



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

IN THE MATTER OF APPLICATION NUMBER 72962
FILED BY ROCKVIEW DAIRIES, INC.

PROTEST

ON JUNE 24, 2005

TO CHANGE THE POINT OF DIVERSION, PLACE OF USE AND MANNER OF USE
OF WATER HERETOFORE APPROPRIATED

Comes now Daniel J. McGlothlin, 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 72962 filed by Rockview Dairies, Inc. of Amargosa Valley, situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

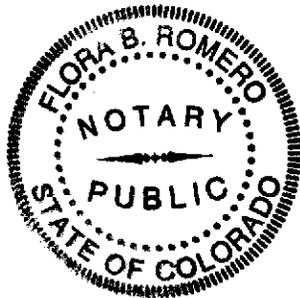
THEREFORE the protestant requests that the application be denied.

Signed: *Daniel J. McGlothlin*
Agent or protestant

Daniel J. McGlothlin
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 29th day of September, 2005

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

dam

IN THE MATTER OF APPLICATION 72962

EXHIBIT A

Protest by Daniel J. McGlothlin, 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

partially 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 72962 was filed June 24, 2005 by Rockview Dairies, Inc. to change the point of diversion, place of use and manner of use of 1.0283 cfs, not to exceed 343.6 acre-ft per annum, a portion of water heretofore appropriated under Permit 20352.
- VII. The existing point of diversion is described as Government Lot 10 of Section 36 T16S, R48E. The proposed point of diversion is located in the NE1/4 SE1/4 Section 9 T17S, R49E. The proposed point of diversion is located about 10 miles from Devil's Hole, which is about 4 miles closer than the existing point of diversion.
- VIII. According to recent Ground Water Pumpage Inventories of Amargosa Valley, the amount of water put to beneficial use under Permit 20352 has ranged from about 614 acre-ft/yr to about 864 acre-ft/yr. The amount reported as beneficially used is based on an annual duty of 5 acre-ft/ acre, but the use is currently not being metered.
- IX. The proposed point of diversion is the same point of diversion the applicant has permitted under Permits 64489, 68218, 70719, 70720, 70721, 70722, and 67163 (for effluent). According to recent Ground Water Pumpage Inventories of Amargosa Valley, the existing permits may not be fully utilized. For example, 64489 is permitted for a total of 790 acre-ft per year for 210 acres, yet in 2004 only 155 acres were irrigated, and the duty assigned was 775 acre-ft. However, this use is currently not being metered.
- X. Numerous other points of diversion that are permitted by the applicant are located within the vicinity of the proposed point of diversion (Table 1). The use under many of these wells has not been reported in the Ground Water Pumpage Inventories of Amargosa Valley and the use is currently not being metered.

XI. 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.

Table 1. Rockview Dairies permitted water rights in Section 9 Township 17 South Range 49 East.

Permit #	Change of	Date	Point of Diversion	Diversion Rate	Annual Duty
43524	29650	4/13/81	NE NE 9 17S 49E	1.45	628
59729	29649	1/28/94	NE NE 9 17S 49E	0.11	50
62115	29649	5/9/96	NE NE 9 17S 49E	0.56	264 S
64766	40448	1/13/99	NE NE 9 17S 49E	1	57.5 S
65144	15929	5/27/99	NE NE 9 17S 49E	0.56	100 S
66041	40448	2/3/00	NE NE 9 17S 49E	1	59.8 S
67956	62637	8/30/01	NE NE 9 17S 49E	0.24	17.5 S
67957	62637	8/30/01	NE NE 9 17S 49E	0.12	75
67957	62637	8/30/01	NE NE 9 17S 49E	0.12	75 S
69836	60437	4/10/03	NE NE 9 17S 49E	0.0389	10
69837	63235	4/10/03	NE NE 9 17S 49E	0.11	18.2
70383	17417	9/5/03	NE NE 9 17S 49E	1.4	160.1
64489	17241	9/29/98	NE SE 9 17S 49E	2.45	790 S
67163	(effluent)	1/25/01	NE SE 9 17S 49E	2.6	
68218	66201	11/21/01	NE SE 9 17S 49E	1.29	345.4 S
70719	65327	1/7/04	NE SE 9 17S 49E	0.15	50
70720	66787	1/7/04	NE SE 9 17S 49E	0.13	42.98
70721	66788	1/7/04	NE SE 9 17S 49E	0.34	111
70722	66789	1/7/04	NE SE 9 17S 49E	0.08	25
64491	24729	9/29/98	NE SW 9 17S 49E	3.12	250 S
69059	64490	8/8/02	NW NW 9 17S 49E	1.114	200
70383	17417	9/5/03	NE NE 9 17S 49E	1.4	160.1
70349	(new)	8/25/03	NW SW 9 17S 49E	0.11	5
72197	(new)	2/7/05	NW SW 9 17S 49E	0.11	5

"S" indicates duty supplemental with another permit

XII. The NPS protests the granting of this application on the following grounds:

- The proposed point of diversion is closer to Devil's Hole and may contribute to the decline of water levels at Devil's Hole and thereby adversely affect the Federal reserved water right at Devil's Hole.
- The public interest will not be served by granting a change application where the applicant has existing permits in the vicinity of the proposed point of diversion that are not being fully utilized, where the applicant has not demonstrated a need for additional water, and where the basin is over-appropriated.

XIII. The NPS requests that if the Nevada State Engineer chooses to grant the application that the amount available to be changed be limited to the amount put to beneficial use and the base permit be appropriately reduced.

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.