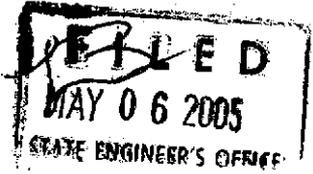


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 72197
FILED BY ROCKVIEW DAIRIES, INC
ON FEBRUARY 7, 2005
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

PROTEST

Comes now William 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 72197 filed by Rockview Dairies Inc., 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: William Hansen
Agent or protestant

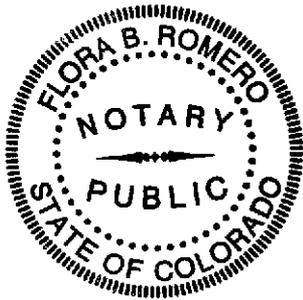
William Hansen
Printed or typed name, if agent

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

RECEIVED

MAY 06 2005

STATE ENGINEER'S OFFICE



Subscribed and sworn to before me this 5th day of May, 2005

Flora B. Romero
Notary Public

State of Colorado

County of Larimer
Flora B. Romero, Notary Public
State of Colorado

My Commission expires

My Commission Expires 7/31/2006

Handwritten initials

IN THE MATTER OF APPLICATION 72197

EXHIBIT A

Protest by William Hansen, 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 72197 requests water in the amount of 0.11 cfs for quasi-municipal and domestic purposes. The point of diversion is described as the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9 Township 17 South, Range 49 East. The place of use is described as the West $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9 Township 17 South, Range 49 East.
- VII. The State Engineer has previously determined in Ruling 5244 that to grant a new appropriation of water when an applicant has an available source of water to use would threaten to prove detrimental to the public interest.
- VIII. The proposed point of diversion is in close proximity to existing points of diversion and places of use already owned by the applicant. According to the Ground Water Pumpage Inventories for Basin 230, the applicant has not demonstrated that the full amount of water appropriated for similar purposes under these permits is being put to beneficial use.
- IX. The NPS requests that meters be placed on the applicant's existing and new wells and the use reported to the Nevada State Engineer, at least annually, to validate the amount of water that is put to beneficial use.
- X. The NPS protests the granting of this application on the following grounds:

The public interest will not be served by granting a new water right permit to an applicant that is not fully using existing permits for similar purposes in a basin that 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.

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.