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STATE ENGINEER'S OFFICE

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BEFORE THE STATE ENGINEER, STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES

IN THE MATTER OF APPLICATION 73309 FILED BY REGIONAL UTILITIES TO APPROPRIATE UNDERGROUND WATERS

PROTEST AND REQUEST TO DENY APPLICATION 73309 PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; PETITION FOR A HYDROLOGICAL AND ENVIRONMENTAL STUDY PURSUANT TO N.R.S. 533.368

COMES NOW DAVID RUMSEY, MICHAEL S. MOORE AND JOHN G. BOGARD, as individuals, (hereafter "Protestants"), by and through their attorneys, and hereby protest the granting of application 73309, filed by Regional Utilities on October 03, 2005, to appropriate the underground waters situated in the Smoke Creek Desert, Washoe County, Nevada. Mr. Rumsey's address is: David Rumsey, Parker Ranch, P.O. Box 232, Gerlach, NV 89412. Mr. Moore's address is: Michael S. Moore, Wall Spring Ranch, 71600 County Road 33, Gerlach, Nevada 89412. Mr. Bogard's address is: P.O. Box 4, Gerlach, Nevada 89412. Protestants are all residents, landowners, and water right owners in the vicinity of Gerlach, Nevada, in Smoke Creek where the subject application seeks to appropriate waters.

Rumsey, Moore and Bogard protest the Application for the following reasons and on the grounds, to wit:

1. The Applicant seeks to appropriate 5.0 cfs - 1,900 acre feet per annum to be used for quasi-municipal purposes. Regional Utilities proposes to appropriate and divert underground water located in Smoke Creek Basin (Basin 21) for municipal purposes to serve multiple hydrographic basins (81, 82, 84, 85, 86, 87, 91, 92A, 92B, 100 and 100A.). Water rights within

Basin 21 have not been adjudicated under N.R.S. § 533.090 et seq. Protestants and others have previously petitioned the State Engineer to adjudicate the water rights within Basin 21. There are numerous applications, permits and proofs which have been filed on the Smoke Creek and Tributaries which fully appropriate all flows from these sources; therefore, there is no unappropriated water available.

2. Groundwater aquifers in the Smoke Creek Basin are intimately connected to surface water sources, such as Smoke Creek and Rush Creek, which have their headwaters in Lassen County, California. The State Engineer should adjudicate these water rights to address the interstate issues. Lassen County has joined in the request for an adjudication of the rights in Smoke Creek.

3. The Applicant seeks to divert and store groundwater from Basin 21 to be used in other water basins. This will negatively impact current ground water users who depend on the availability of groundwater water in the Smoke Creek Basin, especially in drought years.

4. N.R.S. 534.120 authorizes the State Engineer to designate a basin as a depleted groundwater basin. Protestants assert that Basin 21, Smoke Creek Basin, is a depleted groundwater basin and should be so designated by the State Engineer. In addition, senior priority pending applications filed by Washoe County seek to appropriate any unappropriated ground water resources in this basin for the same purpose and similar places of use; therefore, these applications are unnecessary.

5. Due to the large magnitude of this Application and potential inter-basin transfers, a hydrological study and environmental impact study should be conducted pursuant to N.R.S. 533.368. These studies are especially critical since previous USGS studies have identified the

potential for inter-basin flow between the Smoke Creek and adjacent basins.

6. Based upon information and belief, Protestants believe that the Application to Appropriate will conflict with existing water rights of Protestants.

7. A project of this magnitude will require NEPA compliance as well as an Environmental Impact Study. The State Engineer should withhold hearings and actions on these applications until these studies/processes are completed.

8. The State Engineer must address requirements of N.R.S. 533.370(6) for an interbasin transfer of groundwater. This Applications will limit the future growth and development of rural communities within Smoke Creek Basin to benefit the urbanizing areas which are experiencing significant quasi-municipal growth. N.R.S. 533.370(6)(d). In addition, importation of groundwater to support growth in the urbanizing areas will create many unknown hydrologic, socioeconomic, and environmental impacts.

9. If this Application is approved, the public interest will be violated in that there will be a negative impact on ground, spring, and surface water sources relied upon by farmers, ranchers, wildlife and other landowners and will negatively impact flows to the wetlands, artesian wells and will adversely affect water quality.

10. The future demand on the Smoke Creek Basin is unknown. Granite Fox Power, LLC proposes to construct and operate a large coal fired electric power plant in the Smoke Creek Desert and use 25,000 acre feet of water from surface and underground sources in Basin 21. The effects of the Regional Utilities Application to Appropriate waters in Smoke Creek must be considered in conjunction with the Granite Fox Power applications. The United States Bureau of Land Management is currently in the scoping process to prepare an environmental impact

statement (EIS) for the Granite Fox Power, LLC proposed project. A significant portion of this EIS will address the water resources and water rights. Not only may this EIS provide important information concerning the project, it will also assist the State Engineer's Office in considering both the water rights adjudication and this application to appropriate more water from the Smoke Creek basin. A hydrological study and environmental impact study should be conducted pursuant to N.R.S. 533.368, particularly in view of the fact that the Granite Fox Power applications will affect the entire perennial yield in the Smoke Creek Basin.

11. The proposed Application requires easements for rights of way over private and federally administered lands and the Applicant has made no demonstration that it is feasible for it to obtain said easements.

12. The proposed Application is detrimental to the public interest for the following reasons, to wit:

a. There is no unappropriated water available for the stated purpose;

b. The amount of water to be appropriated would cause further depletion to the groundwater and continue to place the basin in overdraft;

c. The proposed use of the water would have a detrimental effect on wildlife and on native vegetation;

d. The proposed use of the water will cause the soil to subside, causing cracks in foundations and roadbeds;

e. The proposed use will cause the detrimental impacts to wetlands and riparian areas;

f. The proposed use of water will impact the water supply in Pyramid Lake,

potentially causing harm to listed endangered and/or threatened species;

g. The proposed use of water will cause the water table to drop, preventing subsurface irrigation of vegetation;

h. The proposed use of water will remove surface water from the water basin, thus altering the geology and appearance of the area forever;

i. The proposed use of water will lower the water table, causing existing wells to dry up or requiring wells to be drilled deeper;

j. The proposed use of water will interfere with artesian water sources, springs and seeps, preventing them from reaching the surface;

k. The proposed use of water will prevent the beneficial use of water for irrigation, thus interfering with existing prior vested and certificated water rights;

l. The proposed use of water will cause a violation of the Migratory Bird Treaty Act;

m. The proposed use of water will prevent the appropriation of existing water rights for domestic purposes in times of drought;

n. The proposed use of water will have a detrimental effect on wildlife refuges and protected habitats.

o. The proposed use of water will adversely impact water use in adjoining water basins.

p. The proposed use of the water will cause an increase in dust and particulates and will cause exceedances of air quality standards for the basin.

q. The proposed use conflicts with protectable interests in existing domestic wells

as set forth in N.R.S. 533.024; therefore, the State Engineer must reject the applications. N.R.S. 533.370(4)

13. The proposed Application is speculative as it fails to adequately identify the beneficial use of the water or the place of beneficial use.

14. The proposed application fails to adequately identify a specific project where the water will be applied for beneficial use. The Applicant has not demonstrated feasability of beneficial use of the water, therefor, the application is speculative.

15. Regional Utilities status as a Nevada Corporation is currently in default and their right to transact business is forfeited. N.R.S. 78.175(2). Noncompliance with the filing requirements deprives a corporation of its rights, thus they may not possess a water right. Regional Utilities is unable to beneficially use the water applied for or show the financial ability and reasonable expectation to construct works necessary to apply the water for its intended purpose. N.R.S. 533.370(c).

16. Since the full scope of this project is unknown and speculative in nature, the Protestants reserve the right to add or amend this Protest as more information becomes available.

THEREFORE, Protestants respectfully request that the State Engineer require hydrological and environmental impact studies to be conducted pursuant to N.R.S. 533.368, that

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the State Engineer hold a hearing on the Application, and that the Application be denied and an order be entered by the State Engineer denying said application.

Dated this 29th day of March, 2006.

Respectfully submitted,

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Attorneys for Protestants David Rumsey,
Michael S. Moore and John G. Bogard

Subscribed and sworn to before me this 29th day of March, 2006.

SAMANTHA HUBLEY
Commission # 1441610
Notary Public - California
San Francisco County
My Comm. Expires Oct 22, 2007

Notary Public