

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

FILED
JUL 25 2003
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 69837
FILED BY ROCKVIEW FARMS
TO CHANGE THE POINT OF DIVERSION,
MANNER OF USE AND PLACE OF USE OF THE
PUBLIC WATERS OF THE STATE OF NEVADA

PROTEST

Comes now William R. Hansen, on behalf of the United States Department of the Interior, National Park Service, whose post office address is 1201 Oak Ridge Drive, Suite 250, Fort Collins, Colorado, 80525, whose occupation is Acting Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 69836, filed on April 10, 2003 by Rockview Farms, a California Corporation, to appropriate the waters of underground, situated in Nye County, State of Nevada. The protest is filed for the following reasons and on the following grounds:

See Exhibit A attached.

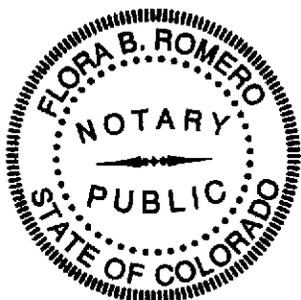
THEREFORE the protestant requests that the application be denied.

Signed William R. Hansen
Agent or protestant

William R. Hansen
Printed or typed name, if agent

Address 1201 Oak Ridge Dr., Suite 250
Street No. or P.O. Box No.

Fort Collins, CO 80525
City, State and Zip Code No.



Subscribed and sworn to before me this 24th day of July, 2003.

Flora B. Romero
Notary Public

State of Colorado
County of Larimer

My Commission expires Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/31/2006

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EXHIBIT A
IN THE MATTER OF APPLICATIONS 69836 AND 69837

Protest on behalf of the National Park Service

Death Valley National Monument was created by Presidential Proclamation in 1933 to preserve unusual features of scenic, scientific, and educational interest, including springs and water-related features. In 1952, Devil's Hole was added to Death Valley National Monument because of the unusual features of the pool and the "peculiar race of desert fish... which is found nowhere else in the world." In 1976, the U.S. Supreme Court determined that a Federal reserved water right exists at Devil's Hole for the purpose of maintaining a water level sufficient to inundate the shelf on which the pupfish spawn (*Cappaert v. United States*, 426 US 128 (1976)). The Court also held that the United States could protect its right, vested in 1952, from "subsequent diversion, whether the diversion is of surface or groundwater" (*Cappaert*, at 143).

In 1994, the enactment of the federal California Desert Protection Act changed the status of Death Valley to a National Park. The Act acknowledged Death Valley's extraordinary and inestimable value, and specifically charged the Secretary of the Interior to take all steps necessary to protect the reserved water rights and water resources of Death Valley National Park, including Devil's Hole.

The National Park Service (NPS) currently monitors water levels at Devil's Hole to detect changes in water levels and to assure that the daily mean water level at Devil's Hole does not fall below the court mandated level. Additional monitoring is conducted by various entities in the vicinity of Devil's Hole and Ash Meadows. The NPS relies upon data collected in these monitoring programs as a basic component of its resource protection program. The NPS is working toward a better understanding of ground water flow paths and flow rates to evaluate the long term effects of nearby water development on park resources.

The NPS has become increasingly concerned that the cumulative effect of nearby ground-water development in the Amargosa Desert may pose a potential threat to resources at Devil's Hole and in Death Valley National Park. Numerous change applications for water rights in the Amargosa Desert have resulted in the general movement of ground-water pumping closer to Devil's Hole.

Applications 69836 and 69837 were filed by Rockview Farms to change the point of diversion and place of use of waters previously appropriated under 60437 and 63235, respectively. The priority date for the base permits is junior to the Federal reserved water right at Devil's Hole. Application 69836 was filed for 0.0389 cfs, not to exceed 10.0 acre-ft annually. Application 69837 was filed for 0.11 cfs, not to exceed 18.2 acre-ft annually. The manner of use is irrigation. The proposed point of diversion and place of use are the same for both applications.

The proposed appropriations are located within the Amargosa Desert, in the Alkali Flat – Furnace Creek sub-basin of the Death Valley Regional Flow System. The proposed point of diversion is about ten miles northwest of Devils Hole, about four miles closer than the base permits. The proposed point of diversion appears to be the same point of diversion for several additional water rights and pending applications, including: Nos. 62115, 64766, 65144, 66041,

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67956 and 67957. The combined annual duty at this common point of diversion is somewhere between 150 and 570 acre-feet annually (depending on how the duties are divided among supplemental water rights).

A recent report published by the U.S. Geological Survey (Fenelon and Moreo, 2002) found that between the 1950's and 2000, water levels in the Amargosa Farms area declined as much as 30 feet because of pumping. According to this report, annual withdrawals in the Amargosa Desert have increased since the mid-1960's. The report states that a cone of depression from pumping in the Amargosa Farms area might either draw more water across the sub-basin boundary between the Ash Meadows and Alkali Flat – Furnace Creek sub-basins, or decrease the amount of water flowing into the Ash Meadows sub-basin.

The movement of the points of diversion closer to Devil's Hole and Death Valley National Park may impair the senior water rights and water resources of Death Valley National Park. The public interest will not be served if water and water-related resources of Death Valley National Park are impaired by these proposed appropriations. Therefore, the NPS protests the granting of Applications 69836 and 69837 by Rockview Farms, Inc. of California.

The NPS is not opposed to the efficient use of water for irrigation purposes. However, recent scientific evidence (Fenelon and Moreo, 2002) suggests that long term withdrawals in the area where these appropriations are proposed will reduce spring flow in discharge areas of the regional ground water flow system. Therefore, we would like to take this opportunity to invite discussions regarding potential monitoring that might alleviate our concerns. The NPS would agree to withdraw its protest if an appropriate ground water monitoring plan could be negotiated with the applicant.

REFERENCES CITED

Cappaert v. United States, 426 US 128 (1976).

Fenelon, J.M., and Moreo, M.T. Trend Analysis of Ground-Water Levels and Spring Discharge in the Yucca Mountain Region, Nevada and California, 1960 – 2000. U.S. Geological Survey Water Resources Investigations Report 02-4178 (Available upon request).