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

IN THE MATTER OF APPLICATION NUMBER 79295
FILED BY Southern Nevada Water Authority
ON January 28, 20 10, TO APPROPRIATE THE
WATERS OF Underground

} PROTEST

RECEIVED
2010 APR 16 PM 1:25
STATE ENGINEERS OFFICE

Comes now U.S. Bureau of Indian Affairs
Printed or typed name of protestant

whose post office address is 2600 N. Central Ave., 4th Floor, Phoenix, AZ 85004
Street No. or PO Box, City, State and ZIP Code

whose occupation is Federal Government Agency and protests the granting

of Application Number 79295, filed on January 28, 20 10

by Southern Nevada Water Authority 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"

FILED
APR 16 2010
STATE ENGINEER'S OFFICE

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 Rodney M. Vey
Agent or protestant

Rodney McVey Deputy Regional Director for Trust Services
Printed or typed name, if agent

Address 2600 N. Central Ave., 4th Floor
Street No. or PO Box

Phoenix, Arizona 85004
City, State and ZIP Code

602-379-6600
Phone Number

Subscribed and sworn to before me this 15th day of April, 20 10

Velda M. Garcia
Notary Public

Notary Public State of Arizona
Maricopa County
Velda M Garcia
My Commission Expires
05/24/2011

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. 79265, 79266 and 79295

On January 28, 2010, Southern Nevada Water Authority (Applicant) filed the above referenced groundwater *Applications for Permits to Appropriate the Public Waters of the State of Nevada* in the Spring Valley (No. 184) hydrographic area. The applications request a total diversion rate of groundwater in the amount of 18 cubic feet per second (cfs). The applications are for the withdrawal of groundwater from the Great Salt Lake Desert (GSLD) groundwater flow system. The Confederated Tribes of the Goshute Reservation (Tribe) reside on the Goshute Indian Reservation (Reservation) which is located within the GSLD flow system.

The U.S. Bureau of Indian Affairs (BIA) is the legal owner of over 112,000 acres of Indian trust land and associated water rights on the Reservation in east central Nevada and west central Utah. The Treaty of 1863 (13 Stat. 681-684) between the United States and the Goshute Shoshone Indians defined the natural boundaries of their lands in Nevada and Utah. The Reservation was created by Executive Order No. 1539 in 1912 and Executive Order No. 1903 in 1914. Subsequent additions to the Reservation were by purchases of local ranches and public domain land. The current reservation lands total over 112,000 acres and are held in trust by the United States for the benefit of the Goshute Shoshone Indians.

The Reservation is located in White Pine County, Nevada in east central Nevada and in Juab and Tooele counties in west central Utah. It lies in the southern one-third of Deep Creek Valley (No. 193), an eastern portion of Tippett Valley (No. 185) to the west, Pleasant Valley (No. 194) to the south and extends into Snake Valley (No. 195) on the east.

Carbonate rocks underlie the basin fill deposits in Deep Creek Valley, although the extent and distribution is unknown. The Reservation is considered to be part of the GSLD regional carbonate-rock aquifer flow system where the primary direction of flow is towards the Great Salt Lake (Harrill and others, 1988). On the Reservation several springs discharge from consolidated bedrock and contribute to the flows of the streams of the Deep Creek system. Spring Creek is supplied by a spring issuing from carbonate-rocks southwest of the community of Goshute. Some springs yield water that is warmer than the average annual air temperature, indicating the source of the water may be from a deeper source than recharge from the nearby mountains (Hood, et al, 1969). These regional carbonate-rock aquifer groundwater systems are comprised primarily of a thick carbonate bedrock sequence which underlies shallow basin-fill material and can extend across topographic divides depending upon the hydrologic and geologic conditions of the various basins and mountain ranges. The determination of these flow systems are based on scarce and limited data, if at all, therefore the actual flow boundaries and characteristics are not accurately known, which in many cases, results in several interpretations in the same region. For example, Welch and others (1988) indicated there is interbasin flow from Spring Valley towards Tippett Valley while Harrill and others (1988) indicate the flow is in the opposite direction. Due to this uncertainty of

subsurface conditions and groundwater flow it is very difficult to forecast with certainty which basin may be impacted due to pumping in another basin in the region.

The Tribe has 1905 decreed surface water rights along the Deep Creek system in Utah. The Tribe has also acquired existing senior state water rights in Nevada from the purchase of ranches. These water rights are still in the name of the previous ranch owner and have not been transferred into the name of the United States/Tribe. The BIA is researching other possible state-permitted water rights that may have been acquired in previous ranch purchases during the creation or enlargement of the Reservation.

In addition, the Tribe has reserved water rights that 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) (*Arizona I*); 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). The essential purpose of Indian reservations is to provide Native American people with a permanent home, an abiding place, and a livable environment. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source,* 35 P.3d 68 (Ariz. Sup. Ct. 2001) (*en banc*), citing *Winters* and *Arizona I*.

Application Nos. 79265, 79266 and 79295 are located in Spring Valley hydrographic area. The total combined existing permits for groundwater in Spring Valley is over 86,000 acre-feet/year (afy). These applications add an additional 13,032 afy (18 cfs). The State Engineer has ruled (Ruling No. 5726) the perennial yield of the Spring Valley is 80,000 afy.

The BIA on behalf of the Confederated Tribes of the Goshute Reservation protests the granting of Application Nos. 79265, 79266, and 79295 for the following reasons:

1. The proposed discharge rates for the applications in combination with existing permitted rights in Spring Valley will exceed the perennial yield of the Basin, as currently determined by the State Engineer.

2. The applications do not clearly describe the place of use, the proposed works, the

estimated cost of the works, the number and types of units to be served, or the annual consumptive use. Nor is it clear that the diversions sought are necessary and in an amount reasonably required for the beneficial uses applied for.

3. The applications could jeopardize the habitat and likely cause adverse impacts to endangered and threatened species recognized under the Endangered Species Act and related state statutes.

4. The cumulative effects of the diversions proposed by the applications could potentially lower the groundwater levels within the Goshute Indian Reservation, thereby increasing the costs of supplying and developing water within the Reservation.

5. The economic development of the Goshute Indian Reservation could be harmed if water and water-related resources of the Reservation are diminished or impaired as a result of the diversions proposed by these applications.

6. Spring Valley appears to be fully appropriated and there is no water available for further water withdrawal in the basin.

7. The withdrawals of groundwater proposed in the applications could likely result in reductions in flows in the carbonate aquifer and related discharge. If permitted, the proposed withdrawals could interfere with the senior federal reserved rights held by the United States in trust for the Tribe.

8. Available scientific literature is not adequate to reasonably assure that the groundwater appropriation and diversions proposed by these applications will not impact the senior water rights of the Confederated Tribes of the Goshute Reservation. The State Engineer will, therefore, be unable to make a determination that injury will not occur to other water users, including that of the Tribe.

The BIA reserves the right to amend and supplement its exhibit and protests of Application for Permit Nos. 79265, 79266 and 79295.

Literature Cited

Nevada State Engineer's Water Rights Database/Website, March 2010.

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.

Rose, T.P. and Davisson, M.L., 2003, Isotopic and geochemical evidence for Holocene-age groundwater in regional flow systems. Geological Society of America Special Paper 368.

Welch, A.H., Bright, D.J., and Knochenmus, L.A., 2007. Water Resources of the Basin and Range Carbonate-Rock Aquifer System, White Pine County, Nevada and Adjacent Areas in Nevada and Utah.