FILED
MAY 05 2006
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF APPLICATION NUMBER 73862
FILED BY JAMES AND NORA ROOK **PROTEST**
ON FEBRUARY 21, 2006
TO CHANGE THE POINT OF DIVERSION, MANNER AND PLACE OF USE
OF WATER HERETOFORE APPROPRIATED

Comes now Charles W. Pettee, 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 Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 73862 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: _____
*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.

FLORA B. ROMERO NOTARY PUBLIC STATE OF COLORADO

Subscribed and sworn to before me this 4th day of May, 2006

_____
*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**

**IN THE MATTER OF APPLICATION 73862**

**EXHIBIT A**

Protest by Charles W. 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 73862 was filed February 21, 2006 by the James and Nora Rook to change the point of diversion, manner and place of use of 0.056 cfs of water heretofore appropriated under Permit 66370. Permit 66370 was originally filed as a change application of Permit 19197.

VII. According to the Ground Water Pumpage Inventories for the Amargosa Desert hydrographic basin, no water has been put to beneficial use under Permit 19197 or Permit 66370 since at least the year 1995.

VIII. In 1979, the Nevada State Engineer designated the Amargosa Desert hydrographic basin as a basin coming under the provisions of Chapter 534 NRS. Additional management considerations are warranted in a designated basin.

IX. The proposed point of diversion is approximately nine miles closer to Devil's Hole than the original point of diversion. The proposed point of diversion is less than 6 miles from Devil's Hole.

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

A. The public interest will not be served if water and water-related resources in the nationally important Death Valley National Park, including Devil's Hole, are diminished or impaired as a result of the appropriation proposed by this application.

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.