

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

RECEIVED

2010 JUN 14 AM 11:30

STATE ENGINEERS OFFICE

**FILED**

JUN 14 2010

STATE ENGINEER'S OFFICE

PROTEST

IN THE MATTER OF APPLICATION NUMBER 79699,  
FILED BY AMARGOSA SOLAR I LLC,  
ON MARCH 18, 2010, TO APPROPRIATE THE WATERS OF UNDER  
PERMIT 15893, CERTIFICATE NO. 5717.

Comes now John F. Bosta, whose post office address is P.O. 42 whose occupation is Retired and protests the granting of Application Number 79699, filed on March 17, 2010 by Amargosa Valley Solar 1 LLC to appropriate the waters of an underground source under permit 15893, Certificate No. 5717. situated in Basin 230 in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

James R. Hare filed the Amended Application 15893 February 1, 1957 for 7.0 second-feet of underground water for irrigation and domestic use on 320 acres of land in the N ½ of Section 23, Township 16 South, Range 48 East, M.D.B.&M. The Acting State Engineer issued the permit. The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 3.5 cubic feet per second, or a yearly duty of 5 acre-feet per acre of irrigated land.

On April 8, 1964 State Engineer, Elmo J. DeRicco issued Certificate 5717 for a POD in the NE ¼ NE ¼ Section 23, Township 16 South, Range 48 East, M.D.B.&M or at a point from which the NE corner of said section 23 bear N. 37° 10' E. a distance of 87.0 feet for the amount of appropriation of 3.5 cfs, but not to exceed 800 acre feet annually. The description of land to which the water is appurtenant is 160 acres in the NE ¼ Section 23, Township 16 South, Range 48 East, M.D.B.&M.. 800 acre-feet annually is enough water to irrigate 160 acres at 5 acre-feet per acre.

Under the date March 13, 1997, Lisle Lowe, filed an Application 62918, which was returned. The Amended Application was filed April 25, 1997 to change the POD and POU for a portion of water heretofore appropriated under Permit 15893, Certificate 5717. The amount of water to be changed was 0.86 cfs, not to exceed 197 afa. A total of 39.4 acres was removed from irrigation in NE ¼ NE ¼ of Section 23, 9.85 acres from each corner, leaving an inscribed circle pivot of 120.6 acres with a duty of 603 afa at 5 acre-feet per acre for irrigation.

The Amended Application submitted April 15, 2010 for Application 79699, filed on March 17, 2010 is insufficient, and ambiguous:

1. This application, 79699, abrogates a portion of 603 afa duty of Permit 15893, Certificate 5717. The amount of water to be changed is 1.75 cfs, not to exceed 400 afa. A total of 80 acres are deleted from the circle pivot leaving 40.6 acres with a duty of 203 afa under Permit 15893
2. The applicant, Amargosa Valley Solar 1 LLC, lessee from Geneerco, Inc has no recorded lease or easement pursuant to Nye County Document Search Results using Eagle Web Search.
  - a. The owner, Geneerco, should make this application to drill the new well (B), see Map To Accompany A New Appropriation and A Change of A Portion of Permit 15893, for Industrial use, which will change the Irrigation Use to an Industrial, a higher use.
  - b. If Amargosa Valley Solar 1 LLC does not own the land, can they drill a well on someone else's property?
  - c. Has the owner notified the county assessor of change of agriculture Irrigation Use to Solar Industrial Use?
3. Item 2, the amount of water to be changed 1.75 cfs (400 afa) should read 1.75 cfs not to exceed 400 afa because 1.75 cfs equals 1,266.9475 afa.

4. Item 5, the POD remains the same, Well 5606 (A), located at NE ¼ NE ¼ Section 23, Township 16 South, Range 48 East, M.D.B.&M or at a point from which the NE corner of said section 23 bear N. 37° 10' E. a distance of 87.0 feet.
  - a. The existing well, 5606, will have two uses, Irrigation and Industrial by means of two permits, 15893 & 79699. Pursuant to NRS 533.330; No application shall be for the water of more than one source to be used for more than one purpose; but individual domestic use may be included in any application with the other use named.
  - b. The POD should be the new well (B), proposed to be located at NE ¼ NE ¼ Section 23, Township 16 South, Range 48 East, M.D.B.&M or at a point from which the NE corner of said section 23 bear N. 75° 33' 30" E. a distance of 403.5 feet.
  - c. The proposed location of Well (B) is in the 9.85 acres removed from irrigation use in the NE corner of Section 23 of Permit 15893 by abrogation for Permit 62918. See Map for Permit 62918. The remaining water for irrigation use is the inscribed circle pivot.
  - d. This 9.85-acre area will contain Well (A) for irrigation owned by Geneerco under Permit 15893 and Well (B) for industrial owned by Amargosa Valley Solar 1 LLC under Application 79699.
5. Item 7, Proposed place of use is the entire proposed BLM Right-of-way and not for the two power blocks, which are not located on the map for Permits 79699.
  - a. The water distribution pipeline from the POD to the new POU, power blocks, is not included in the map submitted for this application.
  - b. Each power block will use 200 afa for a total of 400 afa.
  - c. An addition 200 acre-feet of water will be needed to wash the mirrors.
    - i. During the June 1, 2010 Nye County Board of Commissioners (BoCC) meeting, discussion on the Development Agreement between Solar Millennium and Nye County, the attorney Mark Fiorentino, representing Solar Millennium, said he had met with the State Engineer, Fish and Wildlife, National Park Service, Nye County, BLM, and Solar Millennium which they all have agreed to the mitigation of water supply for the Solar Project on Farm Road. The public has been excluded from these meeting with the above agencies. The mitigation agreement will be disclosed in the Final EIS, which will be released sometime in July 2010.
    - ii. During a telephone conversation with Greg Helseth, BLM, Solar Millennium will lease 400 acre-feet for the power blocks and 200 acre-feet for other uses such as wash the mirrors and watering the roads. Also, an additional 203 or more acre-feet of senior water rights north of Devil's Hole will be purchased and held in trust for Nye County while Solar Millennium works out a plan with federal and state agencies. Once the agreements are made the water rights will be transferred to Nye County for future development. However, "The State Engineer further finds that to leave the water in its natural state in the ground does not constitute an appropriation for a beneficial use under Nevada Law." See page 4 of the State Engineer Rule No. 4916 issued by R. Michael Turnipseed July 25, 1997.
6. Item 8, Existing place of use is the circle pivot located in NE ¼ NE ¼ Section 23, Township 16 South, Range 48 East, which is 120.6 acres. 400 acre-feet of water will irrigate 80 acres, which will be deleted from the 120.6 acres leaving 40.6 acres of land in the small circle pivot to be irrigated using the remaining 203 acre-feet of water under Permit 15893.
7. Item 11, Description of proposed works includes only the existing 12" well, which is well (A) 5606.
  - a. The drilling of the new proposed well (B) is not included for the water of one source to be used for one purpose, an industrial use.
  - b. The proposed water distribution pipeline is not included in the proposed works and map.
8. Item 12, Estimated cost of \$100,000 for the existing well is not realistic.
  - a. What are other costs that have not been identified?

9. Item 15, Provide a detailed description of the proposed project and its water usage; "Water will be used for industrial use in two solar power plants" is an insufficient description.
  - a. There is no detail on how the 600 afa of construction water will be used during the construction period of two or three years.
  - b. There is no conversion factor of irrigation use, which returns about 30% of the water back to the ground water, to industrial use, which will evaporate into the air. This proposed use is an exchange of one acre-foot of irrigation to one acre-foot of industrial and not one acre-foot of irrigation to seven tenths of acre-foot of industrial.
10. Item 16, Miscellaneous remarks, "Water rights may temporarily be moved back to irrigation while the power plants are being constructed" is two uses in one permit.
  - a. Pursuant to NRS 533.330 an application is limited to water of one source for one purpose. No application shall be for the water of more than one source to be used for more than one purpose; but individual domestic use may be included in any application with the other use named. The primary use of this application is industrial. Temporarily move back to irrigation is a second use, which would require an amended permit.
11. NRS 553.386 provides that the State Engineer shall not consider or treat any person to whom a permit or certificate is conveyed as the owner or holder of the water right until the State Engineer confirms a report of conveyance.
  - a. The Proposed Place of Use in Item 7 is the description of 7,810 acres of land in the application for the BLM Right-of-Way for the Amargosa Farm Road Solar Energy Project (NVN-084359). The Notice of Decision to Grant a ROW for NVN-084359 has not been made, which cannot be made until the Final EIS is approved for ROW. Therefore, the Report of Conveyance cannot be completed without a ROW lease from BLM.

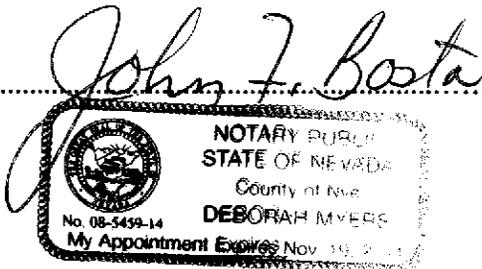
The State Engineer should require Amargosa Valley Solar 1 LLC to sign an agreement that the electric power produced will not be exported from Nevada and will be purchased by Nevada customers only before this application is approved.

- a. Pursuant to NRS 533.372; Approval or rejection of application to use water to generate energy for export. Based upon the public interest and the economic welfare of the State of Nevada, the State Engineer may approve or disapprove any application of water to beneficial use or any application which contemplates a change in the place or beneficial use of water to a use involving the industrial purpose of generating energy to be exported out of this state.

I request that a public hearing be held on this application before the State Engineer makes a decision on the application

On September 20, 2002 I purchased my home on 1830 E. McCoy Street, which is located in NE ¼ NE ¼ Section 35, Township 16 South, Range 49 East, M.D.B.&M. My domestic water supply well is located about 6.5 miles South East from the point of diversion (POD) in the NE ¼ NE ¼ Section 23, Township 16 South, Range 48 East, M.D.B.&M. This application might have an adverse affect my water supply well.

THEREFORE the Protestant requests that the application be Denied and that an order be entered for such relief as the State Engineer deems just and proper.



John F. Bosta

P.O. Box 42  
Amargosa Valley 89020  
(775) 372-9038

Subscribed and sworn to before me this ...17<sup>th</sup>...day of June 2010

*Deborah Myers*  
Notary Public of Nevada County of Nye