BEFORE THE STATE OF NEVADA,

STATE ENVIORNMENTAL COMMISSION

In Re:	)
	)
Appeal of Solid Waste Disposal Site Permit	)
Permit No. SW495REV00	)
Operator: Recology	)

APPELLANT'S EXHIBIT LIST

COMES NOW, the Appellants, Clean Desert Foundation, Inc., Richard Cook, and Rob Hannum, by and through counsel of record, Dolan Law, LLC, may use the following exhibits at the hearing on this matter scheduled for May 21 and 22, 2012.

EXHIBIT LIST

In addition to the permit application and supporting materials and all other documents in NDEP's record, including all matters brought forth during any period of public comment or the like, Appellants may offer the following exhibits at the hearing on this matter:

Exhibit 1. Humboldt Sun Newspaper Article, "State Wants Panel to Deny Jungo Permit Appeals" and "Move to Dismiss Jungo Appeals Could Hinge on AB 94", dated 5/8-5/10, 2012.

Exhibit 2. Cross Section of Golder C_C, Comparative Graphic

Exhibit 3. 02/19/2012 Picture of Jungo Flat

Exhibit 4. Picture of Fairy Shrimp

Exhibit 5. Precipitation Map with Legend

Exhibit 6. Slope Map with Legend

Dated this 14th day of May, 2012.

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EXHIBIT 1

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VOLUME 43, ISSUE 37

State wants panel to deny Jungo permit appeals

By Rudy Herndon
The Humboldt Sun

WINNEMUCCA — State regulators are asking Nevada's environmental commission to deny three appeals of the Jungo Landfill's operating permit, arguing that the proposed design they approved far exceeds current statutory requirements.

A three-member panel is scheduled to convene in Carson City on May 21 and May 22, if necessary, to review challenges from Richard Cook, Robert Hannum and the Clean Desert Foundation.

The appellants maintain that state officials repeatedly failed to consider potential threats to public health, wildlife and the environment when they approved a Class I operating permit for the project. But Deputy Attorney General Cassandra P. Joseph urges the panel to uphold the state's permit, asserting that the appellants themselves failed to demonstrate that the Nevada Division of Environmental Protection (NDEP) shirked its duties under the law.

Writing on behalf of the agency's Bureau of Waste Management, she says the appellants rely on speculative and unfounded arguments to make their case, based on the assumption that the landfill design will ultimately fail. But those arguments fall short, she says, because the proposed landfill and monitoring programs are designed to prevent the kind of scenarios they envision from occurring in the first place.

"NDEP's unprecedented

— See APPEALS, Page Two —

Move to dismiss Jungo appeals could hinge on AB 94

By Rudy Herndon
The Humboldt Sun

WINNEMUCCA — Not many people were paying attention in 2007, when the Nevada Legislature unanimously passed a bill that eliminated four sentences from an equally obscure 2005 law.

Assembly Bill 94 faded even further from the public's memory over the next several

— See BILL, Page Two —

BILL

(Cont. from Page One)

years, but the law's chief sponsor hasn't forgotten about it.

Former Assemblywoman Sheila Leslie says she worked on the 2007 bill to ensure that members of the public have the legal standing to challenge a state regulatory agency's decision.

Although it's largely been forgotten, the law could be thrust to the forefront this month, as the Nevada State Environmental Commission reviews Recology's motion to dismiss three appeals of the proposed Jungo Landfill's operating permit.

Attorneys for Recology maintain that none of the three appellants has any cognizable legal interest that would give them the standing they need to move forward with their challenges.

"Allowing these appeals to proceed in the absence of standing will render the 'aggrieved' standard meaningless, open the floodgates to unauthorized appeals, unfairly burden the permit holder and needlessly tax the resources of (the Nevada Division of Environmental Protection and the Commission," the attorneys say in their motion to dismiss the appeals.

But Leslie believes the law, as enacted on May 29, 2007, restores legal standing to the public at large.

"That was certainly the intent of the bill — to make sure that a citizen could file an appeal," she told the Humboldt Sun on April 30.

Before 2005, environmentalists, public interest groups and citizens alike were free to participate in the environmental commission's hearings. But during that legislative session, lawmakers passed a bill that was designed to prevent competitors from meddling in another company's plans to obtain state licenses.

The Nevada Attorney General's Office later determined that the 2005 bill applied to public interest groups, as well, and the environmental commission went on to quote that opinion when it struck down a mine watchdog group's appeal.

When Leslie heard about the environmental commission's actions, the Reno Democrat went to work on AB 94.

Leslie's bill struck down a provision that prevented citizens from joining administrative proceedings unless they had a "direct financial interest" in the approval, denial or renewal of a state license.

Tim Chandler, a senior principal deputy with the non-partisan Nevada Legislative Counsel Bureau, said that generally speaking, an appellant no longer needs to have a direct financial interest to participate in related proceedings.

Former Assemblyman John Carpenter co-sponsored Leslie's bill, and believes that it gives the appellants the foundation they need to appear before the state commission.

"If we eliminated it, why then, it looks to me like they could go forward with them," the Elko Republican told the Humboldt Sun.

Carpenter did not take a position on the proposed landfill itself. But the veteran ex-lawmaker said he believes that as a rule, citizens should be allowed to appeal a state agency's decision.

"I always kind of felt that if people wanted to protest, they have a right to protest," he said.

Assembly Minority Leader Pete Goicoechea, who seconded a motion that pushed AB 94 through the Assembly Government Affairs Committee, put it more succinctly.

"Anyone can appeal," the Eureka Republican told the Humboldt Sun.

To state the obvious, attorneys for Recology don't share that belief.

They argue that none of the three appellants' personal or property-related interests are at stake, since everyone associated with the appeals lives more than 25 miles from the project site. Likewise, the attorneys say that none of the appellants has established a legal interest that would be substantially and adversely affected by the Jungo property.

"(Granting) standing to challenge the Jungo project to someone who lives in Winnemucca is equivalent to granting standing to someone in Reno to challenge a land use project in Carson City," Recology's motion to dismiss says.

The motion also alleges that the appellants' attorneys are trying to get around their lack of standing by hiding behind the recently formed Clean Desert Foundation, which it calls a "shell entity."

It notes that a federal judge previously ruled that neither Bob Dolan nor Massey Mayo had the standing to appeal a Humboldt County Regional Planning Commission decision to extend the project's conditional use permit.

Moreover, the motion claims that Dolan and Mayo are attempting to manufacture standing by filing an appeal on behalf of Robert Hannum. The Mountain View, Calif., resident purportedly bought property within two to three miles of the project site in 2008, according to his appeal.

"In other words, even in the face of the federal court order that they lack standing, Dolan and Mayo continue to challenge the Jungo project and prosecute appeals to this Commission through abusive tactics," the motion says.

But at the time that Hannum "allegedly" purchased his property, work to develop the landfill was already well under way, the motion says.

"As a result, to the extent that Hannum owns property 'within 2-3 miles of the landfill site,' he took title subject to the development of a solid waste landfill at the Jungo location," it adds.

Recology's attorneys ultimately argue that Hannum has no cognizable legal interest at stake, since the state operating permit would prevent the landfill from discharging pollutants into the groundwater. In any event, they say that Hannum has not identified any water right that could be impacted by the project.

To read Recology's motion in full, go to: http://sec.nv.gov/main/jungo_landfill.htm.

APPEALS

(Cont. from Page One)

demands on Recology for a robust and protective landfill design at the Jungo landfill has (sic) led to the highest state-of-the-art design for a landfill in the state of Nevada," she says in the agency's response to the appellants. "The design goes far beyond the legal threshold for issuing the Permit and is more than adequate to protect human health and the environment."

The state maintains that the double liner design alone is robust enough to almost meet the requirements for a hazardous waste landfill, and says the proposed leachate removal system would further reduce the potential of leakage from the Desert Valley site.

Other safeguards include quarterly sampling and testing of landfill gas and groundwater, as well as further monitoring of soil settlement and the liner system over time.

When taken together, Joseph writes, these significant features protect public health and the environment, while surpassing current requirements under Nevada law.

The appellants, however, say the permit amounts to a variance from state requirements, since the base of the proposed landfill is within 100 feet of Desert Valley's aquifer.

They note that the bottom of the landfill would extend roughly 34 feet below the surface, even though the uppermost portions of the aquifer are just 59 feet underground.

They're concerned that short distance could be further reduced during the proposed landfill's projected lifespan by another nine to 10 feet, based on past variations of the aquifer's levels.

But according to the state's response, the developer does not need a variance from current requirements as long as the design is sufficient enough to protect Nevada's waters from pollution or contamination. In this case, Joseph writes, the protective measures would more than compensate for the site's proximity to the aquifer.

She notes that G. Fred Lee, who served as the county's consultant during the permitting process, also favors the kind of double-liner system that would be used in this case. The system includes layers of soil, gravel, piping, cushions and high-density polyethylene.

"There is simply no question that these layers provide protection above and beyond that required by the regulations," she writes.

At times, the state's response adopts a sarcastic tone, noting that even Lee, "Appellants' favorite author on the subject," endorses the kind of gas collection system that the Jungo site would use.

It also refers to the appellants' comments regarding daily soil cover as a "red herring."

Landfill opponents believe that silty soil on the valley floor is ill-suited to support millions of tons of waste on top of it. Nor do they think that material can be used to build berms or trenches that would divert surface water away from the site.

The NDEP counters that soil from the site can be used as a daily cover. However, if it turns out that it's inadequate, Recology would be required to import soil to the site, or make other arrangements as needed.

As far as other soil applications go, the state and Recology have acknowledged that the developer will likely need to import less permeable soil for use in the liner system, or to amend that soil with clay. It's unfounded, then, for the appellants to assert that the importation of clay soil is unlikely, Joseph writes.

"Plain and simple, Recology will not be permitted to operate the Jungo landfill if construction of the soil liner does not meet the design requirements," her response says.

In fact, Joseph writes, some of the initial design elements have already undergone significant changes. For instance, she notes that the overall height of the landfill has been reduced from 400 feet to 200 feet.

In the future, there's always a possibility that the developer may be required to modify its designs even further, she says, based on the results of subsidence testing.

"In sum, NDEP has not excused Recology from meeting any of the statutory requirements for operation of a solid waste landfill," she writes. "Rather, NDEP has made it clear that it will strenuously enforce the regulations by requiring more robust design requirements, and that appropriate measures to meet those requirements must be taken."

Ultimately, she says the appellants "appear to be confused" and "appear to misunderstand" some aspects of the state's proposed landfill monitoring program.

The NDEP can always extend the groundwater monitoring period, based on data it collects over the landfill's lifetime, she says.

Recology's response to the three appeals largely echoes the state's position on the matter.

Attorneys for the developer note that the project went through a demanding four-year review that led to numerous changes in the proposed landfill's design. As a result, it exceeds many regulatory requirements, so the NDEP was well within its discretion to issue a permit for the project, they say.

"Distilling these appeals to their core, Appellants want the Jungo project to be held to more exacting standards than Nevada's regulations require," they write. The company's response also takes aim at the evidence that the appellants submitted to the state's environmental commission.

It says that some of the appellants' objections are based on an outdated 1988 report that examined a single-liner system, instead of the double-liner system that would be used at the Jungo site.

The company's attorneys say the appellants also rely on obsolete and non-peer reviewed information, as well as hearsay, to support arguments that common food waste would degrade the landfill's liner.

Nor did Cook submit any engineering data to support his "conclusory" opinion that the proposed design would not control run-on and runoff from the site, they say. Instead, Cook and other appellants rely on photographic evidence of flooding around the nearby railroad tracks to back up their contention that the site is prone to "ponding."

State officials say they're confident that the proposed controls they've put in place will protect the site from record storm events, and Recology says the appellants' photos actually support the proposed landfill design.

"The photos demonstrate that the railroad berm remains above the ponded water during storm events and prevents the water from infiltrating from one side of the berm to the other," they say. "Likewise, the railroad berm demonstrates the effectiveness of aggregate to allow for all-weather access because the railroad tracks remain operational (during) storm events."

To read the latest documents in full, go to: http://sec.nv.gov/main/jungo_landfill.htm.

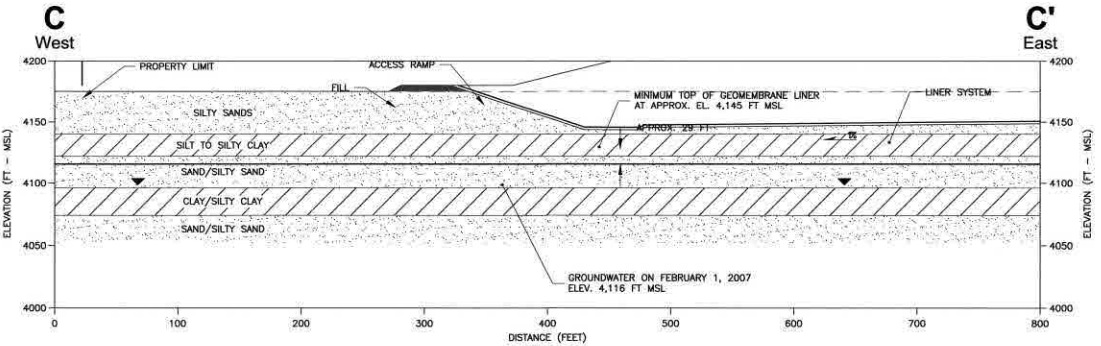
For more information about the appeals, see the April 24 edition of the Humboldt Sun.

EXHIBIT 2

EXHIBIT 2

EXHIBIT 3

EXHIBIT 3



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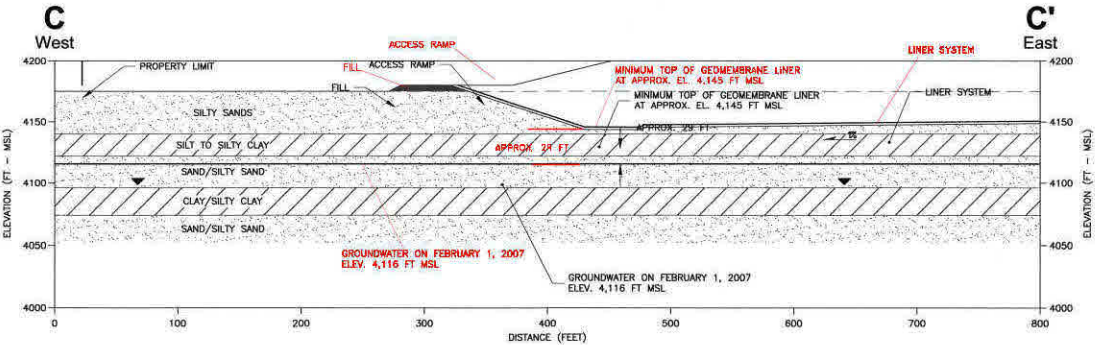

C 9 9 **CROSS-SECTION C-C'**

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HORI. & VERT. SCALE FEET

EXHIBIT 4

EXHIBIT 4

EXHIBIT 5

EXHIBIT 5

Graticule-UTM

photo point

jungo-s7-survey-boundary

Section 7

7

UPRR

Bottle Crk Rd

Jungo Rd

jungo_flat

Landmarks

jungo-rainfall--isohyetal-0.5in

jungo-rainfall

6.5 - 7.5

7.5 - 8.5

8.5 - 9.5

9.5 - 10.5

10.5 - 11.5

11.5 - 12.5

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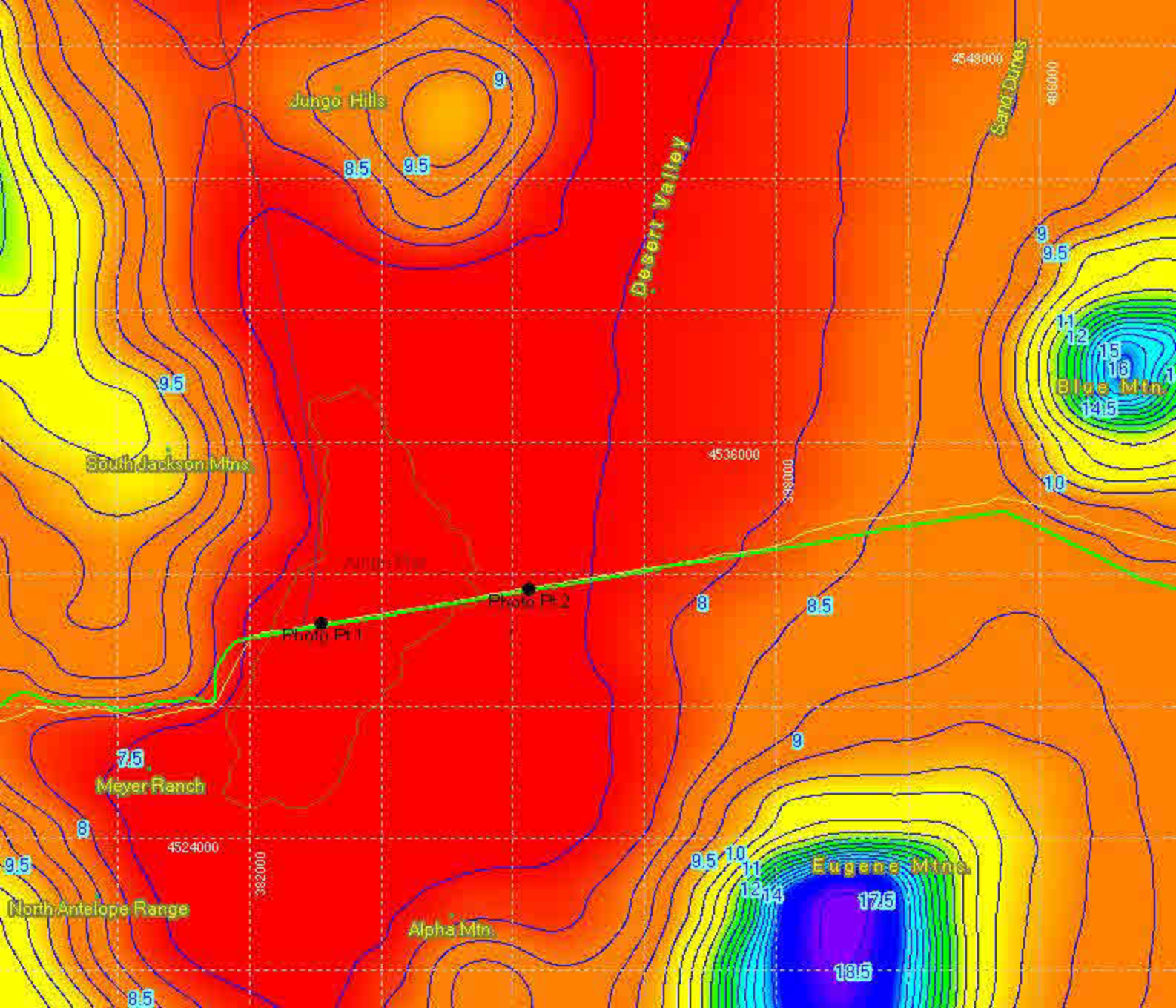
Jungo Hills
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8.5
9.5
Desert Valley
4548000
Sand Dunes
406000
9
9.5
11
12
15
16
Blue Mtn.
14.5
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9.5
South Jackson Mtns.
4536000
398000
Photo Pt 2
Photo Pt 1
8
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7.5
Meyer Ranch
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4524000
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North Antelope Range
Alpha Mtn.
9.5
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12
14
Eugene Mtns.
17.5
18.5
8.5

EXHIBIT 6

EXHIBIT 6

Graticule-UTM

photo point

jungo-s7-survey-boundary

Section 7

7

UPRR

Bottle Crk Rd

Jungo Rd

jungo_flat

Landmarks

jungo-slope

0 - 1 %

1 - 2 %

2 - 3 %

3 - 4 %

4 - 5 %

5 - 10 %

10 - 20 %

20 - 30 %

30 - 40 %

40 - 50 %

50 - 60 %

60 - 70 %

Above 70%

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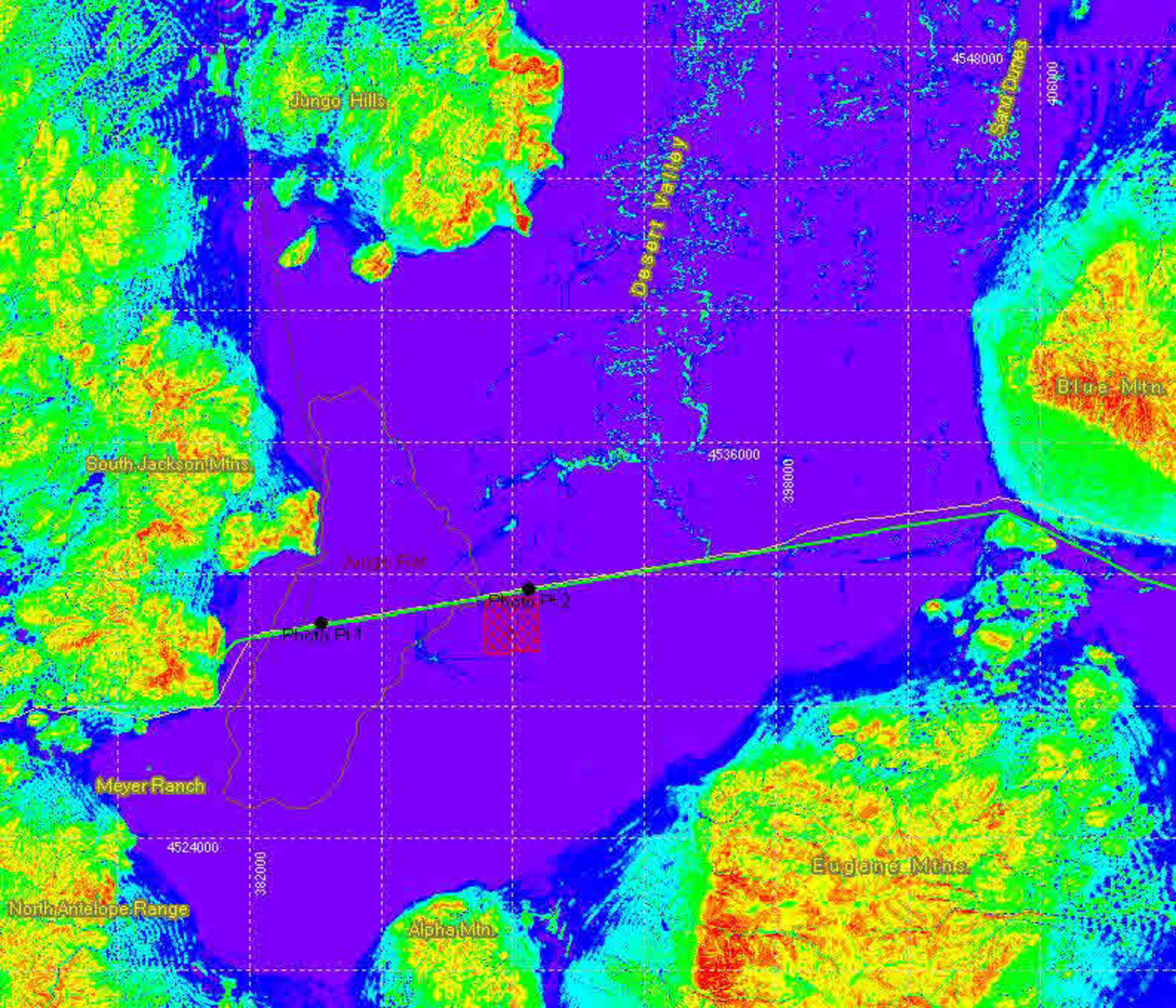

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Photo Pt 1
Meyer Ranch
4524000
382000
Eugene Mtns.
North Antelope Range
Alpha Mtn.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2012, I have deposited in the U.S. Mail in a properly addressed and stamped envelope a true and correct copy of the Exhibit List, addressed to the following:

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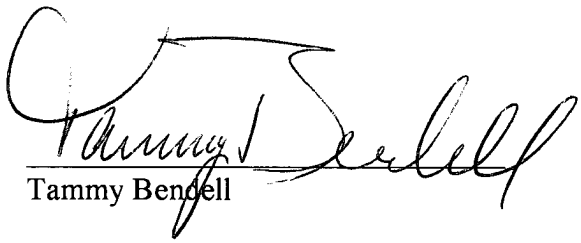

Tammy Bendell