FILED
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STATE ENGINEER'S OFFICE

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

03 NOV -7 AM 9:19
STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATION NUMBER 69880
FILED BY BEVERLY JOAN JACOB ON APRIL 18, 2003,
TO APPROPRIATE THE WATERS OF UNDERGROUND

PROTEST

Comes now Daniel 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 69880 filed on April 18, 2003, by Beverly Joan Jacob of Lake Oswego, State of Oregon, to appropriate the waters of underground, situated in Lincoln 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 NPS is willing to reconsider this protest if the applicant provides information to show that the proposed appropriation will not affect the water rights and water-related resources 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 6th day of November, 2003.

FLORA B. ROMERO NOTARY PUBLIC STATE OF COLORADO

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 7/31/2006

IN THE MATTER OF APPLICATION 69880
EXHIBIT A

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Protest by Daniel J. McGlothlin on behalf of
the United States Department of the Interior,
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 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 proposed appropriation. These rights have not been judicially quantified.

IV. The Muddy River, which originates in the Muddy River Springs area located northwest of Moapa, Nevada, flows into Lake Mead NRA at the north end of the 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.

V. The United States has a State appropriative water right to water in the Muddy River, under Certificate No. 5126.

VI. 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.

VII. The United States has State appropriative water rights to springs in the Lake Mead NRA under Certificate No. 4476.

IN THE MATTER OF APPLICATION 69880
EXHIBIT A - CONTINUED

Protest by Daniel J. McGlothlin on behalf of
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VIII. Beverly Joan Jacob of Lake Oswego, Oregon filed Application No. 69880, which is one of 16 applications (69878 through 69893) requesting a combined withdrawal rate of 27,627 cubic feet per second, more or less, of underground water in Dry Lake and Delmar Valleys for hydroelectric power generation purposes.

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

FINDINGS

I. The proposed withdrawal is located in Dry Lake Valley. The locations of the proposed withdrawals for applications 69878 through 69893 are located within Dry Lake and Delmar Valleys. The aquifers in these valleys are part of a regional groundwater flow system that is informally called the White River groundwater flow system (Eakin, 1966). Development of groundwater could divert throughflow that leaves Dry Lake and Delmar Valleys as underflow to downgradient areas.

II. Groundwater recharge from precipitation in Dry Lake Valley was estimated at about 5,000 acre-feet/year (afy) and 1,000 afy in Delmar Valley (Eakin, 1962). Most of the recharge results from runoff in the mountains or percolation into bedrock in the mountains (Eakin, 1962).

III. Discharge from Dry Lake Valley occurs mostly as underflow to downgradient basins with very little discharge from evapotranspiration (Eakin, 1962). Harrill and others (1988) estimated that 5,000 afy leaves Dry Lake Valley as underflow to Delmar Valley and 6,000 afy flows from Delmar Valley to Pahranagat Valley.

IV. Perennial yield for Dry Lake Valley is listed as 2,500 afy and 3,000 for Delmar Valley (Nevada Division of Water Resources and Water Planning, 1992).

V. Applications 69878 through 69893 request a combined withdrawal rate of 27,627 cfs, which converts to over 20,000,000 afy if pumping is continuous. This number far exceeds the perennial yield and recharge rates for both valleys combined. The withdrawals proposed by this application and applications 69878 through 69893 are not sustainable and would mine ground-water. This proposed withdrawal, if approved, would adversely affect other water right holders in the White River groundwater flow system and would be detrimental to the public interest.

IN THE MATTER OF APPLICATION 69880
EXHIBIT A - CONTINUED

Protest by Daniel J. McGlothlin on behalf of
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CONCLUSIONS

I. The proposed appropriation, in combination with 69878 through 69893 exceed the water available for appropriation in Dry Lake Valley and Delmar Valleys. In other basins where pending applications exceed water available, the State Engineer has held applications in abeyance until a better understanding of the water source is obtained.

II. The approval and development of the appropriation proposed by this application will impair the water rights of the United States, because:

A. The appropriation, in combination with other appropriations and withdrawals proposed by Las Vegas Valley Water District, Lincoln County and Vidler Water Company will further reduce the discharge of the Muddy River. The United States' senior water right and other existing rights to the Muddy River would be impaired, if the appropriation is approved and developed.

B. The proposed appropriation, in combination with existing appropriations and pending applications in the White River ground-water flow system, if approved and developed, could reduce the discharge of Lake Mead NRA springs, because of the large potential withdrawal rate. The drawdown caused by such large withdrawals would extend to capture ground water that naturally discharges through the springs.

C. The effects of the appropriation proposed by this application, when combined with other existing and proposed appropriations, could impair the senior water rights of Lake Mead NRA more quickly and/or to a degree greater than the withdrawal proposed under this application alone.

III. The granting of a permit to this application would prove detrimental to the public interest because the water and water-related resources in the nationally important Lake Mead NRA would be diminished or impaired, as a result of the appropriation proposed by this application.

Based on the foregoing, and given the large amount of water sought by the applicant through this and other applications, the National Park Service requests that the application be denied.

IN THE MATTER OF APPLICATION 69880
EXHIBIT A - CONTINUED

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

BIBLIOGRAPHY

Eakin, T.E., 1962, Ground-water appraisal of Dry Lake and Delmar Valleys, Lincoln County, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 16, 26 p.

Eakin, T.E., 1966, A Regional Interbasin Groundwater System in the White River Area, Southeastern Nevada. Water resources Research, Vol 2, No. 2, P 251 – 271.

Harrill, J.R., Gates, J.S., and Thomas, J.M, 1988, Major ground-water flow systems in the Great Basin region of Nevada, Utah, and adjacent States: U.S. Geological Survey Hydrologic Investigations Atlas HA-694-C, 2 sheets.

State of Nevada, 1992, Hydrologic area summaries: State of Nevada Department of Conservation and Natural Resources, Division of Water Resources and Water Planning, Carson City, Nevada.