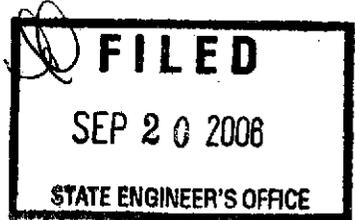


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 74308
FILED BY LCF HORTICULTURE HOLDINGS LLC
ON MAY 17, 2006
TO CHANGE THE POINT OF DIVERSION AND MANNER OF USE AND PLACE OF USE
OF A PORTION OF WATER HERETOFORE APPROPRIATED

PROTEST

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.

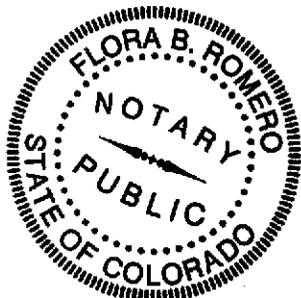
Signed: *Charles W. Pettee*
Agent or protestant

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 19th day of September, 2006



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 7/31/2010

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IN THE MATTER OF APPLICATION 74308

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 Devils 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, concessionaires and 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 essential for domestic, administrative and commercial uses.

In 1995, water from these springs was supplied to 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. Devils Hole, a detached unit of Death Valley National Park located in the Amargosa Desert, was created by presidential proclamation in 1952. A unique and endangered species of pupfish exists at Devils Hole. A decision by the U.S. Supreme Court determined that a Federal reserved water right exists at Devils Hole for the purpose of maintaining a water level to ensure the survival of the pupfish. On remand, the U.S. District Court determined that the minimum required water level was no more than 2.7

feet below a brass pin located on the rock wall of Devils 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).

- 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 74308 was filed to change the point of diversion and manner of use and place of use for a portion of water heretofore appropriated under Permit #17657 Cert. 6978 in the Amargosa Desert hydrographic basin.
- VII. A second application (74307) is currently pending before the Nevada State Engineer to change a portion of the water heretofore appropriated under Permit #17657 Cert. 6978.
- VIII. Permit #17657 Cert. 6978 has not been fully used over at least the last eleven years. According to the Ground Water Pumpage Inventory, the largest area of land that has been irrigated under this permit since 1995 was 2.5 acres in 1995 for "domestic/garden and fruit trees." Over the past 9 years (1997 - 2005), only 4 acre-ft/yr has been reported under this permit in the Ground Water Pumpage Inventory. The NPS asserts that only the consumptive use portion of the base permit should be approved for change.
- IX. 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.
- X. Nevada State Engineer Ruling 5491 found that in areas of active management, "to allow the full duty to be changed is tantamount to the issuance of a new water right in a groundwater basin that is over appropriated and new appropriations are limited." The Amargosa Desert hydrographic basin is a designated basin that is considered an area of active management by the Nevada State Engineer, and is a basin that is currently over appropriated.
- XI. The location of the proposed (and existing) point of diversion is in an area of the Amargosa Desert that has been experiencing water level declines since the 1950's. Based on water levels in monitoring well AD-5, which is about 3 miles east of the proposed

point of diversion, water levels have been declining since about 1958, and the rate of decline is accelerating. Between 1958 and 1990, the rate of decline was about 0.5 feet per year. Between 1990 and 2000 the rate of decline was about 1 foot per year. Since 2000, the rate of decline has increased to more than 1.5 feet per year.

- XII. Water levels at Devils Hole began declining in 1989, following partial recovery from local ground-water withdrawals in the Ash Meadows area. The decline in water levels at Devils Hole began at about the same time that the overall rate of ground-water withdrawals began increasing in the Amargosa Desert.
- XIII. The NPS is concerned that the large number of change applications filed in the Amargosa Desert that seek to put water to beneficial use that has not been used for many years will represent an increased draw on the system. Water levels throughout the basin are already declining under current pumping conditions. Allowing water to be pumped that has not been used historically will cause the rate of decline to continue to increase.
- XIV. The NPS is concerned that the proposed change application, in combination with recent change applications that have moved the ground-water pumping center closer to Devils Hole, or have caused an overall increase in ground-water pumping in the basin, may cause further declines at Devils Hole.
- XV. The NPS protests the granting of this application for the amount requested on the following grounds:
 - A. The public interest will not be served if the combined effect of existing and proposed withdrawals cause unreasonable lowering of the water table.
 - B. The public interest will not be served if water rights and water-related resources in Death Valley National Park, including Devils Hole, are diminished or impaired.
- 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.