recovery of any capital expenditures and reasonable return thereon for any capital expenditures reasonably expected or required to be made to continue performance under this Agreement until January 1, 2042, and with respect to each additional or incremental period, the amounts necessary for such period, (2) secondly, to insure that the price is such as to permit, to the extent possible after consideration of object number 1, both Parties to recover on-going O&M costs, and last (3) to insure that any and all amounts above such amounts in b(1) and b(2) above shall inure to the benefit of District's customers.

c. With respect to the first incremental period, in the event the Parties are unsuccessful in negotiating or mediating such amount by July 31, 2030, the matter shall be subjected to final and binding arbitration in Douglas County under and pursuant to whatever arbitration rules are then in effect under the Nevada Revised Statute, with such arbitration to be based on the same factors set forth above and with a decision to be rendered not later than August 1, 2031. In the event either Party undertakes any legal action whatsoever to renew, revise, or alter such rates, then the Parties agree no stay or injunction shall issue with respect to such rates, the remedy for successful action being only restoration or refund of any amounts determined to be due.

d. The price for effluent beginning on January 1, 2042, and continuing for three additional 10-year intervals until the term expires shall be subject to the same negotiations, mediation, and arbitration process described in parts a. through c. above, except that (1) in the event the Parties are unsuccessful in negotiating or mediating the new price in negotiations and mediations to occur between January 1, 2041, and July 1, 2041 (first renewal term), January 1, 2051, and July 1, 2051 (second renewal term), and January 1, 2061, and July 1, 2061 (third renewal term), binding arbitration shall commence not later than July 1, 2041, for the first term, July 1, 2051, for the second term, and July 1, 2061, for the third term, and be completed by December 31 of each such year, and (2) the expected capital expenditures,

reasonable rate of return, O&M, and fair market value considerations shall be for the applicable period or interval .

6. District's Obligations to Construct.

District will, at its expense, construct, maintain, and retain ownership of the pumping station and transmission pipeline through to the easterly right-of-way of U.S. Highway 395 east of its treatment plant up to the POD, as depicted on Exhibit B. Owner shall provide to District's reasonable satisfaction, at Owner's expense, any and all licenses, easements, and/or rights-of-way to, on, over, under, and through any property now owned by any party or successor to the Prior Contract reasonably necessary to enable District at all times to make, construct, occupy, and maintain any and all improvements to the POD and which are reasonably necessary to enable District to perform its obligations hereunder.

7. District's Obligations to Maintain Storage.

District will maintain its existing reservoirs or reservoirs substituting for existing reservoirs sufficient, in district's reasonable discretion, to perform District's obligations under this Agreement for storage and pumping regulation to the POD of Owner-constructed facilities east of U.S. Highway 395.

8. District's Obligations to Maintain Pressure.

District will deliver to Owner effluent at the Point of Delivery at a sufficient pressure to reach the reservoir top estimated to be 5,015 feet elevation plus friction losses.

9. District Not Responsible for Owner's Improvements

District will not be responsible for constructing or maintaining required groundwater monitoring facilities or any other improvements beyond the Point of Delivery, but District will monitor groundwater quality and prepare monitoring reports as required by government agencies.

10. District's Obligation to Contribute to Owner-Constructed Facilities.

District will reimburse Owner for 15% of the construction cost of the Owner-constructed facilities East of U.S. Highway 395 to a maximum of One Million Dollars (\$1,000,000.00). Construction costs will include design, supervision, equipment, materials, labor, permits, fees, and inspectors, all for construction of the pipeline, service connections, and storage facilities. Materials, labor, or equipment provided by the Parties will be valued as negotiated by the Parties.

District will review and reasonably approve any construction contract and pay Owner its 15% share as provided for herein, up to the maximum \$1,000,000, as Owner pays the contractor. District will assist Owner in the construction permitting and approval process.

11. District's Right to Oversize.

District may mandate the over sizing of any pipeline or related facilities constructed by Owner. In such event, District shall pay all costs directly attributable to such oversize as measured by the difference in costs of the line or facilities with and without over sizing.

If the Parties are unable to reach agreement regarding construction costs under Sections 10 or 11, they shall be subject to, bound by, and utilize the

services for arbitration of such matters as are set forth and controlled by the rules of the Ninth Judicial District Court in and for the State of Nevada.

12. Duty To Deliver and Accept Wastewater Effluent.

a. District.

District shall reasonably cooperate with Owner regarding the timing of deliveries provided for hereunder, but District shall have the right, in its reasonable discretion, to determine the timing of any and all deliveries of effluent provided for by this Agreement. This Agreement does not impose a duty upon the District to export any or all of its wastewater effluent and Owner does not acquire any right to demand any quantity of wastewater effluent to be exported, so long as it would be illegal or impossible for the District to do so. Subject to the provisions of Section 12.b. below, acceptance and use of wastewater effluent by Owner pursuant to this Agreement is subject to the legal ability of the Owner to accept and use such wastewater effluent.

b. Owner's Obligations to Comply with Law.

Acceptance and use of wastewater effluent by Owner pursuant to this Agreement is subject to the legal ability of the Owner to accept and use such wastewater effluent, except that Owner shall be obligated to make any expenditures, changes or improvements, and make any changes in its processes and procedures as shall be reasonably required to permit it to reuse and accept effluent under this Agreement and in compliance with any existing or future applicable law, rule, or regulation. In the event Owner and District cannot agree on what expenditures, changes, or improvements are

reasonable, then the Parties agree to subject such matter to mediation and, if unsuccessful, to final binding arbitration in accordance with whatever mediation and arbitration rules are then in existence under the NRS, such mediation and arbitration to be based on the same factors identified in Section 5 above. In the event any arbitrator concludes that any expenditures or improvements to be made by Owner are or would be unreasonable, based on the factors identified in Section 5 above, District shall have the right, but not the obligation, to make any expenditures, construct such improvements, or incur and reimburse to Owner any costs necessary to effectuate changes in process as may be determined by the arbitrator to be above the amounts found to be reasonable, and Owner shall make any expenditures, construct such improvements, or make any process changes as are found to be reasonable.

13. Warranties.

a. Owner warrants that the right of the District to discharge its wastewater effluent hereunder shall be an easement appurtenant to land and Facilities, an irrevocable license coupled with an interest, a covenant running with all land and improvements which are the subject of this Agreement, and that it will execute and permit to be recorded any and all documents reasonably necessary to convey such interest to District.

b. Subject to Section 16 below, the District warrants and promises that the treated wastewater effluent exported by District and discharged onto Owner's land shall conform to all present and future specifications and

requirements of the regulatory agencies of the United States Environmental Protection Agency, or similar agencies, the State of Nevada, and Douglas County relating to the application of treated wastewater effluent for use on Owner's irrigated farm lands.

c. Both Parties warrant that they will take prompt action to obtain all permits and let all contracts necessary to perform their obligations hereunder.

14. Conditions Precedent.

a. Receipt of Permits.

Owner's and District's obligations under this Agreement are contingent upon receipt by Owner and District of all permits and approvals necessary to allow District to deliver and Owner to accept at the POD and use the wastewater effluent on the Project, subject to their determination, in their reasonable discretion, that the terms and conditions of such permits and approvals are satisfactory.

15. Termination.

a. Either Party may terminate this Agreement without charges, penalties, or liabilities to the other if they cannot agree to the Permit or Plan to be submitted to NDEP, or, if in the opinion of either Party, the Permit or Plan approved by NDEP contains any terms or conditions which materially affect either Party's ability to perform, or the benefits to be secured by either Party.

b. In the event that Owner is or will be for any reason whatsoever unable to accept wastewater effluent and implement this Agreement

substantially in accordance with its terms not later than December 31, 2003, this Agreement may be terminated by either Party, in which event both Parties shall be restored to their prior legal positions without liability to each other. In such event, District and Owner agree to execute and deliver to each other, in recordable form, releases and quitclaim deeds reconveying to each other any interest or claims acquired hereunder.

c. This Agreement is entered into by the District pursuant to its Permit to Discharge issued by NDEP and other local, state or federal laws. This Agreement may be terminated by the District at any time in the event that District shall, by governmental action, be required to relocate its point of discharge or otherwise modify its method of effluent use.

d. District will provide to Owner at the POD all secondary treated effluent provided for under this Agreement which, on a continuing basis, meets all local, state, and federal requirements for agricultural application by flood or sprinkler irrigation on the Project. In the event any federal, state, or local statutes, rules, ordinances, or regulations impose requirements for the treatment of effluent which make it unsuitable or unsatisfactory for ground or agricultural application to the extent which renders further performance under this Agreement impractical or uneconomic, then District shall have the right, at its option, to terminate this Agreement at such time as it shall designate in writing.

16. Indemnification.

a. District and Owner.

District and Owner agree to indemnify and hold each other harmless from and against and with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages, diminution in value and deficiencies, including, without limitation, interest and penalties, counsel fees, and all amounts paid in settlement of any claim, action or suit (all such claims, demands, losses, costs, expenses, etc., being referred to herein collectively as "Claims"), which may be asserted against either Party, or which either Party shall incur or suffer, and which arise out of, result from, or relate to any breach of warranty of either Party herein or the breach of any agreement or covenant of either Party contained in this Agreement. The term "Claims" as used in this Agreement is not limited to matters asserted by third Parties but includes damages, losses, and expenses incurred or sustained by either Party in the absence of third-Party claims.

b. Claims for Indemnity.

Whenever a Claim shall arise for which one Party hereto (the "Indemnitee") shall be entitled to indemnification hereunder, the Indemnitee shall notify the other Party hereto (the "Indemnitor") in writing, within 30 days of the first receipt of such notice of such Claim, and in any event within such shorter period as may be necessary for the Indemnitor to take appropriate action to defend against such Claim. Such notice shall specify all facts known

to the Indemnitee giving rise to such indemnity rights and shall estimate the amount of the liability arising therefrom. The right of the Indemnitee to indemnification and estimated amount thereof, as set forth in this notice, shall be deemed agreed to by the Indemnitor unless, within 30 days after the mailing of such notice, the Indemnitor shall notify the Indemnitee in writing that it disputes the right of the Indemnitee to indemnification, or that the Indemnitor elects to defend such Claim in the manner provided in Section 16.c. of this Agreement. If the Indemnitee shall be duly notified of such dispute, the Parties shall attempt to settle and compromise the same, or if unable to do so within 20 days of the Indemnitor's delivery of notice of a dispute, such dispute shall be settled by appropriate litigation, and any rights of indemnification established by reason of such settlement, compromise, or litigation shall promptly thereafter be paid and satisfied by the Indemnitor.

c. Defense of Claims.

Upon receipt by the Indemnitor of a notice from the Indemnitee with respect to any Claim of a third party against the Indemnitee, and acknowledgement by the Indemnitor (whether after resolution of a dispute or otherwise) of the Indemnitee's right to indemnification hereunder with respect to such Claim, the Indemnitor may assume the defense of such Claim with counsel reasonably satisfactory to the Indemnitee and the Indemnitee shall cooperate to the extent reasonably requested by the Indemnitor in the defense or prosecution thereof and shall furnish such records, information, and testimony, and attend all such conferences, discovery proceedings,

hearings, trials, and appeals as may be reasonably requested by the Indemnitor in connection therewith. In the event that the Indemnitor shall acknowledge the Indemnitee's right to indemnification, but decline to assume the defense of such Claim, the Indemnitee may assume such defense and the Indemnitor shall acknowledge the Indemnitee's right to indemnification and elect to assume the defense of such Claim, the Indemnitee shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of Indemnitee. If the Indemnitor does not elect to assume defense of a third-party Claim and disputes the Indemnitee's right to indemnification, the Indemnitor shall have the right to participate in the defense of such Claim through counsel of its choice, at the Indemnitor's cost and expense (provided that such costs and expenses shall be reimbursed by the Indemnitee to the Indemnitor if a final judgment of a court of competent jurisdiction or a settlement approved by the Indemnitor reflects the Indemnitee's obligation to indemnify the Indemnitor), and the Indemnitee shall have authority to resolve such Claim subject to this Section 16. The Indemnitee shall give written notice to the Indemnitor of any proposed settlement of any Claim, which settlement the Indemnitor may reject in its reasonable judgment within 10 days of receipt of such notice. If the Indemnitor has assumed the defense of any such Claim against the Indemnitee, the Indemnitor shall have the right to settle any Claim for which indemnification has been sought and is available hereunder; provided that, to the extent such settlement refers to any alleged liability or wrongdoing of the

Indemnitee, requires the Indemnitee to take, or prohibits Indemnitee from taking, any action or purports to obligate the Indemnitee other than for the payment of money, the Indemnitor shall not settle such Claim without the prior consent of the Indemnitee, which consent shall not be unreasonably withheld.

17. Assignability.

This Agreement may be assigned or transferred by either Party to any other person following receipt of approval by all regulatory agencies having jurisdiction hereof and upon the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that it shall be deemed reasonable for either Party to withhold consent to any proposed assignment to any other party who either shall reasonably deem to be uncreditworthy or unable to satisfactorily perform the obligations hereunder. In such event, either Party may demand, as a condition to consent, that sufficient credit be posted in the form of bonds or letters of credit sufficient to guarantee continued performance hereunder. The assigning party shall be responsible for any costs and compliance requirements associated with any such assignment.

18. Insurance

District and Owner each agree to maintain comprehensive and general liability insurance in an amount not less than 5 million dollars to cover the potential liabilities set forth herein, and other potential liability associated with the project.

19. Miscellaneous.

a. Notices.

All notices required or permitted to be given by law or by the terms of this Agreement shall be in writing and shall be considered given upon personal service of a copy on the Party to be served, or 24 hours after mailing such notice by certified mail, return receipt requested, postage prepaid, addressed to the Parties as follows:

If to the District, such notices shall be sent to:

Chairman  
Minden/Gardnerville Sanitation District  
P.O. Box 568  
Minden, Nevada 89423

If to Owner, such notices shall be sent to:

General Partner  
Bently Family Limited Partnership  
P.O. Box B  
Minden, Nevada 89423

And to:

Brooke Shaw Plimpton Zumpft  
P.O. Box 2860  
Minden, Nevada 89423

Any Party may change the address to which notices to it hereunder are addressed by a notice in writing to the others.

b. Consent.

Whenever the approval or consent of any Party is required for any purpose under this Agreement, that approval or consent will not be unreasonably withheld or delayed. Without limiting the foregoing, if any

approval or consent is requested by either Party, unless the consenting party notifies the requesting party within 15 days that it will not grant the approval or consent, the consenting party will be deemed to have given the approval or consent on the 16<sup>th</sup> day.

c. Entire Agreement.

This Agreement constitutes the entire and only understanding between the Parties concerning its subject matter, and supersedes any and all prior agreements, arrangements, communications, or representations, whether oral or written, with respect thereto. No alteration, amendment, change, modification, or waiver to this Agreement shall be valid or binding unless the same is in writing and signed by duly authorized representatives of the Parties hereto.

d. Choice of Law.

This Agreement shall be construed and interpreted in accordance with, and governed by, the laws of the State of Nevada.

e. Waiver.

Neither a course of conduct, nor any waiver by either Party with respect to a default or breach of any provisions of this Agreement by the other Party shall operate or be construed as a waiver of any subsequent default or breach, or as a modification of this Agreement.

f. Attorney's Fees.

If any Party commences an action against the other Party to enforce any of the terms hereof or because of the breach of either Party of any of the

terms hereof, the prevailing party shall be entitled to reasonable attorney's fees, costs, and expenses incurred in connection with the prosecution or defense of such action.

g. Right to Remedy and Injunctive Relief Available.

Both Parties acknowledge that this Agreement is affected with a public interest and that after commencement of deliveries hereunder, a breach of this Agreement may cause immediate and irreparable injury. In such event, the Parties acknowledge and agree that a breach of their respective performances hereunder after commencement of deliveries is enjoined, notwithstanding any requirement of arbitration. In addition to such remedy, in the event Owner neglects, fails, is unable, or otherwise refuses to perform any obligations hereunder, including maintenance obligations or obligations to comply with the law, which neglect, failure, or refusal threatens the public health and safety or public welfare of the citizens of Douglas County, then District shall have the right, but not the obligation, to make or perform any such maintenance, work or improvement, and do all things reasonably necessary to protect the public interest, and thereafter make claim under Section 16 or any other claim against Owner or pursue any other remedy permitted by law to effectuate its rights hereunder. Owner acknowledges that injunctive relief is available, if necessary, to enforce this right.

h. Time of Essence.

Time is of the essence of this Agreement and each term, covenant, and condition thereof.

i. Captions.

The captions of this Agreement do not in any way limit or amplify its terms and provisions.

j. Binding on Successors.

Subject to the right to assign set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to their respective heirs, successors, and assigns for all time.

k. Execution of Additional Documents.

In addition to documents and other matters specifically referenced in this Agreement, the Parties agree to execute and/or deliver, or cause to be executed and/or delivered, such other documents and/or materials, carrying out the terms and conditions of this Agreement, as may be reasonably necessary to effectuate the transactions contemplated by this Agreement.

l. Counterparts.

This Agreement may be executed in one or more counterparts, and each counterpart shall constitute an original instrument, but all such counterparts shall only constitute one and the same instrument.

m. Authorship.

This Agreement has been reviewed by attorneys representing the respective Parties and therefore shall not be construed in favor of or against

any Party hereto based on the sole or primary authorship of this Agreement being the work on one party hereto.

n. Authority.

By signing below, the authorized person for each Party indicates that he has obtained the full, proper, legal authority to bind his entity to this Agreement.

[The rest of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have set their hands the

day and year first above written.

Dated: May 7, 2002 MINDEN GARDNERVILLE SANITATION DISTRICT

By Jerome Etchegoyhen  
Chairman Jerome Etchegoyhen

STATE OF NEVADA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 7th day of May, 2002, before me, a Notary Public, personally appeared Jerome Etchegoyhen, Chairman of the Minden Gardnerville Sanitation District, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged that he executed the instrument.



By Bonnie D. Feticc  
Notary Public

Dated: May 2, 2002 BENTLY FAMILY LIMITED PARTNERSHIP

By Donald E. Bently  
Donald E. Bently, General Partner

STATE OF NEVADA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 2nd day of May, 2002, before me, a Notary Public, personally appeared Donald E. Bently, General Partner of the Bently Family Limited Partnership, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged that he executed the instrument.

MGSD-BENTLYAGRMT-FINALCLN

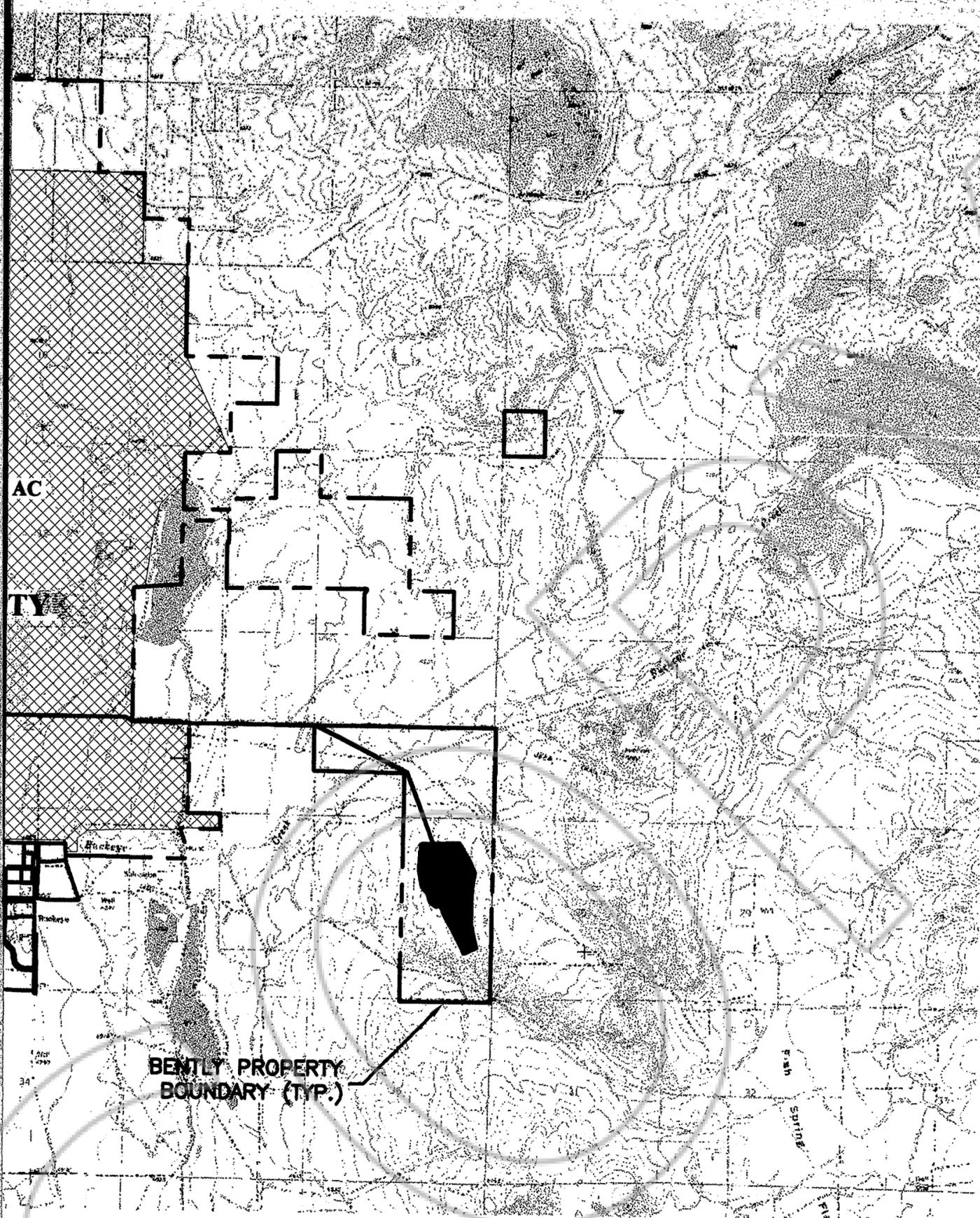
Karen Kade



0541676

BK0502PG02463





P.O. BOX 127  
 MINDEN, NEVADA 89423  
 TELEPHONE (775) 783-4654  
 FAX: (775) 783-4625



SCALE: 1"=4000'  
 PROJECT NO.:  
 FILE NAME: MIDDLE2001.DWG

DATE	REVISION
DRAWN: JEU	CHECKED:
DATE:	DATE:

MGSD EFFLUENT STORAGE  
 EXHIBIT A  
 APPLICATION PROJECT AREA

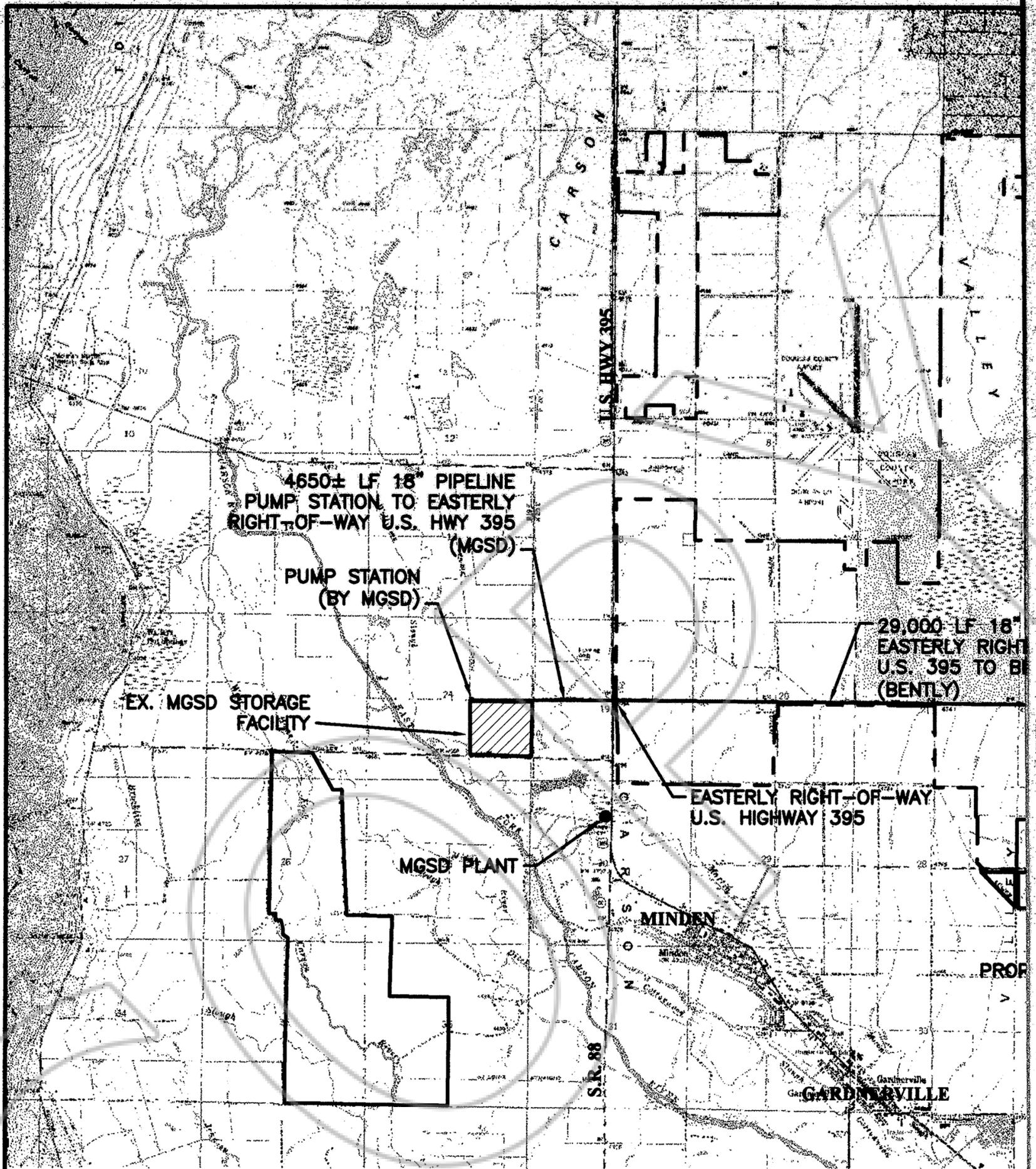
- NOTES:**
1. TOPOGRAPHY AND FEATURES FROM U.S.G.S. 7.5' QUADRANGLES
  2. ALL PROPERTY BOUNDARIES AND ACREAGES ARE APPROXIMATE

0541676

BK0502PG02465

SHEET: A OF
REVISION:
DATE REVISED: 30-APR-02





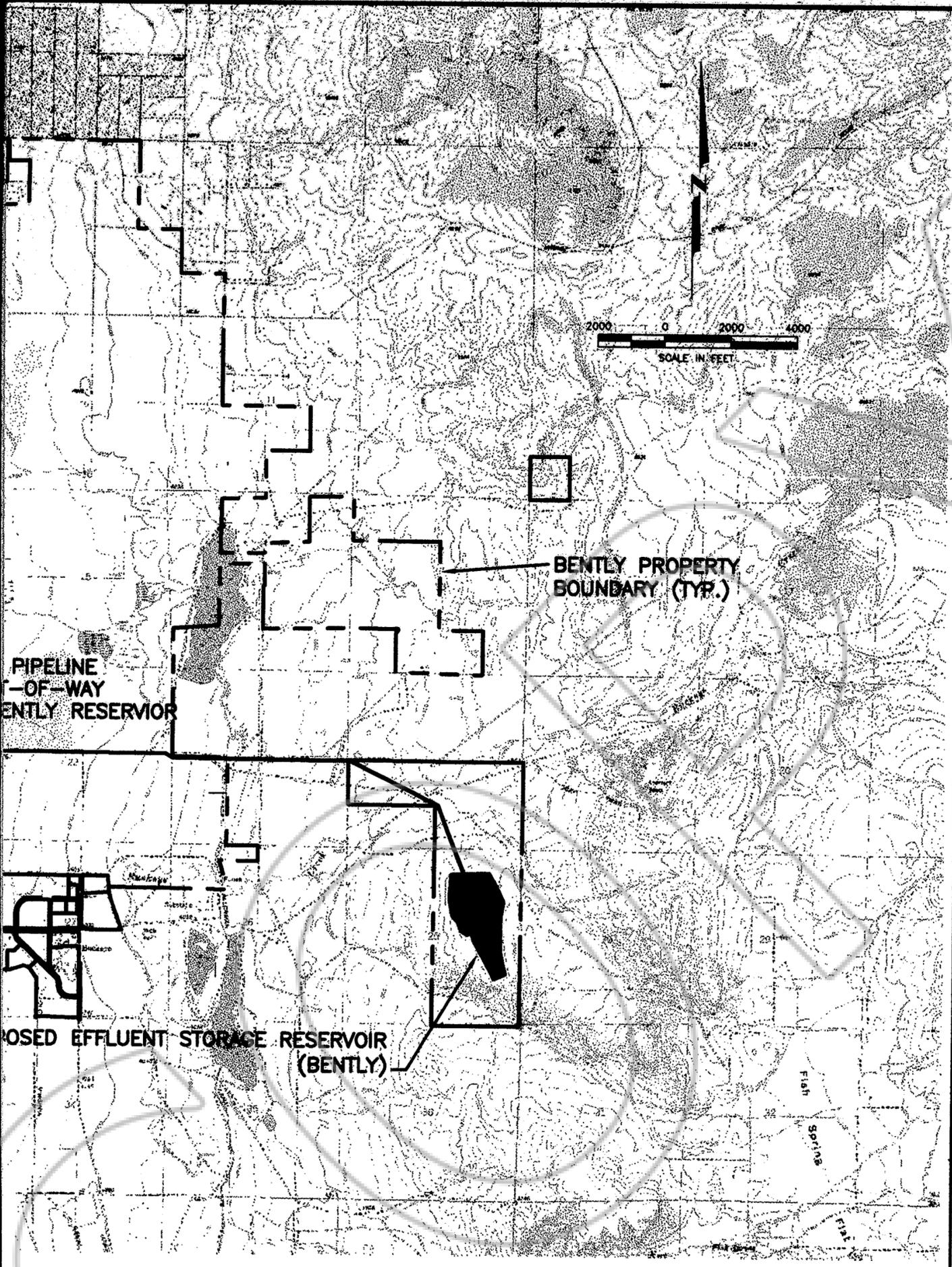
0541676

BK0502 PG. 2466

P.O. BOX 127  
 MINDEN, NEVADA 89423  
 TELEPHONE: (775) 783-4654  
 FAX: (775) 783-4655



MGSD EFFLUENT STORAGE		SCALE: 1"=4000'
EXHIBIT B		PROJECT NO.:
INFRASTRUCTURE SCHEMATIC		FILE NAME: MIDDLE2001.DWG
REVISION	DATE	DRAWN: JEU
		CHECKED:
		DATE:
SHEET: B OF		
REVISION:		
DATE REVISION:		30-APR-02



- NOTES:**
1. TOPOGRAPHY AND FEATURES FROM U.S.G.S. 7.5' QUADRANGLES
  2. ALL PROPERTY BOUNDARIES AND PIPELINE LENGTHS ARE APPROXIMATE

0541676 BK0502PG02467

COPY

REQUESTED BY  
MGS D

IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2002 MAY -8 PM 2:51

LINDA SLATER  
RECORDER

\$45<sup>00</sup> PAID *bl* DEPUTY

0541676

BK0502PG02468