

**TAGGART & TAGGART, LTD.**

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PAUL G. TAGGART  
SONIA E. TAGGART

JOSEPH C. REYNOLDS

January 18, 2008

Tracy Taylor, P.E.  
Nevada State Engineer  
DIVISION OF WATER RESOURCES  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES  
901 South Stewart Street, 2<sup>nd</sup> Floor  
Carson City, Nevada 89701

2008 JAN 18 PM 4:50

Re: Withdrawal of Protests

Dear Tracy:

Enclosed herewith, please find a Stipulation for Withdrawal of Protests regarding Application Nos. 53987 through 53992 by the Moapa Band of Paiute Indians. This Stipulation was agreed to and signed by the parties.

Thank you, and should you have any questions, please feel free to contact this office.

Sincerely,

SE	'S EXHIBITS	79
DATE:	9-26-11	

*Paul G. Taggart*  
PAUL G. TAGGART, ESQ.

PGT/rrd

Enclosure(s) ~ Stipulation for Withdrawal of Protests

cc: George Benesch  
Simeon Herskovits  
Gregory J. Walch

State	'S EXHIBIT	10
DATE:	2-4-08	

## STIPULATION FOR WITHDRAWAL OF PROTESTS

This Stipulation for Withdrawal of Protests ("Stipulation") is made and entered into on this 9<sup>th</sup> day of January, 2008 ("Effective Date") between the Southern Nevada Water Authority ("SNWA") and the Moapa Band of Paiute Indians ("Tribe"). For convenience, SNWA and the Tribe are at times herein referred to individually as "Party" and collectively as "Parties."

### RECITALS

- A. In October 1989, the Las Vegas Valley Water District (SNWA's predecessor-in-interest) filed Applications 53987 through 53992, inclusive, (hereinafter referred to as the "SNWA Applications") for a combined 48 cubic feet per second ("cfs") of groundwater withdrawals in the Delamar, Dry Lake and Cave Valley Hydrographic Basins ("the Hydrographic Basins"). SNWA intends to pump up to 34,752 acre-feet of groundwater annually from the Hydrographic Basins for municipal purposes with concurrent monitoring, management, and mitigation as specified the January 2008 Stipulation for Withdrawal of Protests entered into between SNWA and various U.S. Department of the Interior bureaus ("Federal Stipulation"). In the future, SNWA may apply to the Nevada State Engineer ("State Engineer") to change the points of diversion within the Hydrographic Basins for any quantities of groundwater permitted pursuant to the SNWA Applications.
- B. On July 9, 1990, the Tribe filed protests to each of the SNWA Applications and on September 10, 2007 the Tribe filed a notice of representation and expressed its intent to participate as a protestant in the hearings on the SNWA Applications that are scheduled to begin on February 4, 2008.

2008 JAN 18

C. The Tribe's water rights include: 1) Permit No. 54075 issued by the Nevada State Engineer for 2,500 acre-feet per year ("afy") at 5 cfs; and 2) a surface water lease of shares in the Muddy Valley Irrigation Company ("MVIC") between the Tribe and MVIC at the rates of 11.5 cfs (April – September) and 10.5 cfs (October – March), subject to a consumptive use limit of 3,700 afy ("Tribal Water Rights"). The Tribe also holds other groundwater applications pending before the State Engineer and retains claims to federally-reserved rights to groundwater and surface water pursuant to a proposed Water Settlement Agreement agreed to by the Tribe, SNWA and others, that remains pending for federal approval.

D. As evidenced by the April 20, 2006 Memorandum of Agreement and associated Water Supply Agreement, the Tribe and SNWA have a history of working together to address water issues in southern Nevada, and the Parties believe that the Tribe's concerns regarding development of groundwater from the SNWA Applications are best addressed through this Stipulation, rather than by being a protestant in the hearings on the SNWA Applications.

NOW, THEREFORE based on the foregoing and the mutual promises and covenants contained herein, the Parties agree as follows:

#### AGREEMENT

1. The Tribe hereby withdraws its protests to the SNWA Applications and agrees that the State Engineer may rule on the SNWA Applications based upon the terms and conditions set forth herein.

2. SNWA hereby agrees to manage the development and use of any water rights permitted to SNWA by the State Engineer in the Hydrographic Basins in a manner which avoids injury to Tribal Water Rights. Actions that SNWA may take in order to offset injury to Tribal Water Rights include, but are not necessarily limited to:
  - a. Reduction or cessation of groundwater withdrawals within the Hydrographic Basins;
  - b. Geographic redistribution of pumping within the Hydrographic Basins;
  - c. Augmentation of regional spring flows and/or regional groundwater tables;
  - d. Augmentation of Tribal Water Rights on terms reasonably agreeable to the Tribe; and
  - e. Other measures as agreed to by the Parties and/or required by the State Engineer that are consistent with this Stipulation.
3. SNWA shall ensure that data, reports and other analyses related to the Hydrographic Basins that are performed by the Technical Review Panel ("TRP") pursuant to the Federal Stipulation are contemporaneously shared with the Tribe; provided however, that the Tribe shall not be a voting member of the TRP unless otherwise agreed to by the Federal Stipulation Executive Committee.
4. SNWA may apply to the State Engineer to change the points of diversion and rates of withdrawal within the Hydrographic Basins for any quantities of groundwater permitted pursuant to the SNWA Applications. Prior to filing such change applications, SNWA shall notify and consult with the Tribe about the potential effects of any proposed changes on Tribal Water Rights, and if the Tribe thereafter retains concerns about any such change application, the Tribe shall have the right to protest the change application.
5. It is the expressed intention of the Parties that by entering into this Stipulation, the Tribe and SNWA are not waiving legal rights of any kind, except as expressly provided

herein. Nor is this Stipulation intended to modify any legal standard by which Tribal Water Rights, applications for additional State groundwater rights, or claims for federally-reserved water rights are quantified or protected, except as expressly provided herein.

6. The Tribe agrees not to rebut evidence filed by SNWA with the State Engineer pursuant to the first evidentiary exchange for the hearings on the SNWA Applications. The Parties agree that a copy of this Stipulation shall be submitted to the Nevada State Engineer at the commencement of the administrative proceedings scheduled to begin on February 4, 2008. At that time, the Parties shall request on the record at the beginning of the scheduled proceeding that the State Engineer include this Stipulation as part of the permit terms and conditions in the event that he grants any of the SNWA Applications in total or in part. Following the submission of this Stipulation to the State Engineer, the Tribe, at its option, may attend the hearing, but shall not present a case, witnesses, exhibits, or statements, nor cross-examine any witnesses, nor assist any other party or protestant in presenting a case, witnesses, exhibits, statements, or cross examination.

7. Either Party hereto may transfer or assign its interest, if any, in the water rights here involved, without prior notice or permission from the other Party. Any and all transferees and assignees shall be bound by and be entitled to the benefits of the terms and conditions of this Stipulation. As a condition to any such transfer or assignment, the transferee and/or assignee shall execute a stipulation expressly stating it is bound to and a beneficiary of all of the terms and conditions of this Stipulation.

8. No Party shall be considered to be in default in the performance of any of its obligations under this Stipulation when a failure of performance shall be due to any event

beyond its reasonable control and not due to a default in any of its legal obligations (an "Uncontrollable Force"), including but not limited to, denial of access to private property, denial of right-of-way permits, facilities failure, flood, earthquake, storm, lightning, fire, labor disturbance, sabotage and/or restraint by court or public authority. A Party rendered unable to fulfill any of its obligations under this Stipulation by reason of an Uncontrollable Force shall give prompt written notice of the nature and effect of such event to the other Party.

9. This Stipulation may only be amended by mutual written agreement of the Parties.

10. This Stipulation sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings or agreements regarding the subject matter of this Stipulation. No alteration or variation of this Stipulation shall be valid or binding unless contained in a written amendment in accordance with Paragraph 9 of this Stipulation.

11. This Stipulation is entered into for the purpose of resolving a disputed claim. Except as expressly provided herein, the Parties agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other application or protest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce its terms. The Tribe hereby waives its sovereign immunity, with respect to declaratory and injunctive relief only, on any claim or appeal whatsoever brought by SNWA related to the meaning, enforcement, or performance of this Stipulation.

12. The Parties agree that any claim or controversy arising out of or related to the meaning, enforcement or performance of this Stipulation shall be brought in the Eighth Judicial District Court, Clark County, Nevada. The Tribe hereby waives and foregoes any right to claim that exhaustion of federal or Tribal court remedies is a prerequisite to bringing any action relating in any way to the meaning, enforcement or performance of this Stipulation in the Eighth Judicial District Court, Clark County, Nevada.
13. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, officers, employees, personal representatives, successors, including future Tribal and SNWA governing bodies, transferees and assigns. This Agreement is for the sole benefit of the Parties and does not create any right or benefit, substantive or procedural, enforceable by any third parties.
14. Each Party represents and warrants as follows: (a) that it and the individual executing the Agreement on its behalf is fully empowered and authorized to execute this Agreement; (b) that it is fully empowered and authorized to approve and perform this Agreement; (c) that this Agreement is binding on its interest at the moment of execution and for so long as this Agreement is in effect; and (d) that it has obtained all approvals necessary to enter into and perform this Agreement, including without limitation the Tribe's taking of all actions necessary to accomplish the Tribe's waiver of sovereign immunity as set forth herein.
15. Any notice given under this Stipulation shall be deemed properly given on the earlier of (a) when it is actually received, or (b) three (3) days after such notice was deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed as follows:


If to the Tribe:  
Chairperson  
Moapa Band of Paiutes  
P.O. Box 340  
Moapa, NV 89025

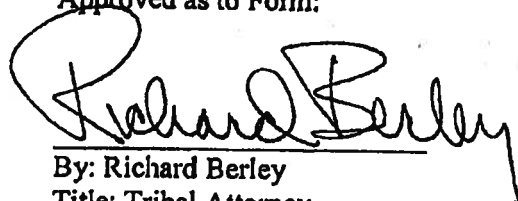
With copies to:  
Steven Chestnut and Richard Berley  
Ziontz, Chestnut, Varnell, Berley & Slonim  
2101 Fourth Avenue, Suite 1230  
Seattle, WA 98121

If to SNWA:  
General Manager  
Southern Nevada Water Authority  
1001 S. Valley View Blvd.  
Las Vegas, NV 89153

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Withdrawal of  
Protests as of the date first written above.

MOAPA BAND OF PAIUTE INDIANS

  
By: Phil Swain  
Title: Chairperson

Approved as to Form:  
  
By: Richard Berley  
Title: Tribal Attorney



SOUTHERN NEVADA WATER AUTHORITY



By: Patricia Mulroy  
Title: General Manager

Approved as to Form:



By: Dana R. Smith  
Title: Deputy Counsel