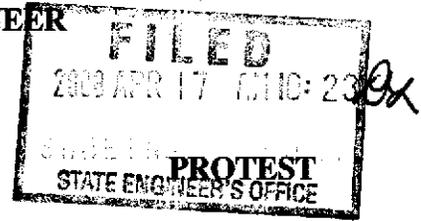


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 76390
FILED BY BARRICK BULLFROG INC., C/O CR BRIGGS CORPORATION
ON OCTOBER 15, 2007
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 74535 for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

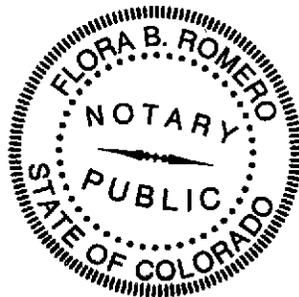
THEREFORE the protestant requests that the application be denied. However, the protestant requests that if the Nevada State Engineer determines that granting of this applications is warranted, that sufficient water use and water level monitoring and reporting are required as part of the permit conditions. At a minimum, the NPS requests the installation of meters on the production well and the use of monitoring wells included as part of a monitoring program. We would be happy to discuss this matter further at your convenience.

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 16th day of April 2008

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

Flora B. Romero
Notary Public

DL

State of Colorado

County of Larimer

My Commission expires

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

IN THE MATTER OF APPLICATION 76390

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.

- 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). The Amargosa Desert hydrographic basin is over-appropriated.
- 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 76390 states that it was filed October 15, 2007 by Barrick Bullfrog, Inc. to change the Point of Diversion, Place of Use and Manner of Use of water heretofore appropriated under Permit 61412 Certificate 16384.
- VIII. Certificate No. 16384 expressly states that "*This certificate is issued subject to the terms of the permit with the understanding that the place and manner of use may not be changed.*" It is unclear to the NPS whether a certificated water right can be changed contrary to the restrictions in the certificate.
- IX. Therefore, the NPS protests the granting of this application on the following grounds:
- The public interest may not be served by granting a change application to a certificated water right that is contrary to the restrictions placed on the certificate.
- XIX. 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.