STATE ENGINEER'S OFFICE
AUG 2 5 2000
FILED

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

IN THE MATTER OF APPLICATION NUMBER 66473
FILED BY MOAPA BAND OF PAIUTES
OF MOAPA , NEVADA
ON June 19, 2000 TO APPROPRIATE
THE WATERS OF the STATE from an UNDERGROUND source

PROTEST

Comes now David G. Barneby, on behalf of the Nevada Power Company, whose post office address is P. O. Box 230, Las Vegas, Nevada 89151, whose occupation is Vice President, Generation Unit, and protests the granting of Application Number 66473 filed on June 19, 2000, by MOAPA BAND OF PAIUTES of 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

Signed _____
Agent or Protestant

David G. Barneby
Printed or typed, if agent

Address P.O. Box 230
Street No. or P.O. Box No.

Las Vegas, Nevada 89151
City, State and Zip Code No.

Subscribed and sworn to before me this 24 day of August, 2000

_____
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Cherilynn Gonzalez
Appt. No. 93-3512-1
My Appt. Expires May 24, 2001

State of NEVADA

County of CLARK

My Commission expires 05/24/01

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24-Aug-00

IN THE MATTER OF APPLICATION 66473
EXHIBIT A

Protest by David G. Barneby
On behalf of the Nevada Power Company, Las Vegas, Nevada

INTRODUCTION

Nevada Power Company (NPC) is an investor-owned electric utility serving a population of more than a million people in portions of Clark and Nye Counties in Southern Nevada. Nevada Power's service territory continues to be one of the fastest growing areas in the nation with electric rates below the national average and substantially below other areas in the Southwest. The continued population growth, and increasing electricity needs during the summer months necessitate the full utilization of Nevada Power's generating facilities and any reduction to their capacity due to inadequate water supply would be detrimental to the public interest.

MOAPA BAND OF PAIUTES of MOAPA has an application filed with the State Engineer for water as follows:

App #	Filing Date	Point of Diversion QQ	Qtr	Sec	Twp	Rng	Div Rate (cfs)	Type of Use	Annual Duty
65949	1/28/00	SE	NE	15	16S	64E	6.0	IND.	
65948	1/28/00	NE	NE	15	16S	64E	6.0	IND.	
65954	1/28/00	SE	SE	34	16S	64E	6.0	IND.	
65955	1/29/00	SE	SW	34	16S	64E	6.0	IND.	
65947	1/29/00	SE	NE	15	16S	64E	6.0	IND.	
65946	1/28/00	SE	NE	15	16S	64E	6.0	IND.	
65945	1/28/00	NE	NE	22	16S	64E	6.0	IND.	
65944	1/28/00	SE	SE	15	16S	64E	6.0	IND	
66475	6/19/00	NE	NE	15	16S	64E	6.0	IND.	
66473	6/19/00	SE	NE	15	16S	64E	6.0	IND.	4343
66474	6/19/00	SW	SE	15	16S	64E	6.0	IND.	

The total annual duty sought under Application 66473 assuming continuous pumping would be 4343 acre-feet per year. The type of use is listed as power generation purposes which is an industrial use (IND.)

Application 66473 is for groundwater from Basin 218. There are other applications pending in this groundwater basin.

Based on the depth to water at the test well associated with this permit application it is reasonable to believe that the recharge source for this well is the deep carbonate aquifer. Until proven otherwise it is also reasonable to assume that the headwater source for recharge is Coyote Springs Valley Groundwater Basin.

The State Engineer issued a ruling on permit 46777 on June 19, 1997. Said ruling identifies that [i]the State Engineer initially described and designated the Coyote Springs Valley Groundwater Basin on August 21, 1985, under the provisions of Nevada Revised Statute 534.030, as a basin in need of additional administration.

PERTINENT FINDINGS OF FACTS FROM RULING 4542

[ii]"The State Engineer finds that the carbonate aquifer is the source of water for the Muddy River, springs in the Muddy River Springs Area Groundwater Basin, and an additional source of recharge, from beyond the drainage area, to the underground source of water known as the alluvial aquifer in the Muddy River Springs Area Groundwater Basin."

POTENTIAL ADVERSE EFFECTS

Nevada Power Company currently has a number of applications for water from the deep carbonate aquifer for water supply for Harry Allen Station. These applications predate this application and are located in various basins. We have identified that not all of the applications will be developed however an economically feasible alternative to NPC' s permits 46777 and 49608 is being actively pursued. Whatever alternative is chosen will be presented to the State Engineer for hearing. We expect that along with any favorable consideration a requirement for monitoring will follow.

Reid Gardner Station's water source potentially could be adversely impacted by uncontrolled withdrawal from the deep carbonate aquifer regardless of the basin the production well is sited. To this end a Monitoring Program has been in place for in excess of 13 years.

Nevada Power Company has filed a "REVISED DRAFT" Monitoring Program for withdrawal from the Coyote Springs permits 46777 and 49608. Said DRAFT identifies Nevada Power's commitment to continue to collect data to ensure that actions taken by others or itself do not adversely affect the priority water rights in the Muddy River Springs Area Groundwater Basin. Any additional withdrawals from the deep carbonate must be reviewed to make sure that any effects can be defined and delineated so that the curtailment, if necessary, can be directed to the party causing the adverse action.

Until more is known about the deep carbonate aquifer there is not a firm basis to expect that there is water available from the proposed source of supply without exceeding the perennial yield or safe yield of said source. As an indirect result the proposed use has the potential to be detrimental to the public interest.

CONCLUSIONS

Based on Ruling No. 4542 and the information provided in this protest a reasonable person would conclude the following:

1. The source of water for Application 66473 is the carbonate aquifer, not the alluvial system.

2. The recharge for the point of diversion under application 66473 is within Coyote Springs Valley Groundwater Basin and just upgradient of the Muddy River Springs Area Groundwater Basin.

3. The MOAPA BAND OF PAIUTES should adhere to chapter 533 of the Nevada Revised Statutes that sets out the rules for appropriation of waters of the State of Nevada.

RECOMMENDATIONS

Nevada Power Company has a pending application in the same groundwater basin. The permit number is 54634. The State Engineer should take no action until such time as a determination is made on said application.

The public interest would not be served by granting a permit to application 66473. Furthermore, the State Engineer should issue no additional permits until such time as an approved monitoring plan for the carbonate aquifer has been established. Said plan should identify trigger points as determined by the State Engineer and an appropriate method of determining which permitted withdrawal is culpable for the measured, quantitative adverse effects.

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[i] State Engineer's Order No. 905, dated August 21, 1985, official records in the office of the State Engineer.

[ii] State Engineer's Order No. 4552, dated June 19, 1997, official records in the office of the State Engineer. p5.