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

FILED
OCT 19 2006
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 74532
FILED BY ROCKVIEW DIARIES, INC **PROTEST**
ON JULY 19, 2006
TO CHANGE THE POINT OF DIVERSION AND MANNER OF USE AND PLACE OF USE
OF A PORTION 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 74532 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 18th day of October, 2006

_____
Notary Public

State of Colorado

County of Larimer

My Commission expires Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/31/2010

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IN THE MATTER OF APPLICATION 74532

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

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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. 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.

VII. Application 74532 was filed July 19, 2006 by Rockview Diaries, Inc. to change the Manner of Use and Place of Use of water heretofore appropriated under Application 69837 in the amount of 0.11 cfs, not to exceed 18.2 acre-ft per year. No water was put to beneficial use under Application 69837.

VIII. Application 69837 was filed as a change application of Permit 63235 to move the point of diversion from Section 8, Township 16 South, Range 49 East, to Section 9, Township 17 South, Range 49 East. Since Application 69837 was not granted, this change application is essentially proposing to move the point of diversion from approximately 13 miles away from Devil's Hole to a location about 9 miles away from Devil's Hole.

IX. The applicant has filed numerous change applications over the past several years. Many of these applications have moved points of diversion much closer to Devils Hole. For example, 10 applications filed in 2004 and granted by the NSE moved the points of diversion from as much as 19 miles away from Devils Hole to a location that is about 9 miles away from Devils Hole.

X. In 2000, approximately 1900 acre-ft/yr was reported in annual water use reports for Township 17 South, Range 49 East. In 2002, approximately 3360 acre-ft/year was reported in annual water use reports. This represents an increase of about 1460 acre-ft/year from the year 2000, and is indicative of the general pattern of movement of points of diversion in the Amargosa Desert closer to Devil's Hole.

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XI. The point of diversion for this change application is located in the vicinity of the ground-water pumping center that is about 9 miles from Devils Hole.

XII. Widespread lowering of the water table by nearly 40 feet has already occurred in the vicinity of the point of diversion due to historical ground-water withdrawals. The lowering of the water table in this area began prior to the onset of pumping from the recent change applications.

XIII. Water levels at Devils Hole began declining in 1989, following partial recovery from local ground-water withdrawals. The decline in water levels at Devils Hole in 1989 began at about the same time that the overall rate of ground-water withdrawals began increasing in the Amargosa Desert.

XIV. Several investigators have suggested a connection between ground-water pumping in the Amargosa Desert and declines in water levels at Ash Meadows (Kilroy, 1991, Fenelon and Moreo, 1998). A more recent publication shows a strong correlation between long term pumping in the historic Amargosa Farms area and water level declines at Devil's Hole (Bedinger and Harrill, 2006).

XV. 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, and an overall increase in ground-water withdrawals in the Amargosa Desert since the late 1980's, will affect water levels at Death Valley National Park.

XVI. Rockview Dairies, Inc. (including its subsidiaries) is listed as the owner of record for at least 36 water right permits in the Amargosa Desert. Conditions listed on each of the water right permits owned by Rockview Dairies, Inc. state that a totalizing meter must be installed and maintained, and that accurate measurements must be kept of water placed to beneficial use. However, very few of the permits owned by Rockview Dairies, Inc. actually provide water use data from a meter. Most of the permits simply use a duty of 5 acre-ft/acre, including those permits where the Manner of Use is listed as commercial.

XVII. Both the 2004 and 2005 Ground Water Pumpage Inventories show that Rockview Dairies, Inc. has reported more water used than is permitted under at least one of their permits.

XVIII. In sum, the NPS protests the granting of this application on the following grounds:

1. 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.

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2. The public interest will not be served if the appropriation proposed by this application, in combination with existing appropriations, will cause the water level at Devil's Hole to fall, thereby impairing senior NPS water rights for Death Valley National Park.
3. The public interest will not be served by granting a permit to an applicant that has not adhered to the terms and conditions of existing permits.

XIX. The NPS reserves the right to amend this exhibit as more information becomes available.

REFERENCES CITED

Bedinger, M.S. and Harrill, J.R. 2006. Analytical Regression Stage Analysis for Devils Hole, Death Valley National Park, Nevada. Journal of the American Water Resources Association, Vol. 42 (4): 827-839.

Cappaert v. United States, 426 US 128, 1976.

Fenelon, J.M. and Moreo, M.T. 2002. Trend Analysis of Ground-Water Levels and Spring Discharge in the Yucca Mountain Region, Nevada and California, 1960-2000. U.S. Geological Survey Water Resources Investigations Report 02-4178.

Kilroy, K.C. 1991. Ground-Water Conditions in Amargosa Desert, Nevada-California, 1952-1987. U.S. Geological Survey Water Resources Investigations Report 89-4101.

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.

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