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

IN THE MATTER OF APPLICATION NUMBER 64190,
FILED BY Coyote Springs Investment, LLC,
ON June 3, 19 98, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

FILED
NOV 24 1998
STATE ENGINEER'S OFFICE

Comes now U.S. Bureau of Indian Affairs
Printed or typed name of protestant
whose post office address is P.O. Box 10, Phoenix, Arizona 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 64190, filed on June 3, 19 98
by Coyote Springs Investment, LLC to appropriate the
waters of Underground situated in Lincoln
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 Welch
Agent of protestant
Barry Welch
Printed or typed name, if agent
Address P.O. Box 10
Street No. or P.O. Box No.
Phoenix, Arizona 85001
City, State and Zip Code No.

Subscribed and sworn to before me this 20th day of November, 19 98

April June Fredericks
Notary Public
State of Arizona
County of Maricopa

APRIL JUNE FREDERICKS
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
JULY 31, 2002

$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment A

Information In Support of the Protests of the U.S. Bureau of Indian Affairs
In the Matter of Nevada Water Right Application for Permit Nos. 64186 Through 64192

On June 3, 1998, Coyote Springs Investment, LLC (CSI) filed seven *Applications for Permits to Appropriate the Public Waters of the State of Nevada* (Application for Permit). Application for Permit Nos. 64186 through 64192 request to withdraw a combined diversion rate of 70 cubic feet per second and a combined annual duty of 50,675 acre-feet for quasi-municipal purposes. The proposed points of diversion (groundwater wells) are to be located in the Coyote Spring Valley Hydrographic Basin (No. 210), Lincoln County, Nevada, approximately 20 to 30 miles northwest of the Moapa Indian Reservation (Reservation).

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 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 Tribe currently uses water from Muddy River for farming purposes and in the future will likely use additional surface and groundwater for economic development, municipal, and other purposes.

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 groundwater) 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 Reservation is located near the southern terminus of the White River Groundwater Flow System. The White River Flow System is a regional groundwater flow system in southern Nevada. The flow system is comprised primarily of a thick carbonate bedrock sequence which underlies shallow basin-fill material and extends across topographic divides. The groundwater flow direction in this regional carbonate aquifer is towards the south and southeast where it discharges at the Muddy River Springs area located approximately 5-10 miles west of the Reservation in the Upper Moapa

Valley. This regional groundwater flow through the carbonate aquifer in Coyote Spring Valley is the principal source of discharge at the Muddy River Springs area. The discharge of the White River Flow Groundwater System at Muddy River Springs is about 36,000 acre-feet per year. The Muddy River Springs feeds the Muddy River which flows southeast through the Reservation and is used by the Tribe and others for irrigation and other purposes.

Since many of the basins in eastern and southern Nevada are hydraulically connected, the development of groundwater in one valley can ultimately impact the environment of another valley. There is concern that the proposed CSI diversions, if approved, will cause declines in spring flow, stream flow, groundwater levels and alter the groundwater flow direction and/or gradient on local and regional scales. Large scale changes in groundwater quality and potential plugging of flow channel and springs from mineral deposition may result. These effects are considered likely due to the regional hydraulic interconnection and the high conductivity of the local and regional aquifers. 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.

The results from a regional groundwater model of the area developed by the U.S. Geological Survey suggests that even at the current level of pumping, the spring discharge at the Muddy River Springs area will be adversely impacted (Prudic et al., 1993; Schaefer and Harrill, 1995). The impacts are proportional to the pumping rates, therefore increases in groundwater pumping in the Coyote Springs Valley will result in greater impacts to the spring discharge at Muddy River Springs. Over the years and it seems increasingly more in recent years, applications for water right permits to use groundwater from Coyote Spring Valley have been filed with the State Engineer. To date, the total combined annual duty of groundwater beneath Coyote Spring Valley which have been applied for by various entities is over 100,000 acre-feet, not including the current proposed amount of 50,675 acre-feet which is the subject of this protest. This is in spite of the State Engineer's ruling (Ruling 4542) that concluded there is at least 18,000 acre-feet of additional water available in the carbonate aquifer in the Coyote Spring Valley. It appears the amount of water being sought in Coyote Spring Valley exceeds the amount of available water. On a more regional scale, since 1997 the White River Groundwater Flow System has seen applications for at least 160,000 acre-feet of groundwater annually.

Therefore, the BIA requests that Application for Permit Nos. 64186 through 64192 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 for Permit Nos. 64186 through 64192, 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 for Permit Nos. 64186 through 64192 to the extent that more information relevant to the protest becomes available.

Literature Cited

Prudic, D.E., Harrill, J.R., and Burby, T.J., 1993. Conceptual evaluation of regional groundwater flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states. U.S. Geological Survey Open-File Report 93-170.

Schaefer, D.H. and Harrill, J.R., 1995. Simulated effects of proposed ground-water pumping in 17 basins of East-Central and Southern Nevada. U.S. Geological Survey Water Resources Investigations Report 95-4173.