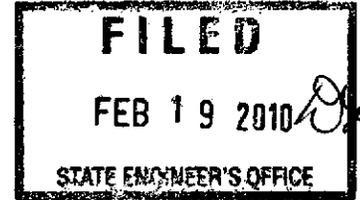


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 79092
FILED BY AMARGOSA LAND INVESTORS, LLC **PROTEST**
ON DECEMBER 17, 2009
TO CHANGE THE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA 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 79092 for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

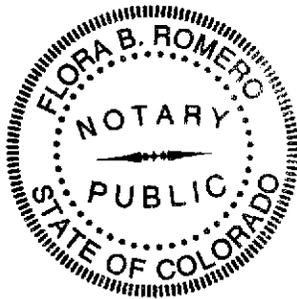
THEREFORE the protestant requests that the application be denied.

Signed: *Charles W. Pettee*
Agent of protestant

Charles W. Pettee
Printed or typed name, if agent

Address: 1201 Oak Ridge Dr., 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 18th day February 2010.

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

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My Commission expires

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

OK

IN THE MATTER OF APPLICATION 79092

EXHIBIT A

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

- I. 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).
- II. In 1979, the Nevada State Engineer (NSE) 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.
- III. Application 79092 seeks to change the point of diversion, place of use, and manner of use of 0.6739 cfs, not to exceed 60.0 acre-ft per year, of water previously appropriated under Permit 69728.
- IV. Permit 69728 was granted November 19, 2004. Permit 69728 was the subject of change application 77418 filed in September of 2008, which was subsequently withdrawn. At that time, the water was proposed to be used for a commercial dairy.
- V. The Groundwater Pumpage Inventories for the Amargosa Desert show no water use under Permit 69728. The field report for 2008 states that there is no well, pump, motor, meter or beneficial use.
- VI. The proposed use is quasi-municipal for a proposed development. The fact that there has been no water use under the base permit, there is no well at the existing point of diversion, and the base permit was the subject of a previous change application that was for an entirely different purpose, suggests that there was never an intention to construct the work and apply the water to the intended beneficial use under the base permit.
- VII. The proposed point of diversion is about 17 miles from Devils Hole. The existing point of diversion is about 12 miles from Devils Hole. A simple Theis analysis shows that the proposed groundwater withdrawal of 0.6739 cfs at the new point of diversion will have a greater impact on Devils Hole than the documented groundwater withdrawal at the existing point of diversion.
- VIII. The State Engineer has stated that in the Amargosa Desert:
 - a. Existing water rights exceed the perennial yield, and only 7,000 acre-ft per year is available for development by wells (Ruling 5992).

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- b. Additional regulation of the resource may be considered for water right applications that request changes in existing water rights (Ruling 5902).

IX. The NPS protests the granting of this application for the following reasons:

- a. Since no water was put to beneficial use under the base permit, the proposed use under the change application will have a greater impact on Devils Hole than the historic use under the base permit and will therefore conflict with the existing senior water right at Devils Hole.
- b. Since no water was put to beneficial use and no well exists under the base permit, the 60 acre-ft per year proposed under this change application will not be balanced by a reduction elsewhere, and will therefore contribute to the imbalance between the amount of water available for appropriation and the amount of groundwater that is being pumped and will prove detrimental to the public interest.
- c. Since no water was put to beneficial use under the base permit, the proposed use will contribute to the withdrawal of groundwater in excess of the perennial yield and will therefore prove detrimental to the public interest.

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

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STATE OF NEVADA