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

IN THE MATTER OF APPLICATION NUMBER **74149** FILED BY LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC., ON APRIL 10, 2006, TO APPROPRIATE UNDERGROUND WATERS

PROTEST

FILED
JUN 12 2006
STATE ENGINEER'S OFFICE

The **MOAPA BAND OF PAIUTE INDIANS**, a federally-recognized Indian tribe, whose post office address is P.O. Box 340, Moapa, NV 89025, hereby protests the granting of Application Number **74149** filed on April 10, 2006, by Lincoln County Water District and Vidler Water Company, Inc. of Pioche, State of Nevada, to appropriate underground waters situated in Lincoln County, State of Nevada, for the reasons set forth in the attached Exhibit A.

THEREFORE the protestant requests that the application be denied.

Signed Richard Berley
Attorneys for protestant

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2101 Fourth Avenue, Suite 1230
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Subscribed and sworn to before me this 9th day of June, 2006.

KATHRYN L. WYMAN
COMMISSION EXPIRES
NOTARY
PUBLIC
3-29-07
STATE OF WASHINGTON

Kathryn L. Wyman
Notary Public Kathryn L. Wyman

State of Washington
County of King
My Commission expires 3-29-07.

2006 JUN 12 PM 3:20

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

EXHIBIT A
TO PROTEST OF MOAPA BAND OF PAIUTES
TO APPLICATION 74149

This application is one of four (Nos. 74147-74150 inclusive) by which the applicants seek to withdraw a total of up to 24.0 cfs of groundwater from the Kane Springs Valley hydrologic basin. The applicants already have pending before the State Engineer multiple other applications (Nos. 72218 through 72221 inclusive), which the current applications appear to duplicate. A hearing has been held regarding Nos. 72218 through 72221, as to which the applicants have already stipulated to certain restrictions and reductions (Stipulation).

The Moapa Band of Paiutes (Tribe) protests this application, as well as those filed contemporaneously with it, for the following reasons: (a) there is no unappropriated water in the proposed source of supply; (b) the proposed withdrawals conflict with existing rights, especially those of the Tribe; (c) the proposed withdrawals threaten to prove detrimental to the public interest; (d) the proposed withdrawals would be inconsistent with and would subvert the applicants' Stipulation to limit groundwater withdrawals under Nos. 72218 through 72221; and (e) the proposed withdrawals would undermine the efficacy of a critically important Memorandum of Agreement (MOA) recently entered into by the U.S. Fish and Wildlife Service (USFWS), Southern Nevada Water Authority (SNWA), Coyote Springs Investment LLC (CSI), the Moapa Valley Water District (MVWD) and the Tribe to maintain Muddy Springs flows to protect the endangered Moapa dace.

The Tribe has substantial surface water and groundwater rights in the region.

The Tribe has senior surface-water rights in the Muddy River under at least two legal principles. First, it has senior federal reserved water rights under *Winters v. United States,* 207 U.S. 564 (1908). Although unadjudicated, those rights will be legally confirmed and quantified upon federal approval of a Water Settlement Agreement (WSA) which has been negotiated and concurred in by the Tribe, the State of Nevada, Las Vegas Valley Water District (LVVWD), SNWA, MVWD and Muddy Valley Irrigation Company (MVIC). All such parties have recently reaffirmed their commitment and determination to pursue federal approval of the WSA. Second, the Tribe has recently been vested with state surface-water rights in the Muddy River under a Surface Water Lease with MVIC, which may run for as long as 198 years, and which has been implemented through the State Engineer's approval of certain change applications (Nos. 73482, 73483 and 73695). These rights will be replaced by the Tribe's reserved rights in the Muddy River to be confirmed under the WSA.

The Tribe also has senior groundwater rights in the region which are appurtenant to the Tribe's reservation, again, under at least two legal principles. First, it has state groundwater rights in California Wash hydrologic basin pursuant to a Water Rights Deed and Indenture from LVVWD, which has been implemented through the State Engineer's approval of additional change applications (Nos. 70257, 70258 and 70259). In that transaction, the Tribe also acquired two related senior groundwater applications in California Wash (Application Nos. 54075 and 54076). Second, the Tribe has an unadjudicated claim to federal reserved groundwater rights under

Winters and *In re Gila River General Adjudication*, 989 P.2d 739, 745-51 (S. Ct. Ariz. 1999), limited under the WSA to a maximum of 14,480 afy. The Tribe's state groundwater rights will be replaced by the Tribe's reserved groundwater rights if and when those reserved rights are legally confirmed.

The Muddy River is fully appropriated. Withdrawals under the Kane Springs applications would very likely cause reductions in river flows.

The primary source of the Muddy River is Muddy Springs, a complex down-gradient from applicants' proposed points of diversion. Muddy Springs is the sole habitat of the endangered Moapa dace. The proposed withdrawals would very likely cause reductions in spring flows, resulting in unlawful takings of dace or losses of critical dace habitat.

The Tribe and other groundwater rightholders in the region are parties to the above-referenced MOA, under which, to protect the Moapa dace, the parties to the MOA, including the Tribe and CSI (the apparent beneficiary of the proposed Kane Springs Valley withdrawals), have agreed to reduce certain of their groundwater withdrawals if flows at Muddy Springs decline to specified levels. The proposed Kane Springs Valley withdrawals would subvert the pumpage cutback commitments of CSI under the MOA. In addition, the proposed additional Kane Springs Valley withdrawals would very likely cause flow reductions at Muddy Springs, triggering mandatory pumping reductions under the MOA by other senior groundwater rightholders, including the Tribe.

The applicants entered into a Stipulation with USFWS regarding Application Nos. 72218 through 72221 in which they agreed to major restrictions and limitations on their groundwater pumping in Kane Springs Valley to protect flows at Muddy Springs. The Stipulation was intended to further the protections to Muddy Springs embodied in the MOA. This application, and Nos. 74147-74150 as a group, if granted, would appear to bypass and subvert the commitments applicants made in the Stipulation, and the protections in the MOA, to the detriment of other rightholders, including the Tribe, and the public interest.

Kane Springs Valley lacks adequate groundwater resources to support the application. It is hydrologically indistinct from Coyote Spring Valley. Additional groundwater removals from either basin are highly likely to result in reduced flows at Muddy Springs and the Muddy River, to the detriment of senior rightholders, including the Tribe, and the public interest.

In pending proceedings before the State Engineer on Application Nos. 72218 through 72221, certain protestants, including the U.S. National Park Service, contend that Kane Springs Valley should be added to the list of groundwater basins that are subject to State Engineer Order 1169. This Order restricts issuance of new groundwater permits in many groundwater basins in the region, and establishes special rules for monitoring and testing, in an effort to protect regional water resources on a coordinated basis. The Order covers Coyote Spring Valley, and it would be arbitrary to treat Kane Springs Valley, with which it is closely hydrologically connected, significantly differently.