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

FILED
JUN 0 8 2006
STATE ENGINEER'S OFFICE

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

Comes now Charles W. Pettee, 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 Chief, Water Rights Branch, Water Resources Division, National Park Service, and 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 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

Signed _____
Agent or protestant

Charles W. Pettee
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.

FLORA B. ROMERO NOTARY PUBLIC STATE OF COLORADO

Subscribed and sworn to before me this 7th day of June, 2006.

_____
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

2006 JUN -8 AM 10:02

IN THE MATTER OF APPLICATION 74149
EXHIBIT A

Protest by Charles W. Pettee
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 National Recreation Area (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 appropriation sought by Lincoln County Water District and Vidler Water Company, Inc. (Applicant). These 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 5126.

V. Numerous 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 will be affected by up-gradient diversions.

Springs include Blue Point, Rogers, 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 bighorn sheep 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, for protection under the Endangered Species Act.

In 2005, 7,692,438 persons visited Lake Mead NRA, contributing to the local economy (NPS, 2005).

VI. The United States has Nevada state appropriative water rights for Lake Mead NRA at the following springs which could be impaired by the appropriation and diversion proposed by this application, in combination with existing appropriations:

IN THE MATTER OF APPLICATION 74149
EXHIBIT A - (CONTINUED)

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Name	Point of Diversion	Certificate Number
Kelsey's Spring	SW ¼, NW ¼, Sec. 20, T16S, R68E, MDB&M	296
Rogers Spring	SE ¼, SE ¼, Sec. 12, T18S, R67E, MDB&M	4476

VII. Application 74149 which is the subject of this protest, proposes to withdraw 6.0 cubic feet per second (cfs) of ground water in Kane Springs Valley hydrographic area (#206) for municipal purposes within the Coyote Springs Valley hydrographic area (#210). Lincoln County Water District and Vidler Water Company, Inc. has also filed Application Nos. 74147, 74148 and 74150, to withdraw an additional 6.0 cfs each of ground water in Kane Springs Valley hydrographic area for municipal purposes within the Coyote Springs Valley hydrographic area. The total diversion rate sought by these applications is 24 cfs. Points of diversion and amounts requested under these applications appear to duplicate Applications Nos. 72218 through 72221, inclusive.

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

FINDINGS

I. The proposed appropriation is within the Kane Springs Valley Hydrographic Area. The aquifers underlying the Kane Springs Valley hydrographic area are part of a regional ground-water flow system informally called the White River ground-water flow system (Eakin, 1966), which discharges water through springs in the Muddy River area, supplying the base flow of the Muddy River (Prudic and others, 1995; Harrill and others, 1988; and Eakin, 1966). Ground-water withdrawals in Kane Springs Valley can reduce the ground-water discharge of the Muddy River Springs, if the ground-water withdrawals are large enough and occur over a sufficiently long period of time.

The White River ground-water flow system contains basin fill and carbonate rock aquifers that appear to be hydraulically connected (Prudic and others, 1995). Therefore, development of ground water in basin-fill aquifers would induce ground water to flow from the regional carbonate rock aquifer to the basin fill, lowering the hydraulic head in the regional carbonate-rock aquifer, and eventually causing depletion of the discharge of regional springs, such as the Muddy River Springs.

II. The amount of local recharge in Kane Springs Valley is about 500 acre-feet per year (afy) (Harrill and others, 1988). Several small springs occur in Kane Springs Valley. A minor amount of discharge occurs as underflow to Coyote Spring Valley (Harrill and others, 1988). Committed spring-water resources total approximately 113 afy. Committed ground-water resources and pending applications for Kane Springs Valley filed prior to Applications Nos. 74147 through 74150, inclusive, total 31,856 afy (Nevada State Engineer records, June 5, 2006). Including these four applications, which seek 24.0 cfs (17,376 afy), the total of committed ground-water resources and pending applications for Kane Springs Valley is 49,232 afy.

The perennial yield of ground water in Kane Springs Valley is listed as "minor" by the Nevada Department of Conservation and Natural Resources (1992). Eakin (1964) appraised the combined ground-water resources of

Kane Springs Valley and Coyote Spring Valley, presumably since Kane Springs Wash is a tributary to the main intermittent channel in Coyote Spring Valley, which is Pahranagat Wash (the ancestral White River), and there is no topographic divide between the two valleys. Eakin (1964, pg. 26) estimated that the combined perennial yield of ground water in Coyote Spring and Kane Springs Valley may be on the order of 2,600 afy. Therefore, committed ground-water resources and pending appropriations in Kane Springs Valley alone are greater than perennial yield and recharge. Committed ground-water resources in Coyote Spring Valley with a filing date prior to Applications 74147 through 74150 total approximately 16,100 afy and pending appropriations in Coyote Spring Valley with a filing date prior to Applications 74147 through 74150 total approximately 201,000 afy. Therefore, the proposed appropriations, if approved, would exceed the amount of ground water that is available. There is no ground water available for appropriation.

III. 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).

IV. The ground-water withdrawal proposed by this application and associated applications, if approved and developed, in combination with existing permits and pending applications [including those of the Las Vegas Valley Water District (LVVWD), Southern Nevada Water Authority (SNWA), Coyote Springs Investment, LLC., Nevada Power Company, and Dry Lake Water LLC], will capture ground water that naturally discharges into the Muddy River and thus will reduce the discharge of the river, thereby impairing existing water rights.

V. Lake Mead NRA springs, located within the Black Mountains Area, are also discharge points from the regional ground-water flow system and will eventually be affected by the proposed appropriation, in combination with existing permits and pending applications. Given that pumping were to occur over a long period of time, the National Park Service is concerned that the ground-water withdrawals proposed by Lincoln County Water District and Vidler Water Company, Inc., in combination with those of LVVWD, SNWA, Coyote Springs Investment, LLC., Dry Lake L.L.C., Nevada Power Company, and other existing ground-water uses in the White River ground-water flow system, if developed, will reduce or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined for the springs.

VI. Ground-water withdrawal rates larger than the recharge rate of Kane Springs Wash (500 afy) would come from storage and constitute ground-water mining. Application 74149 and associated Application Nos. 74147, 74148 and 74150 (which, combined, total 17,376 afy), if approved and developed, will mine ground water.

VII. The National Park Service, in a letter to the Nevada State Engineer dated February 6, 2006, requested the amendment of Order 1169 to incorporate the Kane Springs Valley Hydrographic Basin (No. 206) in said order. The NPS provided evidence at the State Engineer's administrative hearing concerning Application Nos. 72218 through 72221, inclusive, that Kane Springs Valley and Coyote Spring Valley (No. 210) constitute a single distinct hydrological drainage basin. The Applicant did not challenge this evidence and

conceded that Kane Springs Valley and Coyote Spring Valley are hydrologically connected. As stated in the NPS letter, "Because ... there is no discernable ground water divide between Kane Springs Valley and Coyote Spring Valley, it can reasonably be concluded that large scale development of groundwater from the carbonate-rock aquifer in Kane Springs Valley will have similar effects on existing water rights and the environment as groundwater withdrawals from basins already included in Order 1169." The NPS raises the same concern for Application Nos. 74147 through 74150 and hereby requests that these applications be included in any amendment of Order 1169 that the State Engineer may issue. Therefore, the NPS requests that these applications be held in abeyance until pumping pursuant to Order 1169 is completed.

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

CONCLUSIONS

I. There is no water available for appropriation because committed water resources exceed ground-water recharge.

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 in Coyote Spring Valley 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, would 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 public interest would not be served, by granting a permit to this application, because:

A. 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.

B. The land which the applicant proposes to withdraw the water is not owned by the applicant.

IN THE MATTER OF APPLICATION 74149
EXHIBIT A - (CONTINUED)

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LITERATURE CITED

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