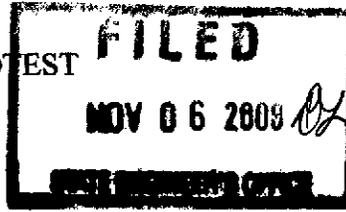


**IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION NUMBER 77418,  
FILED BY AMARGOSA LAND INVESTORS, INC. OF LAS  
VEGAS, NEVADA ON SEPTEMBER 24, 2008, TO  
APPROPRIATE THE WATERS OF PERMIT 69728

} PROTEST



STATE ENGINEER'S OFFICE

2008 NOV -6 AM 11:07

RECEIVED

Comes now John F. Bosta whose post office address is P. O. Box 42 Amargosa Valley, Nevada 89020 whose occupation is Retired and protests the granting of Application Number 77418 filed on SEPTEMBER 24, 2008 by Amargosa Land Investors, LLC incorporated in the State of Nevada # ED162592006-4 to appropriate the waters of an underground source under permit 69728 situated in Basin 230 in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

On September 20, 2002 I purchased my home on 1830 E. McCoy Street, which is located in Section 35, Township 16 South, Range 49 East, M.D.B.&M. My domestic water supply well is located about 2.8 miles from the Point of Diversion (POD) in the NW ¼ NE ¼ Section 9, Township 17 South, Range 49 East, M.D.B.&M., or at a point from which the NE corner of said Section 9 bears North 86 degrees 41 minutes East a distance of 1480 feet for the proposed amount of water to be changed 0.6739 cfs not to exceed 60.0 AFA for Commercial (dairy) and Domestic use. The increased draw down by the Ponderosa Dairy will increase the large cone of depression under the Pondersosa Dairy, which could affect my domestic water supply well.

In the State Engineer's Ruling 4836, page 4, Finding of Fact II., "Using a standard Theis Non-Equilibrium equation to estimate the drawdown of the water level from the pumping of the proposed wells at 72.74 gallons per minute for 24 hours per day, using conservative values of storativity (0.01) and transmissivity (5,000 square feet per day), the State Engineer finds that after continuous pumping for a period of 30 years the drawdown of the groundwater level at a distance betwee (sic) 7 to 10 miles from the proposed point of diversion would be zero. The State Engineer finds the quantity of water applied for under Applications 64766 and 6477 is small enough and the distance great enough that chances of interference with the protestant's water rights are nil."

- ◆ The duty of two wells combined, as one does not give a true linear distance of the cumulative intersecting cone of depressions.
- ◆ A field site may have more than one or two pumping wells. This finding of fact using only two wells is insufficient to determine the cone of depression under the Rockview Dairies, which presently pumping 24 wells within a one-mile radius.
- ◆ Multiple cones of depression can intersect and result in greater drawdown than expected from a single well. As the equation governing groundwater flow (Laplace equation) is linear, the drawdown at any point is found by summing the drawdown produce by all the wells. (See EXHIBIT A 2 pages attached hereto)
- ◆ The State Engineer using a standard Theis Non-Equilibrium equation to estimate the drawdown of the water level from the pumping of the two proposed wells as one well using only 117 AFA and not using cumulative AFA of all 24 wells.
- ◆ The 60 AFA for present application 77418 should be added to the total AFA of all the other 24 wells intersecting cones of depression within the one-mile radius to determine the linear distance of the cone of depression from the center of the one-mile radius.

Nye County received grants from NDEP for the preparation of a basin wide Wellhead Protection Plan the County Complex water supply wells in Amargosa Valley. This plan was completed in 2005 and the reports presented in early 2006. A Potentiometric Map in the Report showed a conic depression under the dairies. (See EXHIBIT B attached hereto.) A local hydrologist presented this information at the NDEP Public Hearing for the Beverly Hills Dairy Permit NEV2006504.

This application presents **no information** about the **cone of depression** or the **capture zone** of the 25 pumping wells **under the dairy**.

- ◆ A new Potentiometric map should be prepared to determine the size of present day cone of depression under the dairy before this permit is approved.
- ◆ The domestic water supply wells within 3 to 5 miles from the center of the cone of depression under the dairy must be protected.
- ◆ Over time subsiding will occur, for example the subsiding in Las Vegas is 6 feet.

If State Engineer approves water Application 77418 the dairy excessive pumping of the groundwater will increase the capture zone, which could affect the domestic water supply wells. The owner of the domestic water supply well will need to deepen their well to receive water or drill a new well. **This is happening now!**

- ◆ The discharge rate of domestic supply wells located on Minor Road has declined and an owner had to deepen his well in or about the 1<sup>st</sup> few day of July 2008.
- ◆ A neighbor less than 1/8 of a mile on Fisher Road well is sucking mud. The domestic wells located on Fisher Rd and Miner Rd is 2 miles due west of the dairy wells located in APN 019-381-07 on Windjammer Road.
- ◆ These two domestic wells are between the 3<sup>rd</sup> and 4<sup>th</sup> gradient levels above the control center of the Potentiometric Map used in contouring the water table and the direction of the groundwater flow in Amargosa Valley.
- ◆ This application for the proposed use or change of the POD conflicts with protectilbe interest of existing domestic wells as set forth in NRS § 533.024
- ◆ Also, look at Item 15: Remarks in all of the Application of Permits 70719, 70720, 70721, 70722, 70723, 70724, 70725, 70726, 70727, and 70728, “ This change in the Point of Diversion is needed because the well driven at the specified point of diversion did not produce a sufficient volume of water.” All of the permits were approved April 5, 2005.
- ◆ Since I am retired, I cannot afford the cost of deepening my water well or drilling a new well.

Item 1 of the application 77418 refers to the Underground-Amargosa Dairy “Haybale” Well, which is alleged to be illegal well:

- ◆ In a letter to Rockview Dairies, Inc. dated February 8, 2008 Robert Coache, Deputy State Engineer, referenced an Undocumented Well, Assessor Parcel Number 019-38-15, the “Haybale Well”. “An inspection of this office this office’s records could not locate a permit, temporary permit or combination application and waiver appurtenant to said well to permit the drilling of the Haybale well in compliance with NRS. It appears that the Haybale well was drilled by an unlicensed well driller without the benefit of a permit, temporary permit or combination application and waiver appurtenant to the location of said well. This lack of documentation is also substantiated by the fact that the Haybale well was not disclosed to the

Ponderosa Dairy's legal counsel and hidden by haybales with additional hay bales being added prior to a December 9, 2006, announced joint field inspection attended by personnel from this office, Ponderosa Dairy's legal counsel and, management of the Ponderosa Dairy."

- ◆ In a letter to Rockview Dairies, Inc. Legal Counsel, Gregory Walch dated February 8, 2008 by Robert Coache, Deputy State Engineer referenced Ponderosa Groundwater Pumpage Reporting. "This lack of documentation is also substantiated by the fact that the Haybale Well was not disclosed to the Ponderosa Dairy legal counsel and hidden by hay bales with additional hay bale being added prior to the December 9, 2006 announced joint field inspection attended by personnel from this office, Ponderosa Dairy's legal counsel and management of the Ponderosa Dairy." "Unfortunately, to date, compliance with existing permit terms and Nevada Revised Statutes (NRS) has not been achieved." "In addition to not being in compliance this office is also concerned that the operators of the Ponderosa Dairy have continued to pump ground water from unpermitted wells located upon Ponderosa Dairy for a beneficial use within the dairy after your law firm and the operator of Ponderosa Dairy were advised during the December 9, 2006, field inspection that certain wells did not have valid water rights appurtenant to them."
- ◆ This is a socially correct way to call a person a thief stealing the public's water (NRS 533.025) for years. Why has the State Engineer not requested the Attorney General to take action for this alleged illegal taking of public's water?
- ◆ The proposed haybale well, which is alleged to be illegal well pursuant to NRS 534.050, should not become a legal using Application 77418. The application should be denied.

The application 77418 has more than one use of the water other than the Commercial Dairy operation of milking cow within the three milking barns. Nevada Revised Statute (NRS) § 533.330 provides that no application shall be for water from one source to be used for more than one purpose.

- The thirty-eight employee housing units would require a permit for Quasi-Municipal and Domestic use which is a secondary use.
- The Compost Plant, which is a solid waste disposal system, through a company named Soil Plus in Las Vegas for a product named Nevada Organic Compost. The Compost Plant would require a permit for commercial solid waste use, which is a secondary use to the proposed commercial dairy use.
- Disposal of water by irrigation is a secondary use.

The Application 77418 is changing Permit 69728, which changed Permit 18764. Sixty (60) AFA of water was moved from Permit 18764. The Permit 69728, Item 5, describes the POD at a point within the SE ¼ of SW ¼ Sec. 28, T.16S, R.49E or at a point from which the NE corner of said Section 28 bears N. 34 degrees 19 minutes 44 second, a distance of 4969 feet.

The submitted map for Application 77418 includes location of all three changes, Lisle Lowe, State Water Right Surveyor #856, P.L.S. #8423 prepared 77418, 69728, and 18764. It appears that Mr. Lowe is trying to breathe life into forfeited water rights for the Rockview Dairy use. The bearings for the POD for Permit 69728 is the same POD that was forfeited by Ruling 4187 on May 13, 1995 for Permit 17790, Certificate 5478 for Well Log 4546, which is not plugged. The bearing for the POD for Permit 17790 is in the SE ¼ of SW ¼ Sec. 28, T.16S, R.49E, or at a point from which the S ¼ corner Sec. 28 bears S. 6 degrees 37 minutes 41 seconds East, 1,190.52 feet and a point from which the SE ¼ SW ¼ corner Sec. 28 bears S. 45 degrees West,

195 feet. The well at this POD is Well Log 4546. When one compares the bearing for POD of permits 17790 and 69728 they are the point.

The Permit 69728 is under the name Farm Road LLC is for Commercial nursery and Domestic Use. However, the Nye County Assessor Parcel # 019-751- 02 has the Assessed Owner Name as Ernest A. & Kathleen C. Becker with an Appraisal Code Classification 180, which is for vacant land with Minor Improvement, the Improvement List includes only a 1940 16 in well 100feet deep. This appraisal was made April 28, 2004. The property is not taxed for any Commercial Codes, any Rural Agricultural Codes 600-606, or Single Family Codes 200-261.

The Assessment records of Nye County on vacant land raises several issue that need to be consider before the State Engineer gives approval for Permit 77418.

1. Has the proposed work for Permit 69728 been completed, a 14" dia. X approximately 250' deep driven well, cased all the way with a 3 hp. submersible pump, pipe & wire within the two years estimated, November 19, 2006?

- What is the Well Log for this new driven well?
- It is obvious that the applicant did not intend to drill a new well at this point of diversion because there is an existing well at this POD, well 4546. Well 4546 was drilled for Permit 16542 May 20, 1959. The Applicant withdrew permit 16542 June 24, 1959.
- The same applicant applied for Application No. 17790, January 19, 1959, which was approved June 1, 1959. Leo Mason received Certificate 5478 March 28, 1963 for POD of well 454, which is appurtenant to 12.25 acres in SE ¼ SW ¼ of Section 28 of T.16S, R.49E.
- State Engineer's Ruling 4187 May 2, 1995 declared Permit 17790 and certificate 5478 forfeited on the grounds that the water under said certificate has not been placed to beneficial use for a continuous period exceeding five years.
- Did the State Engineer require the plugging of well 4546?

2. Why has The Proof of Completion has been extend until December 19, 2008?

- Did Farm Road LLC apply for the extension?
- The applicant has not made a good effort to complete the work of drilling a well.
- I have attached EXHIBIT C 2 pages hereto; page 1 is a Google map of the proposed place of use for permit 69728, which is 80 acres within E ½ SW ¼ of section 28, T.16S., R.49E. I have use pins to mark the four corners of the 80 acres to be irrigated. One can see the creosote bushes in the vacant land; and page 2 is the submitted map with permit 17790 in which you can see the same road located on the map as you can see in the Google map. There is no irrigation or development within the 80 acres.
- Did Amargosa Land Investors, LLC apply for the extension?
- If they did, it is obvious that Amargosa Land Investors, LLC will not complete the work of Permit 69728. Item 15 of Application 77418 by Amargosa Land Investors, LLC will divert all 60 AFA to the haybale well; "The water for will be leased by the Applicant to the Amargosa Dairy under a lease agreement for general commercial dairy operation including but not limited to the watering and

milking of 9400 cows, the watering of 5000 calves, cooling milk refrigeration compressors, compost operation, employee housing, dust control and related dairy requirements.”

3. Amargosa Land Investors, LLC has not demonstrated ownership and control of the land of the existing POD at APN 019-751-02 or at the proposed POD, the Haybale Well.

- The lease agreement can be changed at any time with out public notice, public hearing, or public right to protest.
- This application should be denied.

4. Has Permit 69728 been a parking lot for water right investors?

- a. The 80 acres of land has remained vacant since 1982 and assessed by Nye County as vacant land for APN 19-751-02.
- b. No new well has been drilled.
- c. No evidence of irrigation since 1982
- d. All 60 AFA will be diverted leaving no permitted water for proposed Irrigation and Domestic use for a Commercial nursery within the 80 acres of APN. 19-751-02.
- e. When permits are withdrawn, cancelled, or forfeited the State Engineer has not followed up requiring owner of the permit to seal the well by plugging of the well pursuant to NAC 534.420.
- f. New water rights have been move to the same POD of the withdrawn, cancelled, or forfeited permits by a State Water Right Surveyor using different bearing to describe the location of the POD of an abandoned well as the location of drilling a new well where work is to be completed.
- g. The permit applicant did not complete the work. No new well log was filed on or before the Proof of Completion of Work date.
- h. An extension was given for not completing the work. The State Engineer has given as many as 28 extensions in as many years for Proof of Completed Work to be filed in Amargosa Valley.
- i. State Engineer must stop giving extensions until staff has personally visited the place of use to verify the extent of good faith effort of progress toward the completion of work. If the extent of the good faith effort is not visible, then the extension should be denied and the permit cancelled.
- j. Assessment of the vacant land has changed owners since application 69728. The new permit owner has no intention to provide Proof of Completed Work December 19, 2008. A new application has been made to lease water rights by changing the POD of the water rights to an alleged illegal well and will withdraw permit 69728.
- k. The State Engineer should deny an application using the parking lot technique such as application 77418.

The dairy is using the shotgun approach to permitting by making an application 76218 to change POD from previous existing dairy well permit 74537 and making a lease agreement with Amargosa Land Investment LLC for permit 77418 to use the same POD, the haybale well. On August 31, 2007 Rockview Dairies Inc. filed application 76218. Item 15, permit 77418, provides a detailed description by the applicant adding “This water will be leased by the Applicant to Amargosa Dairy under a lease agreement” to the Rockview’s detailed item 15, permit 76218 statement. Rockview Dairy is hoping to make the haybale well legal.

- Has this agreement with the “Amargosa Dairy” been filed with the application?

- Does the "Amargosa Dairy" own and control the property in which the new POD will be located?
- The Nevada Dairy Commission List of Nevada Dairies as of 10/8/2008 does not contain a dairy by the name of "Amargosa Dairy". The list contains the names for three dairies located in Amargosa Valley Nevada: Moapa Dairy, Ponderosa Dairy I, and Ponderosa Dairy II.
- Is the Amargosa Land Investment LLC or the "Amargosa Dairy" a new operation by Rockview Dairy, Inc?
- If the agreement is terminated between the two parties, will the dairy continue to use water in the same fashion and manor as alleged taking of the publics water by the "Haybale Well", pumping water without a permit or well log?

The extension of permit 69728 should be revisited by the State Engineer and cancelled reverting the water to the groundwater source and not back to the base water right. Also, the State Engineer must restrain the parking lot technique of water rights, shotgun approach to permitting, and the excessive drawdown of groundwater causing a large cone of depression.

Approval of this application may affect the protectible interest in the existing domestic wells as set forth in NRS 533.024; "The Legislature declares that: b) To recognize the importance of domestic wells as appurtenances to private homes, to create a protectible interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated."

THEREFORE the Protestant requests that the application should be **denied** on the primary criteria that the application conflicts with existing rights of domestic wells and that an order be entered for such relief as the State Engineer deems just and proper.

Signed ..... *John F. Bosta* .....

John F. Bosta

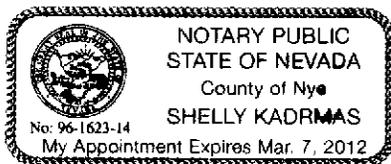
Document contains three exhibits with 5 pages hereto.

Address P. O. Box 42

Amargosa Valley, NV 89020

Subscribed and sworn to before me this <sup>4th</sup> ~~14th~~ day of <sup>Nov.</sup> ~~July~~, 2008  
 ..... *Shelly Kadmas* .....

State of Nevada



County of Nye

## Multiple Wells

In many cases, a field site may have more than one pumping well. Multiple cones of depression can intersect and result in greater drawdown than expected from a single well (Fig. 7). As the equation governing groundwater flow (Laplace equation) is linear, the drawdown at any point is found by summing the drawdowns produced by all the wells (Fig. 8).

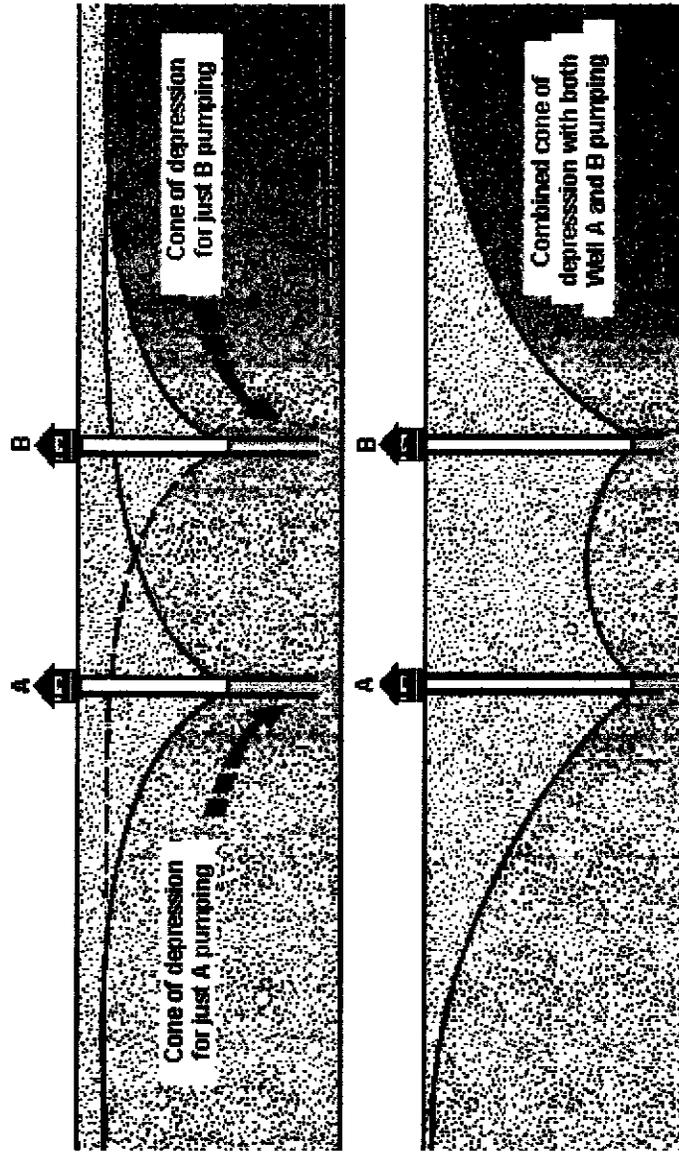


Figure 7. Coalescing of multiple cones of depression (from Oregon State University Extension Service <http://groundwater.orst.edu/under/wells.htm>)

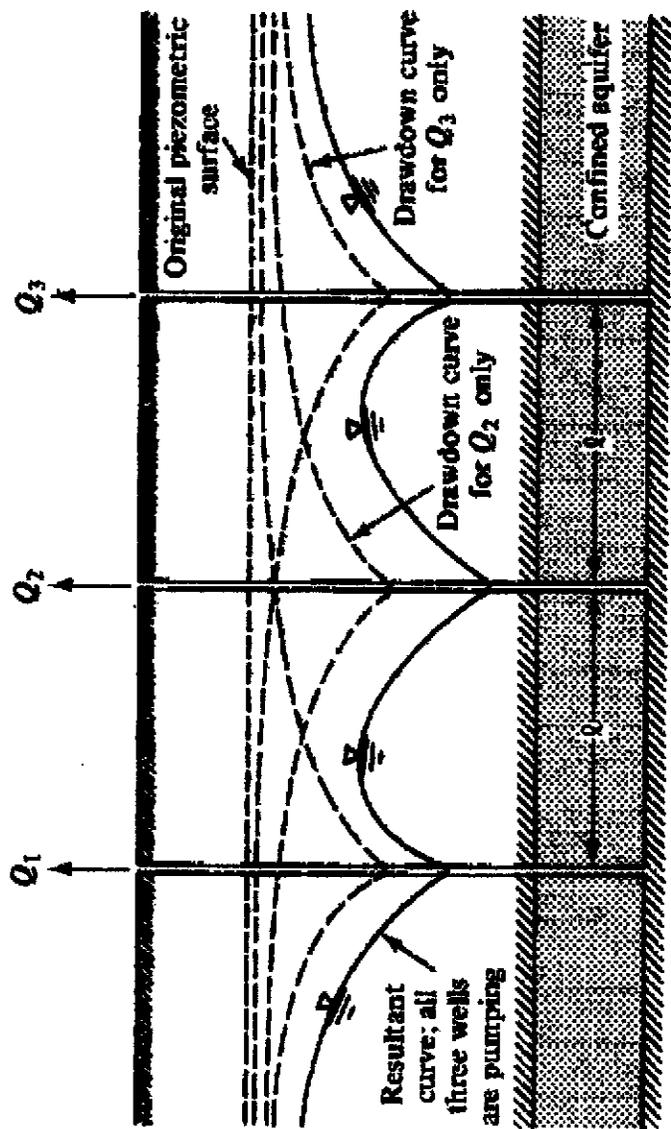
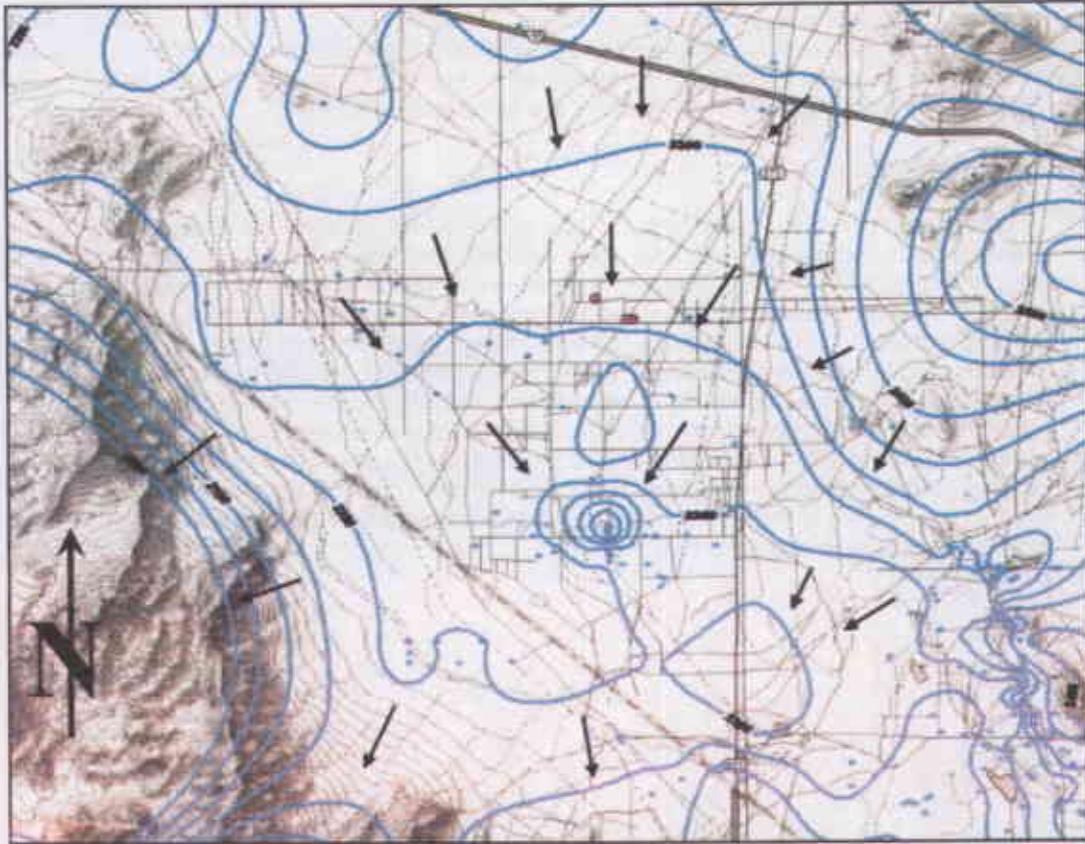


Figure 8. Summing of individual calculated drawdowns for multiple well scenarios (from Bear, 1979)

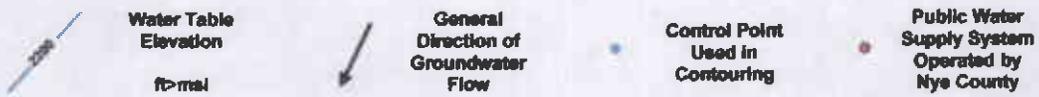
EXHIBITA

Page 2

John Bosta protert 77418



0 1 2 3 4 5 6 miles



**Figure 6. Potentiometric map showing the elevation of the water table in the spring of 2004 and the directions of groundwater flow**

**Note: This map is based upon water level measurements taken primarily by Nye County and the U.S. Geological Survey with supplemental data from the Nevada Division of Water Resources.**

11

**Wellhead Protection Plan  
For Nye County Operated  
Systems in Amargosa Valley  
March 2006**

**Prepared by:  
Thomas S Buqo, Consulting Hydrogeologist, Inc.  
P.O. Box 127, Blue Diamond, NV 89004**

*John Bostin Protest 77418*

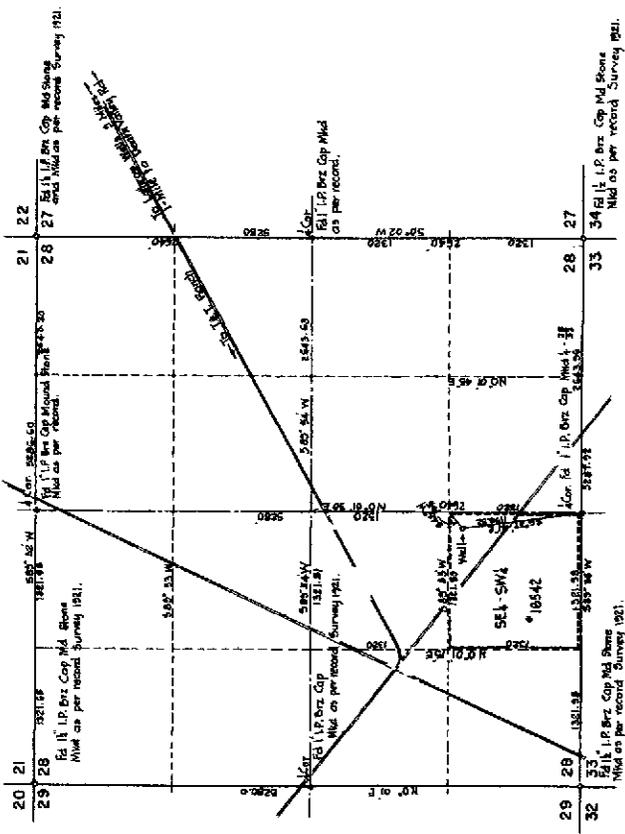
**EXHIBIT B**



# EXHIBIT C

John Bosta Protest 77418

page 1



STATE OF NEVADA }  
 COUNTY OF CLARK }

I, L.M. Sobush, Water Rights Surveyor for the State of Nevada, being first duly sworn, depose and say that this map consisting of one sheet, has been correctly drawn to the designated scale from field notes of a survey made by me on the 23rd day of May 1957; that it truly and correctly represents the location and extent of the proposed works used to divert water from underground sources for irrigation purposes. That the proposed point of diversion, the approximate location of the diversion channel or other conduits, the place and manner of use, and the location and names of all other works or streams which are crossed by or connected with the said works are fully and correctly designated hereon.

*L.M. Sobush*  
 State Water Rights Surveyor

Subscribed and sworn to before me this 25th day of May 1957.

*Leo Mason*  
 Notary Public in and for Clark County Nevada.



SE: SW 1/4, SEC. 28, T16S, R49E.  
 LATHROP WELLS NYE COUNTY NEVADA.

MAP TO ACCOMPANY  
 APPLICATION

TO APPROPRIATE WATER FOR IRRIGATION PURPOSES  
 BY  
 LEO MASON  
 HOLLYWOOD CALIFORNIA.

FILED  
 JUN 2 1957  
 CLARK COUNTY NEVADA

17790 File Under

John Bosta protest 77418

EXHIBIT C  
 Page 2