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

RECEIVED
FILED
2007 OCT 12 AM 10:14
STATE ENGINEERS OFFICE
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 76116
FILED BY BEATTY CATTLE COMPANY, LLC
ON AUGUST 3, 2007
TO APPROPRIATE THE WATERS OF UNDERGROUND

PROTEST

Comes now Dan 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 76116 filed by Beatty Cattle Company, LLC to appropriate the waters of underground, 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: _____
Agent or protestant

Dan McGlothlin
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 11th day of October, 2007

_____
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

Signed _____

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

IN THE MATTER OF APPLICATION 76116
EXHIBIT A

Protest by Dan 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 proclamation gave warning to unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument. Springs and water-related resources are important features.

The national significance of Death Valley and its environs was elevated 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.

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. The public interest will not be served if water and water-related resources in the nationally important Death Valley National Park (Death Valley NP) are diminished or impaired as a result of the appropriation proposed by this application.

II. The NPS is entitled to Federal reserved water rights for reserved lands within Death Valley NP. 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.

The springs in Death Valley NP support vegetation and critical wildlife habitat. For example, two species of snails, which are candidates for threatened or endangered species listing, are found within Death Valley NP and live at certain springs. The Badwater snail (Assiminea infima) is found at Travertine and Nevares Springs and the Amargosa tryonia snail (Tryonia variegata) occurs at Saratoga Springs. Six other species of snails are endemic to Death Valley springs and are not found outside the Park.

Desert bighorn sheep are also dependent upon the springs in Death Valley NP. Approximately 25 herds concentrate around Park springs during the summer, rarely straying more than two miles away.

III. Application 76116 is an application for 1 cfs (200 afa) of ground water for the purpose of irrigation. The proposed appropriation is located within the Oasis Valley Hydrographic Area.

IV. In Ruling 3870 the State Engineer stated that the perennial yield of Oasis Valley was 2,200 afy. The recharge rate to Oasis Valley was estimated at 2,400 afy. Existing permitted and certificated rights in Oasis Valley totaled 3,384 afy. Since existing appropriations exceeded the perennial yield and the ground-water recharge rate, no water was available for appropriation in Oasis Valley.

V. More recently, Ruling 4669 noted a "high degree of interaction between the surface water and ground water resources of the Oasis Valley Groundwater Basin." The State Engineer found that to grant a permit in a ground-water basin that is over committed would conflict with existing rights and be detrimental to the public interest. Ruling 4669 also stated that applications which requested a permanent appropriation of underground water for irrigation purposes within Oasis Valley have been denied since 1978.

VI. Oasis Valley is part of the Pahute Mesa ground-water flow system which discharges to the Amargosa Desert and Death Valley areas (Harrill, et al., 1988, Sheet 1; and Sheet 2; Rush, 1970). In 1992, the Nevada State Engineer (Ruling No. 3870) found that the existing permitted and certificated water rights in the larger part of the Pahute Mesa system (Gold Flat, Kawich Valley, Oasis Valley, Jackass Flat, Buckboard Mesa, Crater Flat, and Amargosa Desert) totaled about 47,000 afy and the system yield was about 24,000 afy. Existing appropriations in the Pahute Mesa system exceed the system's perennial yield. Thus, there is no water available for appropriation.

IN THE MATTER OF APPLICATION 76116
EXHIBIT A (Continued)

Protest by Dan McGlothlin, on behalf of
the United States Department of the Interior,
National Park Service

VII. The National Park Service respectfully requests that the State Engineer deny this water right application for the following reasons:

The proposed appropriation is located in the Oasis Valley Hydrographic Area. This basin is already overcommitted, and there is no water remaining to appropriate.

The proposed appropriation would result in further over-appropriation of the combined perennial yield for the Amargosa Desert area. Since this area is already overcommitted, there is no water remaining to appropriate.

The proposed appropriation would result in further over-appropriation of the Pahute Mesa subsystem. Since the subsystem is already overcommitted, there is no water remaining to appropriate.

The State Engineer has already determined that granting a water right application for ground water in this basin would conflict with existing rights and prove detrimental to the public interest.

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

REFERENCES CITED

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.

Rush, F.E., 1970, Regional ground-water systems in the Nevada Test Site area, Nye, Lincoln, and Clark Counties, Nevada: Nevada Department of Conservation and Natural Resources Water Resources-Reconnaissance Series Report 54, 25 p.