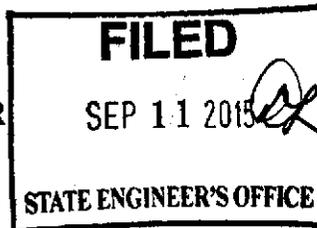


IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 85386E
FILED BY ROCKVIEW DAIRIES
ON AUGUST 14, 2015 TO APPROPRIATE WATER
FOR ENVIRONMENTAL PURPOSES

PROTEST

Comes now William Hansen, 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 85386E, filed on August 14, 2015, by Rockview Dairies to appropriate water, 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:

Agent or protestant

Wm. R. Hansen

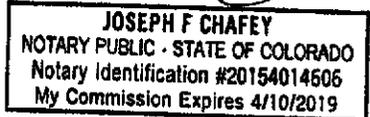
Printed or typed name, if agent

Address: 1201 Oak Ridge Dr., Suite 250
Street No. or P.O. Box No.

Fort Collins, CO 80525
City, State and Zip Code No.

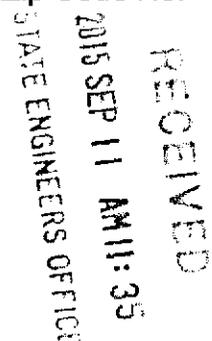
Subscribed and sworn to before me this 10th day of September, 2015.

Notary Public Joseph F. Chafey



State of Colorado
County of Larimer

My Commission expires 4-10-2019



IN THE MATTER OF APPLICATION NO. 85386E

EXHIBIT A

Protest by William Hansen, on behalf of
the United States Department of the Interior,
National Park Service

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GENERAL

- I. The mission of the National Park Service (NPS) may be paraphrased from Title 54 of the United States Code (previously known as the Organic Act), 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 Devils 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 [Devils 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 springs located on reserved lands within Death Valley National Park (Death Valley NP). The priority dates for reserved rights are senior to the appropriation sought by Application No. 85386E. These rights have not been judicially quantified.
- IV. A unique and endangered species of pupfish exists at Devils Hole, a detached unit of Death Valley NP in Nevada. Groundwater withdrawals near the unit previously caused a decline in the water level of the pool, exposing a rock shelf vital to the spawning of the pupfish (Dudley and Larson, Effect of irrigation pumping on desert pupfish habitats in Ash Meadows, Nye County, Nevada. US Geological Survey Professional Paper 927, 1976). Subsequently, a decision in 1976 by the U.S. Supreme Court (later refined by the U.S. District Court in 1978) determined that a Federal reserved water right exists at

IN THE MATTER OF APPLICATION 85386E

EXHIBIT A (Continued)

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Devil's Hole for the purpose of maintaining a water level sufficient to inundate the shelf on which the pupfish spawns (Cappaert v. United States, 426 U.S. 128). In addition, the Endangered Species Act and its amendments impose obligations on Federal agencies to conserve endangered species such as the Devils Hole pupfish.

V. Many of the “unusual features of scenic, scientific, and educational interest” within Death Valley NP are largely shaped by the hydrologic regime of the area. 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 water within the Park 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, private resorts, vegetation, wildlife, recreation, scenic value and other needs. Nevares, Texas, and Travertine springs collectively discharge more than 2,000 gallons per minute.

B. Recent estimates of public visitation to the Park for 2001 - 2014 are as follows:

Year	Visitors
2001	1,014,636
2002	897,596
2003	890,375
2004	764,820
2005	800,113
2006	744,440
2007	704,122
2008	871,938
2009	828,574
2010	984,775
2011	946,867
2012	984,568
2013	951,972
2014	1,101,312

The levels of visitation reveal the economic importance of Death Valley NP to the area, including the towns of Amargosa Valley, Beatty, and Pahrump, and the need for

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a sustainable water supply. Regionally fed springs in the Furnace Creek area are the source of supply for visitors to Death Valley NP, the Furnace Creek Ranch and Furnace Creek Inn, employees of the NPS and Xanterra (the operator of the ranch and inn), and residents of the Furnace Creek area including members of the Timbisha Tribe.

- C. At least three biologically significant springs and one underground pool are located in Death Valley NP in proximity to the Amargosa Desert. These water sources include Texas, Travertine and Nevares springs and Devils Hole. These springs and the underground pool 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. These springs also provide water for an additional 17 species of birds that are listed by the State of California as either endangered, threatened, or of special concern due to population declines or habitat loss.
- D. Desert bighorn sheep also have historically used Texas, 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 No. 85386E seeks to appropriate the public waters of the state of Nevada for environmental purposes. The proposed point of diversion is located within the Amargosa Desert hydrographic basin. The proposed rate of withdrawal is 1.1 cfs (797 acre-ft/yr).
- II. In 1979, the Nevada State Engineer pursuant to Order No. 724 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. On November 4, 2008, the Nevada State Engineer issued Order No. 1197, which acknowledged the federal reserved water right at Devils Hole and ordered that "*...any applications to appropriate underground water and any application to change the point of diversion of an existing ground-water right to a point of diversion closer to Devils*

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EXHIBIT A (Continued)

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Hole, described as being within a 25 mile radius from Devils Hole within the Amargosa Desert Hydrographic Basin, will be denied."

- IV. The Nevada State Engineer determined in Order No. 1197 that applications to appropriate additional groundwater within 25 miles of Devils Hole would be denied, with five possible exceptions, including applications for environmental permits filed pursuant to NRS 533.437.
- V. NRS 533.437 defines an environmental permit as "a temporary permit to appropriate water to avoid the pollution or contamination of a water source." The Nevada State Engineer may approve an environmental permit if the application is accompanied by the prescribed fees and a copy of a letter or order issued by the Nevada Division of Environmental Protection (NDEP), the appropriation is in the public interest, and the appropriation does not impair water rights held by other persons.
- VI. The applicant states that the NDEP requires a recovery well as a condition to NPDES permit NV0023027 to mitigate increasing nitrogen levels in groundwater. The applicant proposes to pump clean water under the environmental permit, mix it with process water in green water lagoons, and land apply the process water as part of the remediation. According to NDEP NV0023027, Ponderosa Dairy has identified the Barn #3 east lagoon as a potential source for the elevated levels of nitrogen detected over several years at MW-3.
- VII. The perennial yield for the Amargosa Desert hydrographic basin is 24,000 afy (Ruling Nos. 3870, 5750, 5971 and 5992). As detailed in Ruling No. 5750, the perennial yield estimate of 24,000 acre-feet consists of 17,000 acre-feet annually discharged by springs in Ash Meadows and 7,000 acre-feet available for groundwater pumping. The 17,000 acre-feet discharged by springs in Ash Meadows are appropriated by senior certificated water rights held by the U.S. Fish and Wildlife Service. Therefore, only 7,000 acre-feet is available for appropriation in the Amargosa Desert.

The committed groundwater rights in Amargosa Desert are equal to approximately 27,320 acre-feet. Combined with the 17,000 acre-feet of certificated water rights for springs, committed water resources in the Amargosa Desert hydrographic basin are more than 44,000 acre-feet per year. Therefore, there is no water available for appropriation in the Amargosa Desert or the five tributary basins that have a combined perennial yield of 24,000 acre-feet with the Amargosa Desert.

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- VI. The Nevada State Engineer has acknowledged in recent rulings (eg., Ruling Nos. 5971 and 5992) that existing water rights in the Amargosa Desert hydrographic basin exceed the available perennial yield and that the granting of additional water rights in the Amargosa Desert would conflict with existing rights and prove detrimental to the public interest. Devils Hole is located within the Amargosa Desert hydrographic basin. The federally reserved water right at Devils Hole is senior to all but one other groundwater right in the Amargosa Desert hydrographic basin. Therefore, additional appropriations would increase the imbalance that exists between committed water rights and the perennial yield would interfere with water rights in the basin, including the federal reserved water right at Devils Hole, and would prove detrimental to the public interest.

CONCLUSIONS

Nevada Revised Statute § 533.437 grants to the Nevada State Engineer the discretion to reject an application for an environmental permit if the proposed use will impair water rights held by other persons or is not in the public interest.

The water rights of the National Park Service will be impaired by granting Application No. 85386E because:

- The proposed consumptive use of groundwater, in combination with existing appropriations, will increase the total amount of water withdrawn and consumptively used from a basin that is already over-appropriated.
- The proposed consumptive use of groundwater, in combination with existing appropriations, would reduce or eliminate outflow from the Amargosa Desert to Death Valley NP and thereby reduce the flows of regionally-fed springs in Death Valley NP.
- The proposed consumptive use of groundwater, in combination with existing appropriations, will expand the area and the magnitude of groundwater declines that already exist in the area, and capture water that would otherwise flow towards Devil's Hole.

The public interest would not be served by approving Application No. 85386E because:

- The water and water-related resources of the nationally important Death Valley NP would be diminished or impaired as a result of Application No. 85386E.

IN THE MATTER OF APPLICATION 85386E

EXHIBIT A (Continued)

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- Application No. 85386E seeks a permit to appropriate groundwater for consumptive use in a hydrographic basin where there is no unappropriated water in the proposed source of supply.
- The imbalance between committed groundwater resources and the perennial yield in Amargosa Desert would increase resulting in further groundwater declines and the need for additional administration by the Nevada State Engineer.
- The environmental permit will not avoid the contamination of the water source since the source is likely the leaking storage lagoon.
- The environmental permit will not avoid the contamination of the source since the proposed remediation is to pump clean water from the source, mix the water with contaminated water stored in lagoons, and then apply the contaminated water to the land surface.

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