FILED
AUG 2 - 2000
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF APPLICATION NUMBER 65954
FILED BY THE MOAPA BAND OF PAIUTES OF MOAPA RIVER
INDIAN RESERVATION, MOAPA, NEVADA
ON JANUARY 28, 2000 TO APPROPRIATE
THE WATERS OF UNDERGROUND

PROTEST

Comes now Daneil J. McGlothlin, 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 Acting Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 65954 filed on January 28, 2000, by The Moapa Band of Paiutes of Moapa River Indian Reservation, Moapa, Nevada, to appropriate the waters of underground, situated in Clark 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. The National Park Service will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights of Lake Mead National Recreation Area.

Signed Daniel J. McGlothlin
Agent or protestant

Daniel J. McGlothlin
Printed or typed name, if agent

Address 1201 Oak Ridge Drive, 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 1st day of August, ~~1999~~ 2000.

Flora B. Romero
Notary Public

State of Colorado

County of Larimer

My Commission expires Flora B. Romero, Notary Public
~~State of Colorado~~
My Commission Expires 7/30/2002

IN THE MATTER OF APPLICATION 65954
EXHIBIT A

Protest by Daniel J. McGlothlin on behalf of
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National Park Service

GENERAL

I. 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.

II. Since 1936, the National Park Service has managed the recreational activities within the Boulder Canyon Project area now known as Lake Mead National Recreation Area (NRA). Lake Mead NRA was established on October 8, 1964 (78 Stat. 1039) to be administered for "...general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area.... The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area."

III. The NPS is entitled to Federal reserved water rights for reserved lands within Lake Mead NRA. The priority dates for these reserved rights are the dates when the lands were reserved and are senior to the appropriation sought by The Moapa Band of Paiutes of Moapa River Indian Reservation, Moapa, Nevada. These NPS reserved rights have not been judicially quantified.

IV. The Muddy River, which originates from large discharge springs located northwest of Moapa, Nevada, flows into Lake Mead NRA at the north end of the lake's Overton Arm. The State of Nevada, Department of Wildlife, is leasing part of Lake Mead NRA adjoining the Muddy River for the purposes of the Overton Wildlife Management Area. This area supports a variety of waterfowl and vegetation. The United States has a State appropriative water right to water in the Muddy River, Certificate No. 5126. The point of diversion is located in the NW¼ SE ¼, Sec. 19, T. 16 S., R. 68 E., M.D.B.M.

V. Springs and water-related resource attributes are important features of Lake Mead NRA. The springs provide water for vegetation and wildlife habitat and create an environment that many visitors use and enjoy. Most springs are not fed by water from Lake Mead and could be affected by upgradient diversions.

Springs include Blue Point, Rogers, Scirpus, Corral, and Kelsey's Springs, and other smaller, unnamed springs. Visitation to Blue Point and Rogers Springs has been

estimated at 5,000 visitors per year. Desert bighorn sheep are also dependent upon the springs in Lake Mead NRA. A herd of approximately 150 use springs in the northern part of the National Recreation Area. The relict Las Vegas Valley leopard frog, *Rana onca*, has been found at Rogers, Corral, and Blue Point Springs. Current taxonomic studies indicate a high potential for listing of this relict population, previously believed extinct, as protected under the Endangered Species Act.

The United States has State appropriative water rights to two springs near the mouth of the Muddy River, which could be impaired by the appropriation and diversion proposed by this application, in combination with existing appropriations

Name	Point of Diversion	Certificate Number
Kelsey's Spring	SW¼, NW¼, Sec 20, T16S, R68E, MDB&M	296
Rogers Spring	SE¼, SE¼, Sec. 12, T18S, R67E, MDB&M	4476

VI. The Moapa Band of Paiutes of Moapa River Indian Reservation, Moapa, Nevada has filed Application No. 65954 to withdraw 6 cubic feet per second (cfs) of ground water from California Wash for cooling water for power generation purposes. The Moapa Band of Paiutes of Moapa River Indian Reservation, Moapa, Nevada has also filed 7 other associated applications ---No.'s 65944, 65945, 65946, 65947, 65948, 65949, and 65955--- each one to withdraw 6 cfs of ground water from California Wash for cooling water for power generation purposes. The total diversion rate sought from all 8 of these applications combined is 12 cfs or 7,000 acre-feet/year (afy) of consumptive use.

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

FINDINGS

I. The proposed appropriation is located in California Wash. The proposed withdrawal rate of this application is 6 cfs. Recharge to the valley from precipitation is estimated to be less than 100 afy (Rush, 1968, Harrill and others, 1988). Another 800 afy enters the valley as subsurface flow from Garnet Valley (Rush, 1968). Ground-water discharge from California Wash occurs as subsurface flow to the Muddy River (Rush, 1968).[1]

[1] See Prudic and others (1995) for a description of the regional ground-water flow system.

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II. Rights to water in the Muddy River were decreed by the Tenth Judicial Court of the State of Nevada in the case entitled *Muddy Valley Irrigation Company vs. Moapa and Salt Lake Produce Company*. According to the January 21, 1920, Order of Determination and the March 11, 1920, Further and Supplemental Order of Determination of the Nevada State Engineer, there is no water available for appropriation in the Muddy River, its headwaters, sources of supply, and tributaries (Muddy Valley Irrigation Company, 1938).

III. Ground water from the aquifers in Hidden Valley, Garnet Valley, California Wash and the Muddy River Springs Area is also tributary to the Muddy River (Rush, 1968; Prudic and others, 1995).

IV. The withdrawal of ground water proposed in this application, if approved and developed, could reduce the discharge of the Muddy River and thus impair existing water rights to the Muddy River, including that of the National Park Service, because it would capture water tributary to the Muddy River.

V. The following table summarizes water rights and hydrologic information for California Wash, Garnet Valley, Hidden Valley North and the Muddy River Springs Area. Column 1 shows committed ground-water resources for the basin. Column 2 shows the proposed appropriations of applications filed prior to those of Moapa Band Paiutes. The amount of water requested in the application by Moapa Band Paiutes is shown in Column 3. Column 4 shows the amount of water appropriated and proposed for appropriation, including the Moapa Band Paiutes application. The Column 5 shows recharge. Column 6 shows perennial yield less total committed and proposed appropriations.

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Hydrographic Area	*1* *Committed Ground-Water Resources [2] (afy)*	*2* *Pending Applications Senior to Moapa Band of Paiutes Applications [2, 4] (afy)*	*3* *Pending Applications by Moapa Band of Paiutes. [2] (afy)*	*4* *Total: Committed Resources and Pending Applications (afy)*	*5* *Perennial Yield[3] (afy)*	*6* *Perennial Yield Less Total of Committed Resources and Pending Applications (afy)*
Hidden Valley North	0	16,430	0	16,430	200	-16,230
Garnet Valley	1,105	34,055	0	35,160	400	-34,760
Muddy River Springs	13,845	13,752	0	27,597	37,000	9,403
California Wash	538	28,960	7,000	35,960	2,200	-33,760

VII. In California Wash, total committed and senior proposed ground-water appropriations (Column 4) exceed perennial yield. The difference between these two columns (perennial yield less total committed and proposed appropriations) is shown in Column 6. Total committed and proposed appropriations exceed total recharge by 2,500 afy. There is no water available for appropriation. Ground-water withdrawals larger than the perennial yield for California Wash would come from storage and constitute ground-water mining.

Total committed and senior proposed ground-water appropriations exceed perennial yield in Garnet Valley and Hidden Valley North. The above table does not include Muddy River surface water rights, which according to the Muddy River Decree, appropriates all water in the Muddy River, its headwaters, sources of supply, and tributaries. Therefore, there is no water available for appropriation in these hydrologically connected basins.

VIII. The ground-water withdrawal proposed by this application and associated applications, if approved and developed, in combination with existing permits and pending applications will capture ground water that naturally discharges into the Muddy River and thus reduce the discharge of the river, injuring existing water rights.

[2] Source: State of Nevada, Feb. 3, 2000; Nevada Division of Water Resources, Special Hydrographic Abstracts.
[3] Source: Nevada Department of Conservation and Natural Resources, 1992
[4] When the proposed annual duty was not specified, it was estimated from the diversion rate.

IX. Lake Mead NRA springs, located within the Black Mountains Area, are discharge points for regional ground-water flow systems and may be affected by the proposed appropriation. The water issuing from the springs probably originates in the Weiser Wash and Mormon Mountains Area (Pohlmann and others, 1998), and may include contributions from the Muddy River Springs Area (Dettinger and others, 1995). The National Park Service is concerned that the proposed ground-water withdrawals (shown in the above table) as well as existing ground-water uses in the Muddy River area, if developed, will reduce or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined to the springs, given that pumping occurs over a long period of time.

X. The water and water-related resources of Lake Mead NRA are locally and nationally important.

CONCLUSIONS

I. Nevada Revised Statute, § 533.370(3), states that the Nevada State Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest...." Based on the mandate set forth in § 533.370(3), N.R.S., the state engineer should reject this application for the following reasons.

There is no unappropriated water available because:

A. The permitted and certificated water rights in the California Wash hydrographic basin exceed the perennial yield.

B. The permitted and certificated water rights in Hidden Valley North, Garnet Valley, and the Muddy River Springs Area exceed the perennial yield of the System.

The approval and development of this application will impair the senior water rights of the United States because:

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Protest by Daniel J. McGlothlin on behalf of
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A. The appropriation proposed by this application will reduce or eliminate the flows of springs in Lake Mead NRA, which are discharge areas for regional ground-water flow systems, thereby impairing the United States' senior water rights.

B. The appropriation proposed by this application, in combination with existing appropriations, will reduce the flow of the Muddy River, thereby impairing the Untied States'senior water right.

The public interest would not be served by granting a permit to this application because:

A. The water and water-related resources of in the nationally important Lake Mead NRA would be diminished or impaired as a result of this application, and exiting rights and senior applications.

B. The water and water-related resources of the park would be diminished, reducing the aesthetic value of the park for the visitor and thus contributions to the local economy.

LITERATURE CITED

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Protest by Daniel J. McGlothlin on behalf of
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National Park Service

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