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

FILED
JUL 31 1998
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 63876,
FILED BY Aerojet-General Corporation,
ON February 24, 19 98, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

Comes now U.S. Bureau of Indian Affairs
Printed or typed name of protestant

whose post office address is P.O. Box 10, Phoenix, AZ 85001
Street No. or P.O. Box, City, State and Zip Code

whose occupation is Agency of Federal Government, and protests the granting of Application Number 63876, filed on February 24, 19 98 by Aerojet-General Corporation to appropriate the waters of Underground situated in Lincoln County
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment A.

THEREFORE the protestant requests that the application be Denied
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Barry W Welch
Agent or protestant

Barry Welch
Printed or typed name, if agent

Address P.O. Box 10
Street No. or P.O. Box No.

Phoenix, AZ 85001
City, State and Zip Code No.

Subscribed and sworn to before me this 30 day of July, 19 98.

OFFICIAL SEAL
LUCINDA A. BEGAY
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires June 19, 2001

Lucinda A. Begay
Notary Public

State of Arizona

County of Maricopa

Attachment A

Information In Support of the Protests of the U.S. Bureau of Indian Affairs
In the Matter of Nevada Water Right Application Nos. 63867 Through 63876

The U.S. Bureau of Indian Affairs (BIA) is the legal owner of over 71,000 acres of Indian trust land and associated water rights on the Moapa Indian Reservation (Reservation) in southeastern Nevada. The Moapa Band of Paiute Indians (Tribe) is the beneficial owner of these trust land and water rights. Portions of the Reservation were established by the United States as early as 1873 by Executive Order signed by President Grant, and as late as 1980 by Congressional legislation (P.L. 96-491). The Muddy River bisects the northeastern portion of the Reservation. The source of the Muddy River is Muddy Springs located about 5-10 miles west of the Reservation. Muddy Springs is the primary discharge point for the regional White River Groundwater Flow System. The White River Flow System underlies several hydrographic basins, including Coyote Spring Valley, which is located upgradient from the Reservation. A significant amount of the surface water and groundwater of the Reservation is derived from the White River Flow System.

Nevada Water Right Application Nos. 63867 through 63876 request a combined diversion rate of 100 cfs and a combined annual duty of 72,390 acre-feet for quasi-municipal purposes. The applications propose to withdraw this water from ten groundwater wells located in the Coyote Spring Valley Hydrographic Basin (210) in Clark and Lincoln Counties, Nevada. The proposed points of diversion are located upgradient of the Reservation approximately 25 miles northwest of the Reservation, and if the applications are approved, would impact the flow of the Muddy River on the Reservation and the availability of groundwater beneath the Reservation. Groundwater beneath the Reservation is recharged by the White River Flow System discharging from the Coyote Spring Valley.

By letter dated July 17, 1998, the U.S. Fish and Wildlife Service (Service) submitted protests to the Nevada State Engineer's Office against Nevada Water Right Application Nos. 63867 through 63876. Included with the Service's protest is Attachment A describing: (1) certain characteristics of the White River Groundwater Flow System and the Coyote Spring Valley hydrographic basin; (2) the totality of the water rights applications in the Coyote Spring Valley filed by Aerojet-General Corporation; (3) State Engineer Ruling 4542 and its applicability to Application Nos. 63867 through 63876; (4) pumping simulation results, using a regional groundwater model developed by U.S. Geological Survey, regarding potential effects of the proposed withdrawals on Muddy River Springs; and, (5) literature cites. The BIA incorporates by reference in this protest the above-described information provided previously to the Nevada State Engineer's Office by the Service. To the extent this information is relevant, BIA relies upon this information as the basis for its protests of these applications.

Although the Tribe's water rights have never been adjudicated, the Tribe's water rights were reserved and secured by the United States at the time of the creation of the reservation, with a priority date no later than the creation of the reservation, in a quantity sufficient (both surface and ground water) to fulfill the purposes of the reservation, and to satisfy the present and future needs of the reservation. See *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963); and *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981). Tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir. 1956). Federal reserved water rights may be protected against off-reservation groundwater diversions which are hydrologically interrelated with the reserved waters. *Cappaert v. United States*, 426 U.S. 128 (1976).

The BIA requests that Application Nos. 63867 through 63876 be denied for the following reasons:

(1) The United States holds in trust for the Tribe senior federal reserved water rights in the Muddy River which flows through the Reservation. The withdrawals of groundwater proposed in the applications would likely result in significant reductions in flows in the carbonate aquifer located beneath the Reservation, and related discharges at Muddy River Springs and the Muddy River. If permitted, the proposed withdrawals would interfere with the senior federal reserved rights held by the United States in trust for the Tribe, as well as other senior water rights.

(2) The Coyote Spring Valley hydrographic basin appears to be fully appropriated already and the granting of further water permits in this basin, such as the proposed withdrawals in Application Nos. 63867 through 63876, would interfere significantly with the senior federal reserved water rights held by the United States in trust for the Tribe, as well as other senior water rights.

The BIA reserves the right to amend and supplement its exhibit and protests of Application Nos. 63867 through 63876 to the extent that more information relevant to the protest becomes available.