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

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IN THE MATTER OF APPLICATION 74339 FILED BY JACKRABBIT PROPERTIES, LLC, TO APPROPRIATE THE UNDERGROUND WATERS OF SMOKE CREEK BASIN

PROTEST AND REQUEST TO DENY APPLICATION 74339; 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 74339, filed by Jackrabbit Properties on May 25, 2005, to appropriate 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 Basin (Basin 21), 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 2.0 cfs to be used for irrigation and domestic purposes. 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. Lassen County has joined in the request for an adjudication of the rights in Smoke Creek. The State Engineer should adjudicate these water rights to address the interstate issues.

3. 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, pending applications filed by Washoe County already seek to appropriate any unappropriated ground water resources in this basin.

4. The Application has a designated use of irrigation indicating that 80 acres will be irrigated. The Application also indicates that use will begin January 1st and end December 31st of each year. Use for irrigation should be limited to the irrigation season and water should not be provided for the stated purpose year round.

5. The Application indicates that the amount of water applied for is 2.0 cfs. If the entire 2.0 cfs is removed from the basin January 1st through December 31st, the amount of water appropriated would be 1445.4 acre feet annually (af/a). This amount of water would create waste. Use of water for irrigation should be limited to the amount required to irrigate 80 acres based on the conventional water duty of 4.0 af/a.

6. The Application, along with similarly filed applications (see applications 74336-74341) seek 14.0 cfs total. If the entire 14.0 cfs is removed from the basin January 1st through December 31, the amount of water appropriated would total 10,117.8 af/a. According to the "Nevada's Water Resources," Bruce R. Scott *et al.*, for Smoke Creek Desert (Basin 21) the

perennial yield is 16,000 af/a, and the groundwater in storage is 20,000 acre feet. According to the Nevada Division of Water Resources Water Rights Database, Hydrographic Abstract for Basin 21, there are over 15,000 af/a of perfected, certificated, and vested underground water rights in Basin 21. This does not include the numerous pending applications to appropriate underground waters in Smoke Creek Basin. Approval of the instant applications will further deplete the groundwater and continue to place the basin in overdraft.

7. The Application, along with similarly filed applications (see applications 74336-74341) seek to irrigate 649.5 acres with new groundwater appropriations. At the conventional duty of 4.0 af/a, these application seek to appropriate an additional 2598 af/a of water in the already depleted Smoke Creek Basin. There is no water available for appropriation, and if granted, this Applications will continue to place the basin in overdraft.

8. The Application indicates that the estimated cost of the works is $60,000 and it will require eight (8) years to put the water to beneficial use. This is six (6) years after the estimated time for completing the works. Six years after completion of works to place the water to beneficial use is too long a time and it promotes speculation of a water right. It is unclear from the Application why this cost and delay is necessary to irrigate the proposed 80 acres. Since the full scope of this project is unclear, the Protestants reserve the right to add or amend this Protest as more information becomes available.

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

10. If this Application is approved, the public interest will be violated in that there will be a negative impact on ground, spring & 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.

11. Due to the large magnitude of this Application and other related applications (see applications 74336-74341), a hydrological study and environmental 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 Smoke Creek and adjacent basins.

12. 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 Bright Holland 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.

13. 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 prevent the appropriation of existing water rights for domestic purposes in times of drought;

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

n. The proposed use of water will adversely impact water use in adjoining water

basins.

o. 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(5).

THEREFORE, Protestants respectfully requests that the State Engineer require hydrological and environmental impact studies to be conducted pursuant to N.R.S. 533.368, that 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 31st day of August 2006.

Respectfully submitted,

MICHAEL J. VAN ZANDT, Esq.
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Attorneys for Protestants David Rumsey,
Michael S. Moore and John G. Bogard

Subscribed and sworn to before me this 31 day of August 2006.

TERESA BECHELLI
Comm. # 1379760
NOTARY PUBLIC - CALIFORNIA
City & County of San Francisco
My Comm. Expires Oct. 12, 2006

Notary Public

CERTIFICATE OF MAILING

I hereby certify that on August 31, 2006, I served a copy of the attached **PROTEST AND REQUEST TO DENY APPLICATION NOS. 74336; 74337; 74338; 74339; 74340; and 74341; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; PETITION FOR A HYDROLOGICAL AND ENVIRONMENTAL STUDY PURSUANT TO N.R.S. 533.368** via United States first class mail, postage pre-paid, on the parties listed below:

Jackrabbit Properties, LLC
James G. Sanford
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Suite 900
Reno, NV 89501

Bright-Holland Co.
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I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Dated this 31st day of August, 2006 in San Francisco, California.

Keith Kiley

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