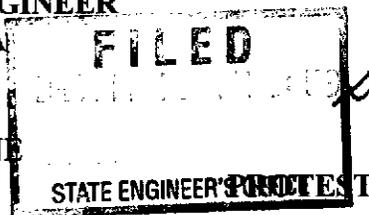


IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

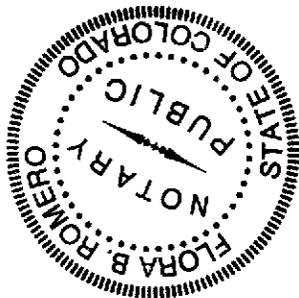


IN THE MATTER OF APPLICATION NUMBER 76617  
FILED BY MICHAEL RUETH BLUEWATER DIAMOND MINE  
OF NEVADA  
ON MARCH 28, 2008 TO APPROPRIATE  
THE WATERS OF THE STATE OF NEVADA

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 76617 to appropriate the waters of underground for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The National Park Service will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and prior pending appropriations, if approved and developed, will not affect the water resources and water rights of Lake Mead National Recreation Area.



Signed *Charles W. Pettee*  
Agent or Protestant  
Charles W. Pettee  
Printed or Typed Name

Address 1201 Oak Ridge Drive, Suite 250  
Fort Collins, CO 80525

Subscribed and sworn to before me this 17<sup>th</sup> day of April, 2008.

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

*ex*

**IN THE MATTER OF APPLICATION 76617**  
**EXHIBIT A**

200 APR 16 11 09:50

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. Since 1936, the National Park Service has managed the recreational activities within the Boulder Canyon Project area now known as Lake Mead NRA. Lake Mead NRA was established on October 8, 1964 (78 Stat. 1039) to be administered for "...general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area.... The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area."
- III. The NPS is entitled to Federal reserved water rights for reserved lands within Lake Mead NRA. The priority dates for these reserved rights are the dates when the lands were reserved and are senior to the appropriation sought by Michael Rueth Bluewater Diamond Mine. These rights have not been judicially quantified.
- IV. The Muddy River, which originates from large discharge springs located northwest of Moapa, Nevada, flows into Lake Mead NRA at the north end of the lake's Overton Arm. The State of Nevada, Department of Wildlife, is leasing part of Lake Mead NRA adjoining the Muddy River for the purposes of the Overton Wildlife Management Area. This area supports a variety of waterfowl and vegetation. The United States has a State appropriative water right to water in the Muddy River, Certificate No. 5126. The point of diversion is located in the NW $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 19, T. 16 S., R. 68 E., M.D.B.M.
- V. Springs and water-related resource attributes are important features of Lake Mead NRA. The springs provide water for vegetation and wildlife habitat and create an environment that many visitors use and enjoy. Most springs are not fed by water from Lake Mead and could be affected by upgradient diversions.

Springs include Blue Point, Rogers, Corral, and Kelsey's springs, and other smaller, unnamed springs. Visitation to Blue Point and Rogers Springs has been estimated at

**IN THE MATTER OF APPLICATION 76617  
EXHIBIT A - CONTINUED**

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

5,000 visitors per year. Desert bighorn sheep are also dependent upon the springs in Lake Mead NRA. A herd of approximately 150 use springs in the northern part of the National Recreation Area. The relict Las Vegas Valley leopard frog, *Rana onca*, has been found at Rogers, Corral, and Blue Point Springs. Current taxonomic studies indicate a high potential for listing of this relict population, previously believed extinct, as protected under the Endangered Species Act.

The United States has State appropriative water rights to Rogers Spring, located in SE $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 12, T.18 S., R.67 E., M.D.B.M., Certificate No. 4476.

- VI. Michael Rueth Bluewater Diamond Mine filed Application 76617 to withdraw 20 cubic feet per second (cfs) of groundwater from the Black Mountains Hydrographic Basin (215). Assuming continuous diversion, the annual duty would equal 14,480 acre-feet.
- VII. The NPS reserves the right to amend this exhibit as more information becomes available.

**FINDINGS**

- I. The proposed appropriation is located in the Black Mountains Area. Harrill and others (1988) estimated that less than 100 afy of water recharges the valley from local mountain ranges. An additional 1,200 afy enters the valley as subsurface inflow from Las Vegas Valley (Harrill and others, 1988). Discharge from the valley is by subsurface outflow to Lake Mead (Rush, 1968).<sup>1</sup>
- II. Existing ground-water rights for the Black Mountains Area total approximately 7,216 afy (unpublished compilation by the National Park Service, 2008). In addition, there are pending applications for ground-water withdrawals in the Black Mountains Area with filing dates prior to this application, which total up to 30,625 afy. The proposed withdrawal rate of this application is 20 cfs or 14,480 afy. Therefore, the total of all existing ground-water rights and prior pending applications equals approximately 37,841 afy, which greatly exceeds the recharge rate of the Black Mountains Area. Ground-water withdrawals larger than the recharge rate would come from storage and constitute ground-water mining.
- III. The ground-water withdrawal proposed by this application, in combination with existing ground-water uses and prior pending applications, will reduce or eliminate the discharge

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<sup>1</sup> See Prudic and others (1995) for a description of the regional ground-water flow system.

**IN THE MATTER OF APPLICATION 76617  
EXHIBIT A - CONTINUED**

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

of the springs within Lake Mead NRA by capturing water destined to the springs. Lake Mead NRA springs, located within the Black Mountains Area, are discharge points for regional ground-water flow systems and may be affected by the proposed appropriation.

- IV. The ground-water withdrawal proposed by this application, if approved and developed, in combination with existing ground-water rights and prior pending applications, may affect ground-water flow paths and capture ground-water that naturally discharges at the Muddy River Springs and forms the headwaters of the Muddy River.
- V. The proposed withdrawal is located in the Black Mountain Hydrographic Area within the carbonate-rock province. The State Engineer found that further hydrologic study of the carbonate-rock aquifer system is required before any additional pending applications will be considered in the Black Mountains Area and in several other nearby hydrographic areas (Order 1169, Office of the State Engineer, 2002).
- VI. The State Engineer found that it would not be prudent to issue additional water rights from the identified basins, including the Black Mountain Hydrographic Area, until a significant portion of water rights already issued are pumped for a substantial period of time, to determine what impacts, if any, those ground-water withdrawals may have (Order 1169, Office of the State Engineer, 2002).

**CONCLUSIONS**

- I. There is no water available for appropriation because committed water resources exceed ground-water recharge.
- II. The approval and development of this application will impair the water rights of the United States, because:
  - A. The proposed appropriation, in combination with existing appropriations and prior pending applications, will reduce the discharge of Lake Mead NRA springs by capturing ground-water that naturally discharges to the springs.
  - B. The proposed appropriation, in combination with existing appropriations and prior pending applications, will reduce the discharge of the Muddy River.
- III. The public interest would not be served by granting this application, because:

**IN THE MATTER OF APPLICATION 76617  
EXHIBIT A - CONTINUED**

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

- A. The water and water-related resources in the nationally important Lake Mead NRA would be diminished or impaired, as a result of the appropriation proposed by this application.
- C. The application is located within a hydrographic area that requires further study before additional permits may be issued.

**LITERATURE CITED**

- Harrill, J.R., Gates, J.S., and Thomas, J.M, 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.
- Prudic, D.E., Harrill, J.R., and Burbey, T.J., 1995, Conceptual evaluation of regional ground-water flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states: U.S. Geological Survey Professional Paper 1409-D, pp. D1-D102.
- Rush, F.E., 1968, Water-resources appraisal of the Lower Moapa-Lake Mead Area, Clark County, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 50, 66 p.
- State of Nevada, Office of the State Engineer, 2002, Order 1169: Department of Conservation and Natural Resources, Division of Water Resources, March 8, 2002, 8 p.