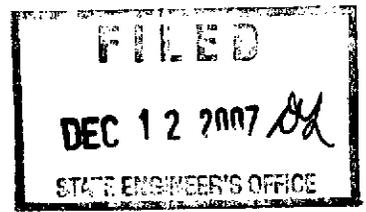


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 76435
FILED BY TARGET CONSTRUCTION, INC.
TO APPROPRIATE THE WATERS OF UNDERGROUND

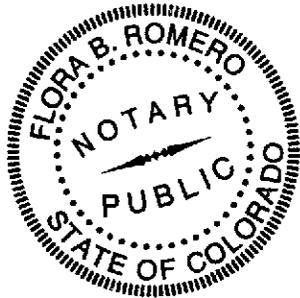
PROTEST

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, to protest the granting of Application Number 76435 filed on October 24, 2007 by Target Construction, Inc. 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 *Charles W. Pettee*
Agent or protestant
Charles W. Pettee
Printed or typed name, if agent
Address 1201 Oakridge Drive, Suite 250
Street No. or P.O. Box No.
Fort Collins, CO 80525
City, State and Zip Code No.



Subscribed and sworn to before me this 20th day of December, 2007.

Notary Public *Flora B. Romero*
State of Colorado
County of Larimer

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

2007 DEC 21 PM 12:13

OK

IN THE MATTER OF APPLICATION 76435

EXHIBIT A

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

GENERAL

- I. 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.
- II. Death Valley National Monument was created by Presidential Proclamation in 1933 to preserve unusual features of scenic, scientific, and educational interest. The proclamation warned unauthorized persons to not appropriate, injure, destroy, or remove any feature of the monument. Springs and water-related resources are important features.

In 1952, a forty-acre tract of public land surrounding Devil's Hole was withdrawn, creating a detached component of Death Valley National Monument through Proclamation No. 2961, 3 CFR 147 [1949-1953 Comp.]. The proclamation recognized that the "subterranean pool [Devil's Hole] is an integral part of the hydrographic history of the Death Valley region," and that the pool is the home of "a peculiar race of desert fish...evolved only after the gradual drying up of the Death Valley Lake System..." *Id.* Because of the pool's "outstanding scientific importance...it should be given special protection..." *Id.*

In 1994, the status of Death Valley National Monument was changed to that of a National Park through enactment of the California Desert Protection Act. The Act acknowledged Death Valley's extraordinary and inestimable value and increased the total land area. 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.

- III. The NPS is entitled to Federal reserved water rights for reserved lands within Death Valley National Park (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.
- IV. A unique and endangered species of pupfish exists at Devil's Hole, a detached unit of Death Valley National Park in Nevada. In the 1970's, groundwater withdrawals near Devil's Hole caused a decline in the water level of the pool, exposing a rock shelf vital to the spawning of the pupfish (Dudley and Larson, 1976). A unanimous decision by the U.S. Supreme Court determined that a Federal reserved water right exists at Devil's Hole for the purpose of maintaining a water level sufficient to inundate the shelf on which the

IN THE MATTER OF APPLICATION 76435

EXHIBIT A (Continued)

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

pupfish spawns (Cappaert v. United States, 1976). The Supreme Court granted continuing jurisdiction to the district court to quantify the minimum water level. The district court held a hearing in 1978 and set the minimum water level at 2.7 feet below the reference copper washer. Current water levels at Devil's Hole are about 2.2 feet below the reference washer and have been steadily declining since about 1989.

V. The Endangered Species Act and its amendments impose obligations on Federal agencies to conserve endangered species such as the Devil's Hole pupfish.

VI. Many of the "unusual features of scenic, scientific, and educational interest" within Death Valley National Park are largely shaped by the hydrologic regime of the area (Hunt et. al., 1966). The hydrologic regime is essential to the values that are preserved in the public interest. Thus, protection of the hydrologic regime is in the public interest. The importance of the Park and its natural features is illustrated by the following:

A. 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 needs. Nevares, Texas, and Travertine Springs collectively discharge about 2,000 gallons per minute and are critical for domestic and commercial use.

B. Public visitation to the Park for the past ten years is as follows:

1994	971,487
1995	1,109,421
1996	1,189,215
1997	1,188,212
1998	1,177,746
1999	1,227,583
2000	1,179,094
2001	1,014,636
2002	897,596
2003	890,375

IN THE MATTER OF APPLICATION 76435

EXHIBIT A (Continued)

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

(Source: NPS Public Use Statistics Office)

- C. Visitors to the park support local businesses by spending money on food, beverages, gas and lodging. In 2000, an economic model was developed by researchers at Michigan State University to estimate the impacts that park visitors have on the local economy in terms of their contribution to sales, income and jobs in the area (NPS Public Use Statistics Office). The model estimated that at Death Valley National Park in 2001, total visitor spending in the local area around was approximately \$44 million dollars. Of this total amount, \$16.2 million contributed directly to personal income, and supported 1,212 jobs. Among all direct sales, \$13.5 million was spent on lodging, and \$9.5 million on food and beverages.
- D. At least three biologically significant springs or spring complexes are located in Death Valley National Park in proximity to the Amargosa Desert. These water sources include Travertine and Nevares Springs (wetlands) and Devil's Hole. These springs provide water for 18 animal species which are federally listed as endangered, threatened or rare. These species are: Devils Hole pupfish, least Bell's vireo, bank swallow, western least bittern, white-faced ibis, mountain plover, black tern, loggerhead shrike, tricolored blackbird, Furnace Creek riffle beetle, un-named riffle beetle, Devils Hole riffle beetle, Furnace Creek naucorid bug, badwater snail, robust tryonia, Amargosa tryonia, Texas Spring amphipod, and the Travertine Springs amphipod. The Devil's Hole pupfish and white-faced ibis have also been designated as state endangered species by the Nevada Board of Game and Fish Commissioners.
- E. Desert bighorn sheep also have historically used Travertine and Nevares Springs as a water source. This animal is relatively rare in the local area, and is critically dependent on a permanent water supply during the summer months.

FINDINGS

- I. Application Number 76435 filed on October 24, 2007 by Target Construction, Inc. requests permission to appropriate 0.276 cfs of groundwater for mining and domestic purposes. The estimated consumptive use according to Application Part 12. is 65.17 MGPA. This represents about 200 acre-ft/yr.
- II. This application proposes to appropriate water from Indian Springs Valley (Basin 161). The Nevada Department of Conservation and Natural Resources (1988) found that the

IN THE MATTER OF APPLICATION 76435

EXHIBIT A (Continued)

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

perennial yield of Indian Springs Valley is equal to 727 acre-ft/yr (about 1 cfs). According to the Nevada state water rights database (queried May 19, 2004) 8,024 acre-ft/yr of surface and ground water have been appropriated in Indian Springs Valley. About 2,005 acre-ft/yr of this amount is ground water. Based on existing permitted water rights, the amount of water already allocated in this basin greatly exceeds the perennial yield for this basin.

- III. Rush (1970) defined the Ash Meadows Groundwater Subsystem as including Groom Lake Valley, Papoose Lake Valley, Tikapoo Valley, Las Vegas Valley, Three Lakes Valley, Indian Springs Valley, Yucca Flat, Frenchman Flat, the eastern third of Jackass Flat, Rock Valley, and Mercury Valley. Subsequent studies (D'Agnese, 1997) suggest that the Las Vegas Valley is not part of the Ash Meadows Groundwater Subsystem.
- IV. Ground water in the Ash Meadows Groundwater Subsystem flows northward from the Spring Mountains through carbonate rocks in Indian Springs Valley and then westward toward Ash Meadows. Ground water is discharged in Ash Meadows through springs along the Ash Meadows fault system, also known as the "gravity fault." The withdrawals proposed by this application will capture water that would otherwise contribute to spring discharge at Ash Meadows and the water levels at Devil's Hole.

CONCLUSIONS

- I. Nevada Revised Statute, §533.370(3), states that the Nevada State Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest...." Based on the mandate set forth in § 533.370(3), N.R.S., the state engineer should reject this application for the following reasons.

There is no unappropriated water available because:

- A. Indian Springs Valley is already over-appropriated.
- B. • Indian Springs Valley is located in the Ash Meadows Groundwater Subsystem. New appropriations will cause further declines in water levels at Devil's Hole and reduce underflow to Death Valley National Park.

The approval and development of this application will impair the senior water rights of

IN THE MATTER OF APPLICATION 76435

EXHIBIT A (Continued)

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

the United States because:

- A. The proposed appropriation, in combination with existing appropriations, will reduce or eliminate the flows of springs in Death Valley National Park, which discharge from the regional groundwater flow system.
- B. The proposed appropriation, in combination with existing appropriations, will cause the water level at Devil's Hole to fall.

The public interest would not be served by granting a permit to this application because:

- A. The water and water-related resources of the nationally important Death Valley National Park would be diminished or impaired as a result of this application, resulting in impacts to wildlife and habitat.
 - B. The water and water-related resources of the park would be diminished, reducing the aesthetic value of the park, and thereby reducing contributions to the local economy.
- II. The NPS reserves the right to amend this exhibit as more information becomes available.

REFERENCES CITED

D'Agnesse, F.A., Faunt, C.C., Turner, K., and Hill, M.C. *Hydrogeologic Evaluation and Numerical simulation of the Death Valley Regional Ground-Water Flow System, Nevada and California*. U.S. Geological Survey Water Resources Investigations Report 96-4300, 1997.

Dudley Jr., W.W., and Larson J.D. *Effect of Irrigation Pumping on Desert Pupfish Habitats in Ash Meadows, Nye County, Nevada*. U.S. Geological Survey Professional Paper 927, 1976.

Nevada Department of Conservation and Natural Resources, Division of Water Resources and Water Planning. *Hydrographic Basin Statistical Summary, Ground Water Basins 001-232*. 1988.

Nevada Division of Water Resources, *Water Rights Database, Special Hydrographic Abstract, and Hydrographic Basin Summary*. Printouts as of May 19, 2004.

Rush, F.E. *Regional Ground-Water Systems in the Nevada Test Site Area, Nye, Lincoln, and*

IN THE MATTER OF APPLICATION 76435

EXHIBIT A (Continued)

Protest by Charles W. Pettee, on behalf of
the United States Department of the Interior,
National Park Service

Clark Counties, Nevada. U.S. Geological Survey Water Resources – Reconnaissance Series
Report 54, 1970.