FILED
APR 30 2010
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF APPLICATION NUMBER 79630
FILED BY Moapa Valley WD
ON February 22, 2010
TO APPROPRIATE WATER

PROTEST

Comes now Charles 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 79630, filed on February 22, 2010, by Moapa Valley WD to appropriate water, situated in Clark 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.

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Signed: _____
Agent or protestant

Charles W. Pettee
Printed or typed name, if agent

Address: 1201 Oak Ridge Dr., Suite 250
Street No. or P.O. Box No.

Fort Collins, CO 80525
City, State and Zip Code

FLORA B. ROMERO NOTARY PUBLIC STATE OF COLORADO

Subscribed and sworn to before me this 27th day of April, 2010.

_____
Notary Public

State of Colorado
County of Larimer

My Commission expires Flora B. Romero, Notary Public State of Colorado My Commission Expires ...

IN THE MATTER OF APPLICATION 79630
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 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 the 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 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 No. 5126. The point of diversion is located in the NW¼ SE ¼, Sec. 19, T. 16 S., R. 68 E., M.D.B.M.

V. 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 could be affected by upgradient 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 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, as protected under the Endangered Species Act.

The United States has State appropriative water rights to two springs near the mouth of the Muddy River, which could be impaired by the appropriation and diversion proposed by this application: Kelsey's Springs, located in the SW1/4 NW1/4, Sec 20, T.16 S., R.68 E., M.D.B.M., Certificate No. 296; and Rogers Spring, located in SE1/4 SE1/4, Sec. 12, T.18 S., R.67 E., M.D.B.M., Certificate No. 4476.

VI. Moapa Valley Water District filed Application No. 79630 to withdraw 5 cubic feet per second (cfs) or up to an annual duty of 3,620 acre-feet per year (afy). In addition, Moapa Valley Water District has filed Application Nos. 79628 and 79631 in Basin 220. Application No. 79628 seeks 5 cfs or up to an annual duty of 3,620 afy; Application No. 79631 seeks 10 cfs or up to an annual duty of 7,240 afy.

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

FINDINGS

I. The proposed appropriation is located in the Lower Moapa Valley hydrographic basin (220). The Muddy River flows into Lake Mead NRA within this basin. The Muddy River Springs are the source of the Muddy River. Water rights 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).

II. The groundwater withdrawal proposed by this application, in combination with existing permits and pending applications, may affect groundwater flow paths and capture groundwater that naturally discharges to the Muddy River. The annual mean discharge in the Muddy River has declined from about 47 cfs in 1944 to about 33 cfs in 2000 at the USGS gaging station near Moapa. Additional groundwater withdrawals will cause further declines in the Muddy River.

IN THE MATTER OF APPLICATION 79630
EXHIBIT A - CONTINUED

Protest by Charles W. Pettee on behalf of
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III. The springs within Lake Mead NRA, located within the Black Mountains Area, are discharge points from the regional groundwater flow system, and may be affected by the proposed appropriation. The National Park Service is concerned that the groundwater withdrawal proposed by this application and associated applications, if approved and developed, in combination with existing appropriations in the regional carbonate-rock aquifer system, will reduce or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined for the springs, given that pumping occurs over a long period of time.

IV. Committed ground-water resources in the Lower Moapa Valley are 5,813 afy (Ruling 1169, Office of the State Engineer, 2002). The Nevada Division of Water Resources (2010) lists the perennial yield of Lower Moapa Valley as 50 afy. Therefore, there is no water available for appropriation.

V. The State Engineer found that further hydrologic study is needed in Lower Moapa Valley before pending and new applications may be granted (Ruling 1169, Office of the State Engineer, 2002). The State Engineer found that it would not be prudent to issue additional water rights from the identified basins, including the Lower Moapa Valley, until a significant portion of water rights already issued are pumped for a substantial period of time, to determine what impacts, if any, those water rights may have (Ruling 1169, Office of the State Engineer, 2002).

CONCLUSIONS

I. There is no water available for appropriation because:

A. The Muddy River, its source of supply, and tributaries, are fully appropriated.

B. Committed groundwater resources already exceed the renewable water resource in Lower Moapa Valley.

II. The approval and development of this application will impair the water rights of the United States, because:

A. The proposed appropriation, in combination with existing appropriations and pending applications, will reduce the discharge of the Muddy River.

B. The proposed appropriation, if approved and developed, in combination with existing appropriations in the regional carbonate-rock aquifer system, will reduce

or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined for the springs, given that pumping occurs over a long period of time.

III. The public interest would not be served by granting this application, because 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.

LITERATURE CITED

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.

Nevada Division of Water Resources, 2010, Water Rights Database, Hydrographic Abstract, and Hydrographic Area Summary: Online at <http://water.nv.gov/water> as of April 2010.

Prudic, D.E., Harrill, J.R., and Burbey, T.J., 1995, Conceptual evaluation of regional ground-water flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states: U.S. Geological Survey Professional Paper 1409-D, pp. D1-D102.

Rush, F.E., 1968, Water-resources appraisal of the Lower Moapa-Lake Mead Area, Clark County, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 50, 66 p.