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

FILED
FEB 2 2012
STATE ENGINEER'S OFFICE
PROTEST

IN THE MATTER OF APPLICATION NUMBER 81257
FILED BY ROCKVIEW DAIRIES, INC
ON OCTOBER 18, 2011
TO CHANGE THE POINT OF DIVERSION, PLACE AND
MANNER OF USE OF WATER HERETOFORE APPROPRIATED

Comes now Christine Lehnertz, on behalf of the United States Department of Interior National Park Service, whose post office address is 333 Bush Street, Suite 500, San Francisco, California, 94104-2828, whose occupation is Regional Director, Pacific West Region, National Park Service, and protests the granting of Application Number 81257 filed on October 18, 2011 by Rockview Dairies, Inc. for the waters of an underground source 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.

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Signed: _____
Agent or protestant

CHRISTINE S. LEHNERTZ
Printed or typed name, if agent

Address: 333 Bush Street, Suite 500
Street No. or P.O. Box No.

San Francisco, CA 94104-2828
City, State and Zip Code No.

State of California)
County of San Francisco)

Subscribed and affirmed to before me on this 17th day of February, 2012, by Christine S. Lehnertz, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

_____
Signature of Notary

SEAL:

NATASCHA H. FRASER
Commission # 1811635
Notary Public - California
Alameda County
My Comm. Expires Aug 29, 2012

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IN THE MATTER OF APPLICATIONS 81257 and 81258

EXHIBIT A

Protest by 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 detached management unit known as Devils Hole.

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 proposed appropriations are located within the Amargosa Desert hydrographic basin, which is part of the Death Valley regional flow system.

IV. 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.

V. In 2008 the NSE issued Order 1197 to protect the senior federal reserved water right at Devils Hole. Order 1197 states that *"...any application to change the point of diversion of an existing ground-water right to a point of diversion closer to Devils Hole, described as being within a 25 mile radius from Devils Hole within the Amargosa Desert Hydrographic Basin, will be denied."* Exceptions were noted, however in no case were new points of diversion allowed within 10 miles of Devils Hole.

VI. Application 81257, filed by Rockview Dairies, seeks to change the point of diversion, place and manner of use of water heretofore appropriated under Permit 62373. The application seeks to change the point of diversion of 11.35 acre-feet from a point 11 miles from Devils Hole to a point 9 miles from Devils Hole.

VII. Application 81258, filed by Rockview Dairies, seeks to change the point of diversion, place and manner of use of water heretofore appropriated under Permit 49947. The application seeks to change the point of diversion of 120 acre-feet from a point 18 miles from Devils Hole to a point 9 miles from Devils Hole.

VIII. The proposed point of diversion is the same point of diversion as Permits 70723-70728, also owned by Rockview Dairies. The combined annual duty for Permits 70723-70728 is 445 acre-feet per year. According to the Amargosa Desert Groundwater Pumpage Inventories, Rockview Dairies used 593 acre-feet under these permits in 2008, 704 acre-feet in 2009, and 788 acre-feet in 2010 (Table 1).

Table 1. Permitted annual duty and reported use for six water right permits owned by Rockview Dairies.

Permit No.	Combined Annual Duty	Reported Use (acre-ft/yr)		
	acre-ft/yr	2008	2009	2010
70723 70724 70725 70726 70727 70728	445.16	593.5	704	788.09

IX. The Amargosa Desert Groundwater Pumpage Inventory shows that Rockview Dairies also used more than 1200 acre-feet of water for commercial purposes in each of the past three years without permits (Table 2).

Table 2. Unpermitted water use by Rockview Dairies for commercial purposes as reported in the Nevada State Engineer Groundwater Pumpage Inventories for Amargosa Valley.

Year	Number	Owner of Record	Used	Total Annual
			acre-ft/yr	acre-ft/yr
2010	No Permit*	Rockview	257.48	
2010	App. 69059	Rockview	667.48	
2010	App. 76218	Rockview	358.45	
2010	App. 76794	Rockview	24.86	1308.27
2009	No Permit*	Rockview	294.31	
2009	App. 69059	Rockview	579.71	
2009	App. 76218	Rockview	354.76	
2009	App. 76794	Rockview	17.19	1245.97
2008	No Permit*	Rockview	246.62	
2008	App. 69059	Rockview	619.49	
2008	App. 76218	Rockview	503.73	
2008	App. 76794	Rockview	15.128	
2008	App. 76230	Rockview	26.39	1411.358

*described as Windjammer Irrigation (part of Rockview Dairies)

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X. Nevada Revised Statutes (NRS 533.325) states: *Any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion or change in manner or place of use,*

apply to the State Engineer for a permit to do so. By using water without a permit and before a change application has been approved, the applicant is in violation of the statute.

XI. Nevada Revised Statutes (NRS 533.460) states: *The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it.* The reported use of water in the pumpage inventories without a permit is evidence that water is being used without a legal right.

XII. A monitoring well identified as AD-9A is located approximately 0.5 miles from the proposed point of diversion and within the same legal section (Section 15 T17S R49E). Almost 40 feet of drawdown has been measured at this site since 2001, a rate of about 3.9 feet per year. This rate of drawdown will interfere with existing water rights and result in negative impacts to the aquifer.

XIII. Therefore, the NPS protests the granting of this application on the following grounds:

The proposed point of diversion is within 10 miles of Devils Hole and is therefore in conflict with Order 1197.

The new use of water at the proposed location is not in the public interest because the applicant is not in compliance with Nevada law governing the use of water.

The new use of water at the proposed location is not in the public interest because current rates of drawdown at the proposed point of diversion are excessive and unreasonable.

The new use of water at the proposed location is not in the public interest because the rates of drawdown will lower the water table and interfere with domestic wells.

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

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