

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

FILED
SEP 26 2011 *EA*
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 81019
FILED BY CHAPARRAL LIMESTONE AND CEMENT CO., LLC
OF PROVO, UTAH
ON JULY 29, 2011 TO APPROPRIATE
THE WATERS OF THE STATE OF NEVADA

PROTEST

Comes now William R. Hansen, 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 Acting Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 81019 to appropriate the underground waters for the following reasons and on the following grounds, to wit:

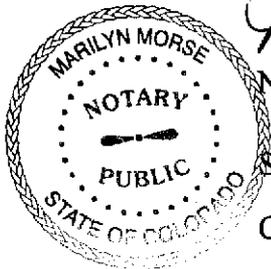
See Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The National Park Service will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights of Lake Mead National Recreation Area.

Signed *Wm. R. Hansen*
Agent or Protestant
William R. Hansen
Printed or Typed Name

Address 1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Subscribed and sworn to before me this 23 day of Sept, 2011.



Marilyn Morse
Notary Public

State of Colorado

County of Larimer

My Commission expires 8/25/2014

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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 Chaparral Limestone and Cement Company, L.L.C. 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 NW¹/₄ SE ¹/₄, 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

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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 Rogers Spring, located in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 12, T.18 S., R.67 E., M.D.B.M., Certificate No. 4476.

- VI. Chaparral Limestone and Cement Company, L.L.C. filed Application No. 81019 to withdraw a total of 0.139 cubic feet per second (cfs) of groundwater from the Lower Moapa Valley hydrographic basin (Basin 220). The total annual duty for this application is 100 acre-feet per year (afy).
- VII. The NPS reserves the right to amend this exhibit as more information becomes available.

FINDINGS

- I. Recharge to the Lower Moapa Valley from precipitation is estimated to be less than 50 acre-feet per year (afy) (Rush, 1968, Harrill and others, 1988). Committed groundwater resources in the Lower Moapa Valley are 5,721 afy (Nevada Division of Water Resources, 2011). The Nevada Division of Water Resources currently recognizes the perennial yield of Lower Moapa Valley as 50 afy. Therefore, there is no water available for appropriation.
- II. The proposed appropriation is located in the Lower Moapa Valley hydrographic basin (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).
- III. 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 35 cfs in 2010, at the USGS gaging station near Moapa. Additional groundwater withdrawals will cause further declines in the Muddy River.

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- IV. Lake Mead NRA springs, located within the Black Mountains Area, are discharge points for regional groundwater flow systems (Harrill et. al., 1988 and Prudic et. al., 1995). The groundwater withdrawal proposed by this application, in combination with existing permits, may reduce or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined to the springs.
- V. The State Engineer found that further hydrologic study is needed in Lower Moapa Valley before pending and new applications may be granted (Order 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 (Order 1169, Office of the State Engineer, 2002).

CONCLUSIONS

- I. There is no water available for appropriation because:
 - A. Committed groundwater resources already exceed the renewable water resource in Lower Moapa Valley, and
 - B. The Muddy River, its source of supply, and tributaries, are fully appropriated
- 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, and
 - B. The proposed appropriation, in combination with existing appropriations and pending applications, will reduce the discharge of Lake Mead NRA springs by capturing groundwater that naturally discharges to the springs.
- 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.

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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.
- Muddy Valley Irrigation Company, 1938, Protest of the Muddy Valley Irrigation Company in the Matter of Application No. 10188 by the United States Department of Agriculture, Bureau of Biological Survey, for Permission to Appropriate Water From Muddy Creek, Filed March 9, 1938: Nevada State Engineer's Office, Carson City, Nevada, 2 p.
- Nevada Division of Water Resources, 2011, Water Rights Database, Hydrographic Abstract, and Hydrographic Area Summary: Online at <<http://water.nv.gov/water>> as of September 2011.
- 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.