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

RECEIVED
2008 DEC 26 PM 1:55
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 77599,
FILED BY U.S Fish and Wildlife Service,
ON November 17, 20 08, TO APPROPRIATE THE
WATERS OF Apcar Springs, a.k.a. Pipeline Jones Springs

} PROTEST

Comes now Moapa Valley Water District
Printed or typed name of protestant

whose post office address is P.O. Box 257, Logandale NV 89021
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is Municipal Water Purveyor and protests the granting

of Application Number 77599, filed on November 17, 20 08

by U.S. Fish and Wildlife Service to appropriate the

waters of Apcar Springs, a.k.a. Pipeline Jones Springs situated in Clark
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:

Moapa Valley Water District ("Protestant") protests the above application unless the same is subject to the rights of Protestant contained in Application 22739, Certificate 10060 and as set forth the Jones Springs Agreement dated April 20, 2006, attached and the Memorandum of Agreement dated April 20, 2006, which is Attachment 1 to the Jones Springs Agreement, copy of which is also attached.

THEREFORE the Protestant requests that the application be issued, but subject to Protestant's prior rights.
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 Robert W. Marshall
Agent or protestant

Robert W. Marshall
Printed or typed name, if agent

Address 625 Onyo Way
Street No. or P.O. Box No.

Sparks, NV 89441
City, State and Zip Code No.

Subscribed and sworn to before me this 24th day of December, 20 08

Rosario Tinnell
Notary Public

ROSARIO TINNELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 07-1070-2 - Expires December 1, 2010

State of Nevada

County of Washoe

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

When Recorded Mail To:

_____

_____

_____

Jones Springs Agreement

This Jones Springs Agreement ("Agreement") is entered into for the purposes described herein this 20th day of April, 2006 by between Moapa Valley Water District ("MVWD"), Muddy Valley Irrigation Company ("MVIC") and the U.S. Fish and Wildlife Service ("FWS").

RECITALS

1. MVWD was created in 1983 by an act of the Nevada Legislature and is the municipal water purveyor in upper and lower Moapa Valleys and serves the communities of Moapa, Glendale, Logandale and Overton, and the surrounding areas, located in Clark County, Nevada.

2. One of MVWD's water sources is a spring known locally as Pipeline Jones Spring ("Jones Spring"). Certificate No.10060 issued by the Nevada State Engineer provides MVWD the right to divert 1 c.f.s. of flow of water from Jones Spring for municipal purposes. The waters of Jones Spring and Certificate No.10060 constitute a portion of the Muddy River Decreed water rights.

3. Water from Jones Spring, as well as numerous other springs, form small streams which make up the Muddy River ("Tributary Streams").

4. There lives in the upper reaches of the Muddy River and in the Tributary Streams, a small minnow known as the Moapa Dace ("Dace"). The Dace was listed as endangered in 1967 under the Endangered Species Preservation Act of 1966 and continues to be so listed and protected under the Endangered Species Act of 1973 as amended.

5. MVWD needs the quantity of water represented by Certificate No.10060 to serve its municipal customers.

6. As an inducement to MVWD to grant this Agreement, the Southern Nevada Water Authority ("SNWA") has agreed to furnish to MVWD a quantity of water equal to MVWD's rights under Certificate No.10060 from SNWA's wells and water rights in Coyote Spring Valley ("Coyote Spring Water"). The terms and conditions of SNWA's obligations are set forth in a separate agreement.

7. MVWD desires to help in the recovery and preservation of the Dace.

NOW THEREFORE, for the purpose of aiding in the recovery and preservation of the Dace, MVWD and FWS hereby agree as follows:

1. Effective on MVWD receiving Coyote Spring Water from Southern Nevada Water Authority, the water from Jones Spring shall not be diverted for municipal purposes pursuant to Certificate No.10060, but shall be allowed to flow down the Tributary Streams to the Muddy River.

EXHIBIT A

2. MVWD may, as soon as Coyote Spring Water is available and being furnished to MVWD for municipal purposes disconnect their existing pumping facilities from the Jones Spring diversion pipe and or otherwise affix appurtenances that will allow the entire flow of water from Jones Spring to flow down to the Muddy River, thus increasing the flow of water in one or more Tributary Streams.

3. MVWD shall file any necessary change applications with the State Engineer as may be required by Nevada Law as a result of this Agreement.

4. The Agreement herein granted shall be for a non-consumptive use of water, with no warranty as to quality or quantity of flow.

5. MVWD reserves the right to change the point of diversion for its consumptive use right to the water from Jones Spring to a point on the Muddy River below that site generally known as the White Tank Narrows and to utilize such water for any purpose permitted by the Nevada State Engineer. Any such change shall not affect the flow of water at Jones Spring for in-stream purposes.

6. This Agreement will be recorded with the Clark County Recorder and filed with the Nevada State Engineer.

7. So long as MVWD is in full compliance with the terms and conditions applicable to MVWD in the Memorandum of Agreement dated April 20, 2006 and attached hereto as Attachment 1, then, if for any reason, whether natural, man-made or otherwise, any portion of the Coyote Spring Water becomes unavailable or unusable to meet MVWD's municipal needs previously supplied by Certificate 10060 (Jones Spring), then MVWD shall have the right to utilize a like portion of water from Jones Spring to replace such portion of the Coyote Spring Water that remains unavailable to MVWD for so long as the Coyote Spring Water remains unavailable.

8. MVIC has joined in the execution of this Agreement to reflect MVIC's approval of the terms thereof.

IN WITNESS WHEREOF, MVWD, MVIC and FWS have executed this Agreement the date first above written.

MOAPA VALLEY WATER DISTRICT

By: _____
Ivan Cooper, Chairman of the Board

U.S. FISH AND WILDLIFE SERVICE

By: _____
for Steve Thompson, Manager
California/Nevada Operations Office

MUDDY VALLEY IRRIGATION COMPANY

By: _____
Todd Robison, Chairman of the Board

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on April 20, 2006, by Ivan Cooper as Chairman of the Board of MOAPA VALLEY WATER DISTRICT.

DIANNE K. WEST
Notary Public State of Nevada
No. 98-0443-1
My appt. exp. Dec. 16, 2009

Dianne K West
NOTARY PUBLIC in and for the State of Nevada
My Commission Expires: 12-16-09

[SEAL]

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on April 20, 2006, by Robert D. Williams as Field Supervisor of U.S. FISH AND WILDLIFE SERVICE

DIANNE K. WEST
Notary Public State of Nevada
No. 98-0443-1
My appt. exp. Dec. 16, 2009

Dianne K West
NOTARY PUBLIC in and for the State of Nevada
My Commission Expires: 12-16-09

[SEAL]

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on April 20, 2006, by Todd Robison as Chairman of the Board of MUDDY VALLEY IRRIGATION COMPANY.

DIANNE K. WEST
Notary Public State of Nevada
No. 98-0443-1
My appt. exp. Dec. 16, 2009

Dianne K West
NOTARY PUBLIC in and for the State of Nevada
My Commission Expires: 12-16-09

[SEAL]

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is entered into this 20th day of April, 2006, (the "Effective Date") by and between the Southern Nevada Water Authority ("SNWA"), a political subdivision of the State of Nevada, the United States Fish and Wildlife Service ("FWS"), Coyote Springs Investment LLC, a Nevada limited liability company ("CSI"), the Moapa Band of Paiute Indians ("Tribe") and the Moapa Valley Water District ("MVWD"), a political subdivision of the State of Nevada. For convenience, SNWA, FWS, CSI, the Tribe and MVWD are at times herein referred to individually as "Party" and collectively as "Parties."

RECITALS

A. In Order No. 1169 the Nevada State Engineer held in abeyance applications for new groundwater rights in certain groundwater basins, and mandated that SNWA, MVWD and other parties conduct a regional groundwater study including the pumping of at least 50 percent of the permitted water rights within the Coyote Spring Valley hydrographic basin for a period of at least two consecutive years ("Pump Test").[1] SNWA currently owns 9,000 afy of water rights with points of diversion within the Coyote Spring Valley hydrographic basin under Permit Nos. 49414, 49660 through 49662 and 49978 through 49987 ("SNWA Water Rights").

B. To facilitate the Pump Test and delivery of SNWA Water Rights, SNWA applied to the Bureau of Land Management ("BLM") for a right-of-way across Federal land for the

[1] Currently there are 16,100 acre-feet per year ("afy") of permitted groundwater rights in the Coyote Spring Valley hydrologic basin, including the SNWA Water Rights and CSI Water Rights, defined in Recitals A and D herein, and Order No. 1169 requires the continuous diversion of 8,050 acre-feet per year during the Pump Test.

construction and operation of a pipeline to deliver groundwater from the Coyote Spring hydrographic basin to either the Muddy River System or to MVWD's service system.

C. In Ruling No. 5115 the Nevada State Engineer granted Application No. 54075, filed by the Las Vegas Valley Water District ("District") on October 17, 1989, for a total duty of 2,500 afy with a diversion rate of 5.0 cubic feet per second ("cfs") within the California Wash hydrographic basin ("Permit No. 54075"). By separate agreement, the District has transferred ownership of Permit No. 54075 to the Tribe. The Tribe plans to divert and utilize groundwater under Permit No. 54075.

D. CSI is a private landowner in the Coyote Spring Valley hydrographic basin and owns 4,600 afy of water rights with points of diversion within the basin under Permit Nos. 70429 and 70430 ("CSI Water Rights").

E. MVWD is responsible for supplying the municipal water needs of Upper and Lower Moapa Valley located in Clark County, Nevada. MVWD owns several water rights within Upper Moapa Valley including surface rights to spring flows in the Muddy Springs area and groundwater rights (Permit Nos. 52520, 55450 and 58269) with points of diversion at the Arrow Canyon well and a right to 1.0 cfs of spring flow from the Jones Spring (Certificate No. 10060) ("Jones Water Right").

F. FWS is a Federal agency within the Department of the Interior. FWS' responsibilities include implementation of the Endangered Species Act and administration of the National Wildlife Refuge System. FWS holds a Nevada State water right certificate for a flow rate of not less than 3.5 cfs as measured at the Warm Springs West flume (Permit No. 56668; Certificate No. 15097 issued subject to the terms of Permit No. 56668) for the maintenance of habitat of the Moapa dace and other wildlife purposes ("FWS Water Right").

G. The Moapa dace (*Moapa coriacea*) is an endemic fish that inhabits the upper Muddy River and tributary thermal spring systems within the Warm Springs area in Clark County, Nevada. The Moapa dace was federally listed as endangered on March 11, 1967 (32 FR 4001). FWS manages the Moapa Valley National Wildlife Refuge established in 1979 as part of the National Wildlife Refuge System.

H. Based upon its evaluation of available data, FWS postulates that current groundwater pumping by MVWD at the Arrow Canyon well is causing a decline in spring flows in the Warm Springs area and that future withdrawals of groundwater by SNWA and/or CSI in the Coyote Spring Valley hydrographic basin and/or by the Tribe in the California Wash hydrographic basin may cause spring flows to decline. SNWA, CSI, and MVWD do not believe the available hydrologic data supports these conclusions.

I. The Tribe believes that regional groundwater monitoring and scientifically valid, but conservative, regional computer modeling have demonstrated and will continue to demonstrate that on-Reservation groundwater pumping authorized under Permit No. 54075 will not cause appreciable declines in spring flows in the Warm Springs area.

J. Prior to the issuance of Order No. 1169, a stipulation was executed on July 19, 2001, between Federal agencies and SNWA regarding protests filed by Federal agencies against SNWA applications for new groundwater rights in the Coyote Spring Valley hydrographic basin. The Federal agencies and SNWA agreed to implement a monitoring study that was clarified in a Monitoring, Management, and Mitigation Plan for Existing and Future Permitted Groundwater Development in Coyote Spring Valley ("3M Plan") attached to and incorporated in that stipulation.

K. As part of the approval of the MVWD water rights at the Arrow Canyon well, the Nevada State Engineer required a monitoring plan. A monitoring plan has been developed and agreed upon jointly by MVWD, Nevada Power Company, FWS and National Park Service, with the most recent amendments to that plan being submitted to the State Engineer in September 2002 ("MVWD Monitoring Plan").

L. State Engineer Ruling No. 5115 requires that "[a] monitoring program approved by the State Engineer prior to the diversion of any water [under Permit No. 54075] be prepared in conjunction with the [Pump Test] ordered in State Engineer's Order No. 1169."[2] The Tribe will develop, in coordination with the other Parties, a monitoring plan approved by the Nevada State Engineer prior to applying any groundwater to beneficial use under Permit No. 54075 ("Tribal Monitoring Plan").

M. On March 11, 2005, the Nevada State Engineer approved a document entitled "Southern Nevada Water Authority's Monitoring Plan for Groundwater Applications and Permits in Coyote Spring Valley, Hidden and Garnet Valleys, and California Wash Hydrographic Basin, Clark and Lincoln Counties March, 2005" ("SNWA Monitoring Plan"). The State Engineer directed that the SNWA Monitoring Plan serve as the monitoring plan required by the State Engineer for the SNWA Water Rights and the CSI Water Rights.

N. The Parties share a common interest in the conservation and recovery of the Moapa dace and its habitat. Each Party also has an interest in the protection, use and enjoyment of its water rights and entitlements. To serve these interests, the Parties have identified certain conservation measures with the objective of making measurable progress toward the conservation and recovery of the Moapa dace, and have agreed to coordinate the monitoring, management and mitigation measures included and to be included in the 3M Plan, MVWD

Monitoring Plan, SNWA Monitoring Plan, and Tribal Monitoring Plan (collectively the "Regional Monitoring Plans").

O. The Parties desire that FWS engage in consultation and prepare a formal biological opinion under the provisions of Section 7 of the Endangered Species Act and its implementing regulations prior to execution of this MOA. The consultation shall consider the effects on the Moapa dace from the pumping of 9,000 afy under the SNWA Water Rights, 4,600 afy under the CSI Water Rights, and 2,500 afy by the Tribe under Permit No. 54075, together with the implementation of the monitoring, management and conservation measures identified herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

I. Conservation Measures. The Parties agree that in order to make measurable progress toward protection and recovery of the Moapa dace and its habitat concurrent with the operation and development of water projects for human use, it is beneficial to the public interest to establish the following conservation measures:

1. Establishment of Recovery Implementation Program. To effectuate the goals of this MOA the Parties agree to establish a Recovery Implementation Program ("RIP") whereby measures necessary to accomplish the protection and recovery of the Moapa dace, the operation and development of regional water facilities, and the inclusion of necessary and interested third parties are outlined and implemented. To facilitate establishment of the RIP:

a. The Parties agree to cooperate in the selection of qualified personnel and/or contractors to oversee the development of the RIP.

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[2] Ruling No. 5115 at 40.

b. SNWA agrees to provide funding in the amount of $300,000.00 to develop the RIP. SNWA agrees to execute such documents as may be necessary to ensure that these funds are available to meet the needs of those persons designated by the Parties with the task of establishing the RIP.

c. The Parties agree to seek the cooperation of other parties within the region that have an interest in the development and management of water and biological resources. To achieve the goals of the RIP, the Parties agree to employ principles of adaptive management to further the current understanding of the habitat and aquatic needs of the Moapa dace. The Parties will jointly negotiate the participation of any other party in the RIP.

2. Dedication of the Jones Water Right. The Parties agree that the recovery of the Moapa dace will be enhanced by the guarantee of additional in-stream flows in areas of historical Moapa dace habitat. One such area is the Apcar Stream down gradient of the Jones Spring. The Parties concur that the dedication of the Jones Water Right to the purpose of providing in-stream flows will be beneficial to the Moapa dace population in this area and further the recovery of the species. To effectuate the dedication of the Jones Water Right to the provision of in-stream flows in the Apcar Stream, the Parties agree as follows:

a. MVWD agrees to record an agreement between MVWD and FWS ("Jones Springs Agreement") on the Jones Water Right with both the Nevada State Engineer and the Clark County, Nevada, Recorder's Office that requires the entire 1.0 cfs flow right under the Jones Water Right to be dedicated to the purpose of maintaining in-stream flows in the Apcar Stream subject to the provisions of paragraph 7 of the Jones Springs Agreement. MVWD shall retain ownership of the Jones Water Right. The Jones Springs Agreement shall be executed and recorded promptly upon execution of this MOA. A draft of the Jones Springs Agreement is

attached hereto as "Exhibit A." The Jones Springs Agreement ultimately recorded pursuant to this paragraph shall be in substantially the same form as Exhibit A.

b. SNWA agrees to transfer to MVWD, at no cost, a portion of Permit No. 49414 equal to 724 afy. This transferred portion of Permit No. 49414 shall remain of equal priority date with that portion of Permit No. 49414 retained by SNWA.

c. MVWD agrees to transfer to SNWA, at no cost, the first 724 afy, or any portion thereof if less than 724 afy is permitted, of any permit(s) issued by the Nevada State Engineer pursuant to Application Nos. 54055 through 54059, inclusive.

d. The Parties agree to cooperate with MVWD in the filing and processing of any change applications, including applications to change the manner or place of use that are filed by MVWD with the Nevada State Engineer in order to effectuate the Jones Springs Agreement referenced in paragraph I(2)(a) above.

e. Subject to paragraph 2 of the Jones Springs Agreement, the Parties agree to cooperatively determine the best methods to ensure that the Jones Water Right accomplishes the purpose stated in paragraph I(2)(a) above, as related to the recovery of the Moapa dace and other endemic species, including the possibility of restoration of the springhead at Jones Spring.

3. Dedication of Portion of CSI Water Rights.

a. CSI agrees to record a conservation easement with both the Nevada State Engineer and the Clark County, Nevada, Recorders Office dedicating 460 afy of the CSI Water Rights to the survival and recovery of the Moapa dace and its habitat. The use of this water would be at the discretion of the FWS in consultation with the CSI and the Parties.

b. In addition, CSI agrees to dedicate 5 percent of all water rights above 4,600 afy that CSI may in the future be entitled to withdraw from Coyote Spring Valley

hydrographic basin or any water rights that CSI imports into and uses in the basin. The Parties, consistent with the RIP, will determine the most effective method for utilizing such water rights. CSI shall execute and record such documentation, including conservation easements, deeds, change applications and reports of conveyance, as may be necessary to effectuate the dedication of that portion of such water rights that is subject to the terms and conditions contained herein.

4. Habitat Restoration and Recovery Measures. To restore the habitat necessary for the Moapa dace and take other steps to protect and recover the species, the Parties agree as follows:

a. SNWA agrees to provide funding in the amount of $750,000.00 for the restoration of Moapa dace habitat under the direction of FWS on the Apcar Unit of the Moapa National Wildlife Refuge or otherwise. All tasks funded under this paragraph I(4)(a) shall be agreed to in advance by SNWA and FWS in consultation with the other Parties. SNWA agrees to execute such documents as may be necessary in order to ensure that these funds are available for such habitat restoration.

b. FWS agrees to provide funding in the amount of $125,000.00 and SNWA agrees to provide funding in the amount of $125,000.00 to develop an ecological model designed to investigate the effects of habitat change on the ecology of the Moapa dace. FWS and SNWA shall, in consultation with the other Parties, agree upon the selection of a contractor to prepare the model.

c. SNWA agrees to provide funding in the amount of $50,000.00 to construct fish barriers to help eliminate the predacious Tilapia from areas of Moapa dace habitat. FWS and SNWA shall, in consultation with the other Parties, agree upon the selection of a contractor to perform such work.

d. SNWA agrees to provide funding in the amount of $25,000.00 to implement programs related to the eradication of non-native fish species, including predacious Tilapia, in the Warm Springs area. FWS and SNWA shall, in consultation with the other Parties, agree upon the selection of a contractor to perform such work.

e. CSI agrees to provide FWS with funding on an annual basis in the amount of $50,000.00 for a period of four years following the execution of this MOA for the restoration of Moapa dace habitat outside the boundaries of the Moapa National Wildlife Refuge along the Apcar Stream, or at such other locations as CSI and FWS, in consultation with the other Parties, agree.

f. The Tribe agrees to use a reasonable portion of the existing on-Reservation greenhouse facility for a reasonable period of years, for the purpose of cultivating native vegetation for use in RIP-approved habitat restoration. The Parties understand that the greenhouse is in a state of major disrepair and that such use of the greenhouse will require repairs and a water supply. FWS will work with the Tribe to obtain the funding necessary to provide for such repairs and to identify and secure a water supply adequate for such use. The Tribe reserves the right to pursue, and if feasible implement, separate arrangements for the improvement and commercial operation of the remainder of the greenhouse.

g. The Tribe agrees to provide access to the Tribe's Reservation for the construction and subsequent maintenance of at least one fish barrier, at a mutually agreeable location, to help eliminate the predacious Tilapia from Moapa dace habitat. FWS will work with the Tribe to obtain the funding necessary for construction, maintenance and repair of such barrier(s).

h. The Tribe agrees to provide the services of the Tribe's Environmental Director for in-kind staff services and participation in the RIP.

5. Protection of In-Stream Flows. The Parties recognize that maintenance of minimum in-stream flows in the Warm Springs area is essential for the protection and recovery of the Moapa dace. Although those flows are unknown at this time, the Parties agree as follows:

a. For purposes of this paragraph I(5), all "Average Flow Levels" specified herein shall be determined by flow measurements at the Warm Springs West flume. Average Flow Levels will be determined to have reached a particular level within a range specified in paragraphs I(5)(b) through (g) ("Trigger Range"): (1) if the daily average flow for each of 45 consecutive days decreases to an amount within the Trigger Range, or if the 90 day average flow over any 90 consecutive day period decreases to an amount within the Trigger Range; or (2) if the daily average flow for each of 90 consecutive days increases to an amount within the Trigger Range, or if the 135 day average flow over any 135 consecutive day period increases to an amount within the Trigger Range. If determined to be necessary by the Parties, the Parties will cooperate in removing phreatophytes, repairing or replacing the flume or taking any other steps to ensure the accuracy of flume measurements. Any adjustment in the rating curve for the Warm Springs West flume shall result in a pro-rata adjustment of the Trigger Ranges. The remaining provisions of this paragraph I(5) apply both during and after the Pump Test, except for paragraphs I(5)(c)(i) and (ii) which apply only during the Pump Test.

b. If the Average Flow Level decreases to an amount within the Trigger Range of 3.2 cfs or less, the Parties agree to meet as soon as practicably possible to discuss and interpret all available data and plan for mitigation measures in the event flows continue to decline.

c. If the Average Flow Level decreases to an amount within the Trigger Range of 3.0 cfs or less, the following Parties agree to take the following further actions:

i. During the pendency of the Pump Test, MVWD agrees to immediately cease pumping from the Arrow Canyon well; and

ii. While the Arrow Canyon Well is shut down pursuant to paragraph I(5)(c)(i) above, SNWA agrees to supply MVWD with all necessary municipal and domestic water supplies from the MX-5 and RW-2 wells or other sources available to the SNWA. Except for the express provision contained in paragraph I(2)(b) of this MOA, nothing in this MOA will obligate SNWA to supply MVWD with any water from SNWA's existing permits in the Coyote Spring Valley following the completion of the Pump Test; and

iii. SNWA and CSI agree to take necessary actions to prepare to geographically redistribute their groundwater pumping in the Coyote Spring Valley should flow levels continue to decline; and

d. If the Average Flow Level is within the Trigger Range of 3.0 cfs or less but greater than 2.9 cfs, the pumping of SNWA from the MX-5, RW-2, CS-1 and CS-2 wells in combination with the pumping of CSI from the MX-5, RW-2, CS-1 and CS-2 and CSI's pumping from other wells within the Coyote Springs Valley ("CSV") shall be restricted to 8,050 afy.

e. If the Average Flow Level is within the Trigger Range of 2.9 cfs or less but greater than 2.8 cfs, the pumping of SNWA from the MX-5, RW-2, CS-1 and CS-2 wells in combination with the pumping of CSI from the MX-5, RW-2, CS-1 and CS-2 and CSI's

pumping from other wells in CSV shall be restricted to 6,000 afy, and the pumping of the Tribe under Permit No. 54075 shall be restricted to 2,000 afy.

f. If the Average Flow Level is within the Trigger Range of 2.8 cfs or less but greater than 2.7 cfs, the pumping of SNWA from the MX-5, RW-2, CS-1 and CS-2 wells in combination with the pumping of CSI from the MX-5, RW-2, CS-1 and CS-2 and CSI's pumping from other wells in CSV shall be restricted to 4,000 afy, and the pumping of the Tribe under Permit No. 54075 shall be restricted to 1,700 afy.

g. If the Average Flow Level is within the Trigger Range of 2.7 cfs or less, the pumping of SNWA from the MX-5, RW-2, CS-1 and CS-2 wells in combination with the pumping of CSI from the MX-5, RW-2, CS-1 and CS-2 and CSI's pumping from other wells in CSV shall be restricted to 724 afy, and the pumping of the Tribe under Permit No. 54075 shall be restricted to 1,250 afy.

h. The Parties agree that any pumping of the 460 afy of CSI Water Rights dedicated to the survival and recovery of the Moapa dace pursuant to paragraph 3.a. of this MOA shall be at the discretion of FWS and not counted against the pumping restrictions set forth in paragraphs 5(d) through 5(g) of this MOA.

6. Hydrologic Review Team. Upon execution of this MOA, the Parties shall establish a Hydrologic Review Team ("HRT") which shall be constituted and function as follows:

a. Membership. Each Party shall appoint two representatives ("HRT Representatives"), including at least one with substantial formal training and experience in hydrogeology ("Technical Representative"). Except as otherwise provided herein, the two HRT Representatives shall together have one vote on HRT matters. By consensus, the HRT

Representatives may offer voting or non-voting HRT membership to others who provide regional monitoring records and analyses to the HRT.

b. Objectives. The objectives of the HRT shall be: (1) to identify opportunities and make recommendations for the purpose of coordinating and ensuring accuracy, consistency and efficiency in monitoring, other data collection, and analytical activities performed under the Regional Monitoring Plans; (2) to establish technically sound analyses of impacts on Muddy River Springs and Muddy River flows resulting from regional groundwater pumping; (3) to assess based thereon whether the pumping restrictions, but not the Trigger Ranges, under paragraphs I(5)(c) through (g) above (or any successors thereto) should be adjusted to better reflect the extent to which regional groundwater pumping by the respective Parties causes, or is likely to cause, impacts on Muddy River Springs and Muddy River flows; and (4) to adopt by consensus appropriate adjustments to such restrictions, if warranted.

c. Regional Baseline Pumping Analysis. Within one year following the execution of this MOA, the Technical Representatives shall prepare a written analysis of regional groundwater pumping data and impacts ("Regional Baseline Pumping Analysis"). In preparing such baseline analysis, the HRT shall consider all relevant and available data and analytical materials. The Regional Baseline Pumping Analysis shall set forth all shared and dissenting analyses, interpretations and recommendations of the participating Technical Representatives. All modeling analyses contained therein shall be based on modeling codes in the public domain and data files that are available for comprehensive review by all Technical Representatives.

d. Annual Determination. Based on the Regional Baseline Pumping Analysis, and no later than one year after preparation of that analysis and annually thereafter, the HRT shall endeavor to determine by consensus ("Annual Determination") whether the

groundwater pumping restrictions, but not the Trigger Ranges, under paragraphs I(5)(c) through (g) above (or any successors thereto) should remain in place, or whether and how any of such restrictions should be adjusted ("Pumping Restriction Adjustments") to better reflect the extent to which regional groundwater pumping by the respective Parties causes, or is likely to cause, impacts on Muddy River Springs and Muddy River flows. However, no Pumping Restriction Adjustments will be made within the first five years following the Effective Date of this MOA. All Annual Determinations (including any Pumping Restriction Adjustments adopted by HRT consensus) shall be final and binding on all Parties, except that by consensus the HRT may at any time modify or vacate any Annual Determination.

e. Annual Determination Reports. Each Annual Determination shall be set forth and explained in a written Annual Determination Report which includes as appendices the Regional Baseline Pumping Analysis, all previously submitted Annual Technical Representative's Reports, and any other data or analytical materials considered by the HRT. If the Annual Determination is not made due to lack of consensus or any other reason, the positions thereon of the HRT Representatives shall be set forth and explained in the Annual Determination Report. Furthermore, if the HRT fails to adopt Pumping Restriction Adjustments recommended in a timely submitted Annual Technical Representative's Report, the Annual Determination Report shall briefly explain why such recommendation was not adopted.

f. Annual Technical Representative's Reports. Within six months after the close of the year of this MOA and annually thereafter, based on the best available scientific data and information, any Technical Representative may submit to all other HRT Representatives a written report ("Annual Technical Representative's Report") containing both: (1) a well-

documented professional analysis of monitored regional pumping and pumping impacts; and (2) recommendations, if any, for Pumping Restriction Adjustments.

g. Provision for Peer Review. If the HRT Representatives are unable to reach consensus on an Annual Determination, the Parties shall refer the matter to a qualified panel of third party reviewers ("Panel") consisting of three scientists unaffiliated with any Party and having substantial formal training and experience in hydrogeology. If the Parties cannot agree by consensus on the make-up of the Panel, one member of the Panel shall be designated by each of the following from its own ranks: U.S. Geologic Survey, Desert Research Institute and a private firm with the requisite expertise designated by a majority of the Parties ("Appointing Entities"), provided that the Parties by consensus may designate different similarly qualified Appointing Entities. If any Appointing Entity for any reason is unable or refuses to designate a member of the Panel, the Parties by majority vote shall designate a qualified replacement Appointing Entity. The purpose of the referral to the Panel will be to obtain peer review of the then-current Annual Determination Report, the data upon which it is based, all previously submitted Annual Technical Representative's Reports, and any other relevant and available data and analytical materials. The Panel will be asked to make its recommendation based on the foregoing information concerning the appropriate content of the Annual Determination. All Parties shall have a fair and reasonable opportunity to present factual and analytical submissions in person and/or in writing to the Panel. The Parties contemplate that a determination of the Panel on the Annual Determination will constitute the best available scientific information concerning the impacts on Muddy River Springs and Muddy River flows resulting from regional groundwater pumping, and the appropriateness of any proposed Pumping Restriction Adjustments. The cost of the Panel shall be borne equally by the Parties.

7. Acquisition of Additional Land and Water Rights. As a potential conservation measure, the Parties agree to work cooperatively to identify both land and water rights that, if acquired and dedicated to the recovery of the Moapa dace, will assist in making measurable progress towards the recovery of the Moapa dace. SNWA agrees to make a good faith effort to acquire land and water rights identified by the Parties. The Parties expressly agree that the reasonableness of any terms and conditions for any acquisition of land or water rights by SNWA shall be determined by SNWA at SNWA's sole discretion, and that SNWA shall have no obligation to acquire any land or water rights upon terms and conditions that SNWA finds unreasonable. When such land or water rights are acquired by SNWA, SNWA will cooperate with FWS in establishing restrictions upon the use of such lands and water rights consistent with existing laws so as to effectuate the conservation of these resources and the recovery of the Moapa dace.

8. Operational Coordination Among FWS, SNWA, CSI and MVWD. Consistent with the terms of this MOA and to accomplish the goals of protecting and recovering the Moapa dace, and accommodating the operation of municipal water supply infrastructure, FWS, SNWA, CSI and MVWD agree to examine all reasonable water operational scenarios and agree to implement feasible scenarios that will minimize impacts to the Moapa dace and its habitat, including, but not limited to the provision of water to MVWD from the Coyote Spring Valley hydrographic basin during the Pump Test or other water supplies available to SNWA and MVWD. MVWD shall have the right during the Pump Test to use the Arrow Canyon Well only in the event and to the extent SNWA is unable to supply MVWD with "all necessary municipal and domestic water supplies" pursuant to the provisions of paragraph I(5)(c)(ii) of this MOA. Except for the express provision contained in paragraph I(2)(b) of this MOA, nothing in this

MOA will obligate SNWA to supply MVWD with any water from SNWA's existing permits in the Coyote Spring Valley hydrographic basin following the completion of the Pump Test.

SNWA and CSI agree, following the execution of this MOA, and in coordination with FWS, to cooperate in locating and drilling one or more production wells in the northern part of the Coyote Spring Valley hydrographic basin. The details of this cooperative effort shall be contained in a separate agreement between CSI and SNWA.

9. Adaptive Management Measures. The Parties agree to carry out additional conservation measures that will need to be taken to protect and recover the Moapa dace following the initiation of the RIP and as more data becomes available both as to the biology of the Moapa dace and regional hydrology. Thus, the Parties agree to cooperate in carrying out the following measures as may be appropriate:

a. Funding, preparation and implementation of biological and hydrological studies and activities supporting the recovery of the Moapa Dace; and

b. Establish a regional monitoring and management plan that will include science-based management and mitigation measures for RIP participants; and

c. Assessing the feasibility of augmenting and/or restoring in-stream flows and establishing those flows as deemed feasible.

d. Continue to re-evaluate necessary measures to protect and recover the Moapa dace.

II. Current Access Agreement. SNWA currently has an access agreement with the owners of the Warm Springs Ranch, which contains Moapa dace habitat, in order to conduct biological surveys of the Moapa dace. SNWA agrees to use its best efforts to seek to amend this access

agreement so that each of the Parties to this MOA will have similar rights of access to the Warm Springs Ranch.

III. Modification of MVWD Monitoring Plan. Pursuant to the MVWD Monitoring Plan, submitted to the Nevada State Engineer in September 2002, FWS and MVWD agreed to a monitoring plan for development of MVWD's water rights at the Arrow Canyon well that contained certain management and mitigation measures that would be taken if flows at the Warm Springs West flume reached 3.17 cfs and 2.94 cfs respectively. This monitoring plan was recognized by the Nevada State Engineer in Ruling No. 5161. The Parties agree that, in order to effectuate a uniform regional monitoring and management plan, that the flow level restrictions and mitigation measures contained in this MOA shall replace the flow and water level restrictions and mitigation measures contained in the MVWD Monitoring Plan.

IV. No Assertion of FWS State Water Right. Provided that the other Parties to this MOA are in full compliance with the terms of this MOA, FWS expressly agrees not to assert a claim of injury to the FWS Water Right against either MVWD for pumping at the Arrow Canyon Well, against the Tribe for pumping within the California Wash hydrographic basin or against SNWA or CSI for any pumping in the Coyote Spring Valley for any diminution in flows at the Warm Springs West flume above 2.7 cfs. This provision shall in no way prejudice the FWS' ability and/or right to assert any and all rights inherent to the FWS Water Right for any diminution in flows at the Warm Springs West flume below 2.7 cfs.

V. No Waiver of Statutory Duties or Legal Rights. This MOA does not waive any of the authorities or duties of the FWS or the United States, nor does it relieve SNWA, CSI, the Tribe and MVWD from complying with any Federal laws, including but not limited to, the National Environmental Policy Act, Endangered Species Act, National Wildlife Refuge System

Improvement Act of 1997, and Federal Land Policy and Management Act of 1976, and any and all rules and regulations thereunder. Except as provided in paragraph IV of this MOA, it is the expressed intention of the Parties that FWS and the United States are not waiving any legal rights or obligations of any kind, including obligations to consult or re-consult under the Endangered Species Act, by entering into this MOA. Further, this agreement is entered as a good faith resolution of certain issues and is not intended to waive any party's rights in a subsequent legal proceeding regarding those issues. In addition, except for the restrictions set forth in paragraphs I(5)(e) through (g) above, this MOA does not in any respect waive, limit, or diminish any rights or claims of the Tribe to any federally-reserved or State surface or groundwater rights.

VI. No Modification of Previous Agreements. The Parties recognize that CSI, SNWA and MVWD have previously entered into multiple agreements concerning the sale, purchase and settlement of water rights within the Coyote Spring Basin including a certain *Agreement For Settlement Of All Claims To Groundwater In The Coyote Spring Basin* entered into between MVWD, CSI, SNWA and the District on March 7, 2002, and a certain *Agreement For Option, Purchase and Sale of Water Rights, Real Property and Easements* entered into between SNWA and CSI on April 16, 1998. Nothing contained herein is intended to abrogate or modify in any manner any of the provisions contained in any of those agreements except as expressly provided in paragraphs I(2)(b) and I(2)(c) of this MOA.

VII. Miscellaneous Provisions.

1. Notices. If notice is required to be sent by the Parties, the addresses are as follows:

If to FWS:

Supervisor
Nevada Fish and Wildlife Office
Fish and Wildlife Service
1340 Financial Blvd., #234
Reno, Nevada 89502

If to SNWA:

General Manager
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, Nevada 89153

If to MVWD:

General Manager
Moapa Valley Water District
Post Office Box 257
Logandale, Nevada 89021

If to CSI:

Carl Savely, General Counsel
Wingfield Nevada Group
6600 North Wingfield Parkway
Sparks, Nevada 89436

If to the Tribe:

Chairperson, Moapa Band of Paiute Indians
Post Office Box 340
Moapa, Nevada 89025
Fax: 702-865-2875

With copies to:

Steven H. Chestnut
Richard M. Berely
Ziontz, Chestnut, Varnell, Berely & Slonim
2101 Fourth Avenue, Suite 1230
Seattle, Washington 98121
Fax: 206-448-0962

2. Choice of Law. This MOA shall be governed in accordance with applicable Federal laws, and the laws of the State of Nevada to the extent not inconsistent with Federal law.

3. Funding. Any commitment of funding by FWS, MVWD or SNWA under this MOA is subject to appropriations by the respective governing bodies of those entities.

4. Amendment. This MOA may be amended in writing by mutual agreement of the Parties.

5. Integration. This MOA sets forth the entire agreement of the Parties and supercedes all prior discussions, negotiations, understandings or agreements with respect to the subject matter hereof. No alteration or variation of this MOA shall be valid or binding unless contained in an amendment in accordance with paragraph VI(4) of this MOA.

6. Binding Effect, Withdrawal From MOA. The terms and conditions of this MOA shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, transferees and assigns. However, the Parties expressly agree that should the execution of this MOA, or any consultation held or biological opinion issued under Section 7 of the Endangered Species Act which is premised thereon, be challenged in a court of competent jurisdiction and be found in violation of the Endangered Species Act or any other law, any of the Parties may withdraw from the MOA upon thirty days written notice to the other Parties. Upon such withdrawal, the withdrawing Party shall have no further obligation to perform any commitment contained in this MOA.

7. Effective Date, Counterparts. This MOA will become effective as between the Parties upon all Parties signing this MOA. The Parties may execute this MOA in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original as against any party who has signed it.

8. Additional Parties. Other entities may become Parties to this MOA by mutual written assent of the Parties.

9. Headings. The underlined paragraph headings used in this MOA are for the convenience of the Parties only, and shall not be deemed to be of substantive force in interpreting the MOA.

10. No Third Party Beneficiaries. This MOA does not create any right or benefit, substantive or procedural, enforceable by any third parties against the Parties or against any other person or entity. The terms of this MOA are not enforceable by any person or entity other than a Party.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement on the 20th day of April, 2006.

MOAPA VALLEY WATER DISTRICT

Ivan M. Cooper

By: Ivan Cooper
Title: Chairman

U.S. FISH AND WILDLIFE SERVICE

for By: Steve Thompson
Title: Manager, California/Nevada Operations Office

SOUTHERN NEVADA WATER AUTHORITY

Amanda M. Cyphers

By: Amanda M. Cyphers
Title: Chair

COYOTE SPRINGS INVESTMENT, LLC

By: Robert R. Derck
Title: General Manager

MOAPA BAND OF PAIUTE INDIANS

By: Dalton Tom
Title: Chairman