

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



IN THE MATTER OF APPLICATION NUMBER 72012  
FILED BY KEN GAREY FAMILY TRUST  
ON DECEMBER 13, 2004  
TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE  
OF WATER HERETOFORE APPROPRIATED

**PROTEST**

Comes now Charles Pettee, on behalf of the United States Department of the Interior, National Park Service, whose post office address is 1201 Oakridge Drive, Suite 250, Fort Collins, Colorado, 80525, whose occupation is Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 72012 filed by the Ken Garey Family Trust, situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

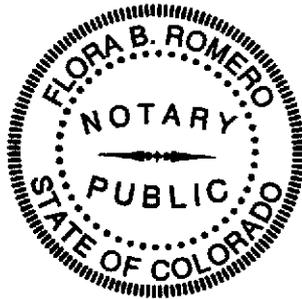
See Exhibit A attached.

THEREFORE the protestant requests that the application be denied.

Signed: *Charles W. Pettee*  
Agent or protestant

Charles W. Pettee  
Printed or typed name, if agent

Address: 1201 Oakridge Drive, Ste 250  
Fort Collins, CO 80525  
City, State and Zip Code No.



Subscribed and sworn to before me this 12<sup>th</sup> day of May, 2005

*Flora B. Romero*  
Notary Public

State of Colorado

County of Larimer

RECEIVED  
05 MAY 13 AM 9:40  
STATE ENGINEERS OFFICE

My Commission expires

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

*Handwritten initials*

## IN THE MATTER OF APPLICATION 72012

### EXHIBIT A

Protest by Charles Pettee, on behalf of  
the United States Department of the Interior,  
National Park Service

- I. Death Valley National Monument was created by Presidential Proclamation in 1933 to preserve unusual features of scenic, scientific, and educational interest. The national significance of Death Valley and its environs was reaffirmed in October 1994 through enactment of the California Desert Protection Act. The Act acknowledged Death Valley's extraordinary and inestimable value, increased its area, and changed the area's status to that of a National Park. The Act specifically charged the Secretary of the Interior and all other officers of the United States to take all steps necessary to protect the reserved water rights and water resources of the Park, which includes the Devil's Hole detached management unit.
- II. The mission of the National Park Service (NPS) may be paraphrased from 16 U.S.C. 1, as conserving scenery, natural and historic objects, and wildlife, and providing for enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.
- III. The NPS is entitled to Federal reserved water rights for reserved lands within Death Valley National Park. The priority dates for reserved rights are senior to the appropriation sought by this application. These rights have not been judicially quantified.

In the eastern part of the Park, Grapevine, Keane Wonder, Nevares, Texas, Travertine and Saratoga Springs provide water for park facilities, domestic use, public campgrounds, resorts, vegetation, wildlife, public enjoyment, scenic value and other related needs. Nevares, Texas, and Travertine Springs collectively discharge about 2,000 gallons per minute (about 3,200 acre-feet per year) and are critical for domestic and commercial use.

The Park supplies water for visitors from the above-named springs. For example, in 1995, water from these springs supported approximately 262,000 overnight campers in Death Valley NP campgrounds, 74,500 motel/hotel rooms rented to park visitors, 220 National Park Service employees and their families (at the height of the visitor season), 400 resort employees and a population of 60 Native Americans.

- IV. A unique and endangered species of pupfish exists at Devil's Hole, a detached unit of Death Valley National Park in Nevada, within the Amargosa Desert hydrographic basin. A decision by the U.S. Supreme Court (later refined by the U.S. District Court) determined that a Federal reserved water right exists at Devil's Hole for the purpose of maintaining a water level of no more than 2.7 feet below a brass pin located on the rock wall of Devil's Hole. This level was determined to be the minimum elevation needed to

inundate the shelf on which the pupfish spawn (*Cappaert v. United States*, 1976). Recent data indicate that the water level in Devil's Hole has been declining since about 1988.

- V. The proposed appropriation is located within the Amargosa Desert hydrographic basin, which is part of the Death Valley regional flow system (Harrill, et al., 1988). According to the Nevada Department of Conservation and Natural Resources (1992), the perennial yield for the Amargosa Desert (230) is combined with Mercury Valley (225), Rock Valley (226), Fortymile Canyon - Jackass Flats (227A), Fortymile Canyon - Buckboard Mesa (227B), and Crater Flat (229). The combined perennial yield for these basins is listed as 24,000 acre-ft/yr. In the Amargosa Desert (230) alone, existing appropriations (including about 17,000 acre-ft of spring discharge in the Ash Meadows area) are estimated to be about 60,000 acre-ft/yr, as of July 2004. Therefore, the amount already appropriated greatly exceeds the perennial yield.
- VI. Application 72012 was filed December 13, 2004 to change the point of diversion and place of use of 0.032 cfs, a portion of water heretofore appropriated under Permit 31727.
- VII. According to the Ground Water Pumpage Inventories of Amargosa Valley, the amount of water put to beneficial use under Permit 31727 was no more than 25 acre-ft during the past ten years. The NPS requests that the Nevada State Engineer limit the amount available to be changed to the amount that has historically been put to beneficial use.
- VIII. The NPS requests that meters be placed on the applicant's wells to validate the amount of water that is actually used, and the amount of water available to be changed under new change applications.
- IX. The NPS protests the granting of this application on the following grounds:
- The amount of water granted in this change application should be limited to the amount that has historically been put to beneficial use. The public interest will not be served by granting a change application where the water has not been put to beneficial use under the base permit and the basin is over-appropriated.
- IX. The NPS reserves the right to amend this exhibit as more information becomes available.

#### REFERENCES CITED

- Cappaert v. United States*, 426 US 128, 1976.
- Harrill, J.R., Gates, J.S., and J.M. Thomas, 1988. Major ground-water flow systems in the Great Basin region of Nevada, Utah, and adjacent states: U.S. Geological Survey Hydrologic Investigations Atlas HA-694-C, 2 sheets.

Exhibit A  
Application 72012  
Page 3

Nevada Department of Conservation and Natural Resources, 1992. Hydrographic Basin Statistical Summary, Ground Water Basins 001-232: unpublished report, Division of Water Resources and Water Planning, Carson City, Nevada.