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

IN THE MATTER OF APPLICATION NUMBER....74147.....,
FILED BY. LINCOLN COUNTY WATER DIST. & VIDLER WATER CO.,
ON.....APRIL 10...., 2006..., TO APPROPRIATE THE WATERS OF
.....UNDERGROUND.....

PROTEST

FILED
JUN 15 2006
STATE ENGINEER'S OFFICE

Comes now.....United States Department of the Interior – 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 the Federal Government..... and protests the granting

of Application Number .....74147....., filed on .....April 10....., 2006.....

by ....Lincoln County Water District and Vidler Water Company, Inc.....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 Exhibit 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 .....
Agent or protestant

/s/ Allen I. Anspach
.....
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

.....(602) 379-6600.....
Phone Number

2006 JUN 13 AM 9:52

Subscribed and sworn to before me this ....13.....day of....June....., 20..06.....

.....
Notary Public

MELANIE POOLHECO
Notary Public – Arizona
Maricopa County
Expires 03/31/07

State of....Arizona.....

County of ....Maricopa.....

+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Exhibit 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. 74147 Through 74150

On April 10, 2006, Lincoln County Water District and Vidler Water Company Inc. (Applicant) filed four *Applications for Permits to Appropriate the Public Waters of the State of Nevada*. The Application for Permit Nos. 74147 through 74150 requests to withdraw a combined diversion rate of 24 cubic feet per second (cfs) for municipal purposes. The proposed points of diversion (groundwater wells) are to be located in the Kane Springs Valley hydrographic area, Lincoln County, Nevada. Kane Springs Valley is located adjacent to and northeast of Coyote Spring Valley which is immediately upgradient of the Muddy Rivers Springs Area and 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 rights extend to groundwater to the extent groundwater is necessary to accomplish the purpose of a reservation. Holders of federal reserved rights enjoy greater protection from groundwater pumping then do holders of state law rights to the extent that greater protection may be necessary to maintain sufficient water to accomplish the purpose of a reservation. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source,* 195 Ariz. 411, 989 P.2d 739 (Ariz. Sup. Ct.1999) (*en banc*). 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).

Recently, the Tribe has negotiated with local water users a Water Settlement Agreement (WSA), pending federal approval, concerning the Tribe's federal reserved water rights. The WSA provides the Tribe with senior state water rights for both surface and groundwater and which ultimately would be replaced by the Tribe's reserved rights once the WSA is confirmed by the United States.

The Reservation is located near the southern terminus of a regional groundwater flow system called the White River groundwater flow system (Eakin, 1966). The White River flow system is a regional groundwater flow system in southern and eastern Nevada and is comprised primarily of a thick carbonate bedrock sequence which underlies shallow basin-fill material and extends across topographic divides. It discharges to the Muddy River Springs area located 5-10 miles upgradient of the Reservation and provides baseflow to the Muddy River which flows through a part of the Reservation (Prudic and others, 1995). The proposed applications in Kane Springs Valley are considered to be within the same White River flow system. The proposed pumping within

Kane Springs Valley and other regional pumping can reduce the discharge of Muddy River Springs and the flow of the Muddy River.

The total combined pending applications and existing permits for groundwater in Kane Springs Valley is approximately 32,000 acre-feet/year (afy). Application Nos. 74147 through 74150 adds an additional 17,380 afy (24 cfs). Harrill and others (1988) estimated local recharge in Kane Springs Valley to be about 500 afy, with a minor amount of discharge occurring as underflow to Coyote Spring Valley. Eakin (1966) estimated the combined yield of both Coyote Spring Valley and Kane Springs Valley is less than 3,000 afy. It appears the amount of water being sought in Kane Springs Valley exceeds the amount of available water.

The Tribe recently entered into a Memorandum of Agreement (MOA) with the U.S. Fish & Wildlife Service (USFWS), Coyote Springs Investment LLC (CSI), Moapa Valley Water District (MVWD), and the Southern Nevada Water Authority (SNWA) to help maintain sufficient flows at Muddy River Springs for the Moapa dace. Due to certain restrictions and commitments required of the MOA, the proposed applications, if granted, could trigger mandatory pumping reductions to be taken by other senior groundwater rightholders, including the Tribe and ultimately affect the implementation and success of the MOA.

Therefore, the BIA requests that Application for Permit Nos. 74147 through 74150 be denied for the following reasons:

(1) The withdrawals of groundwater proposed in the applications could likely result in reductions in flows in the carbonate aquifer and related discharges at Muddy River Springs and the Muddy River. If permitted, the proposed withdrawals could interfere with the senior federal reserved rights held by the United States in trust for the Tribe, as well as other state-based senior water rights provided to the Tribe in the WSA.

(2) The Kane Springs Valley hydrographic basin appears to be fully appropriated and there is no water available for further water withdrawal in this basin.

(3) The proposed applications could adversely affect the implementation and success of the MOA, which is designed to protect the Muddy River Springs environment and other regional water resources.

The BIA reserves the right to amend and supplement its exhibit and protests of Application for Permit Nos. 74147 through 74150 to the extent that more information relevant to the protest becomes available.

Literature Cited

Nevada State Engineer's Water Rights Database/Website, June 2006.

Eakin, T.E., 1966, A regional interbasin ground-water system in the White River area, southeastern Nevada. Nevada Department of Conservation and Natural Resources Water Resources Bulletin No. 33.

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.

Prudic, D.E., Harrill, J.R., and Burby, T.J., 1995. Conceptual evaluation of regional groundwater flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states. U.S. Geological Survey Professional Paper 1409-D.