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

FILED
JUN 2 1 1999
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 64669,
FILED BY Lincoln County and Vidler Water Co
ON December 11 1998, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

Comes now U.S. Fish and Wildlife Service
Printed or typed name of protestant

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

whose occupation is agency of the federal government, and protests the granting of Application Number 64669, filed on December 11, 1998, by Lincoln County and Vidler Water Company to appropriate the waters of underground situated in Lincoln County, State of Nevada, for the following reasons and on the following grounds, to wit:

Printed or typed name of applicant

Underground or name of stream, lake, spring or other source

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 Mary Ellen Mueller
Agent or protestant

for Michael Spear
Printed or typed name, if agent

Address 2233 Watt Avenue, Suite 120
Street No. or P.O. Box No.

Sacramento, CA 95825
City, State and Zip Code No.

Subscribed and sworn to before me this 18th day of June 1999.

Saundra Moore
Notary Public

State of California

County of Sacramento

SAUNDRA MOORE
Commission # 1213315
Notary Public - California
Sacramento County
My Comm. Expires Apr 2, 2003

$25
~~$10~~ FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

O-2033

2454 (Revised 6-80)

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Attachment A

ADDITIONAL INFORMATION TO SUPPORT THE PROTEST OF THE U.S. FISH AND WILDLIFE SERVICE IN THE MATTER OF APPLICATIONS 64668-64673, 64676-64679, AND 64688-64691

Water Right Application Nos. 64668-64673, 64676-64679, and 64688-64691 were filed by Lincoln County and the Vidler Water Company on December 11, 1998 requesting a combined diversion rate of 140 cubic feet per second for irrigation of up to 17,920 acres. The combined annual duty for these applications is estimated to be 71,680 acre-ft, assuming a rate of 4 acre-ft/acre. The source of the water is underground. The water is to be withdrawn from seven groundwater basins, all within the White River Regional Groundwater Flow System and all upgradient of Pahranagat National Wildlife Refuge (NWR) and Moapa Valley NWR. All of the subject applications seek to use water for irrigation on land that is controlled by the Bureau of Land Management (BLM). The land is proposed to be acquired through a land exchange with the BLM. The U.S. Fish and Wildlife Service (Service) requests that these applications be denied because:

- Granting of these applications may cause injury to Service-owned senior water rights.
- Water may not be available to appropriate in the manner described.
- The applications appear to be speculative and granting of these applications may not be in the public interest.

I. The Service's mission, as defined in the National Wildlife System Improvement Act of 1997, is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The Service manages the Pahranagat NWR, a 5,000 acre refuge located at the south end of the Pahranagat Valley (Groundwater Basin 209), and the Moapa Valley NWR, a 60 acre refuge located in the Upper Moapa Valley (Groundwater Basin 218). These groundwater basins are included in the White River Groundwater Flow System and regional groundwater discharge is critical to the function and integrity of both refuges.

II. The White River Flow System is a regional carbonate-alluvial groundwater flow system that extends from Long Valley in the north to Upper Moapa Valley in the south (Eakin, 1966). The flow system, which includes fourteen groundwater basins (Kirk and Campana,1990), consists of numerous local basin fill aquifers underlain by a large

regional carbonate aquifer which transmits water across topographic divides. Water from the regional carbonate aquifer flows generally south and southeast through the system and surfaces at large regional springs in the Pahranagat Valley and the Upper Moapa Valley. The subject applications are in Groundwater Basins 181, 180, 171, 172, 182, 206, and 208, basins that are all tributary to and upgradient of the Pahranagat Valley and the Upper Moapa Valley.

III. The Service believes that large groundwater withdrawals in basins that are upgradient of the refuges could reduce spring discharge at both refuges and lower the water tables in the local aquifers. Spring discharge in these areas is already fully appropriated and any impacts to spring discharge would affect the Service's senior water rights.

IV. The White River Flow System has seen an unprecedented number of groundwater development proposals recently. Excluding the applications by Lincoln County and the Vidler Water Company, there have been new water right applications to appropriate at least 200,000 acre-ft of groundwater annually from groundwater basins within the flow system since March 1997. The total volume of water sought by Lincoln County and the Vidler Water Company within the flow system is very significant (72,000 acre-ft). The total volume of all pending water right applications in this area (> 272,000 acre-ft) is extraordinary and far surpasses any level of pumping that is reasonable or sustainable. The cumulative effect from this much pumping would certainly be devastating to existing water rights and water resources in the flow system, including those of the Pahranagat and Moapa Valley NWRs. The Service is concerned that this scale of groundwater appropriation in this system would be highly detrimental to existing water rights and resources and to the public interest.

V. According to the provision established under NRS 533.370 (1) c, before an application to appropriate water can be approved by the State Engineer there must be a reasonable expectation that the water applied for will be put to beneficial use. The Service questions whether this is the case with the subject applications. The places of use for all of the irrigation applications filed by Lincoln County and the Vidler Water Company are currently controlled by the BLM. The applications indicate that these lands will be acquired through a land exchange but, according to the BLM, there are no applications for land exchanges on file or in preparation involving these lands. The State Engineer has ruled in the past (Ruling #4548) that it is not in the public interest to approve applications for use on lands where the applicants do not control both the proposed well locations and the proposed places of use. The Service questions whether it is the intent of the applicants to put this water to beneficial use or merely to profit from the sale of the water rights.

Literature Cited

Eakin, T. E., 1966. A regional interbasin groundwater system in the White River Area, Southeastern Nevada. Water Resources Research, v. 2, no. 2, p. 251-271.

Kirk, S. T. and Campana, M. E., 1990. A deuterium calibrated groundwater flow model of a regional carbonate-alluvial system. Journal of Hydrology, v. 119, p. 357-388.