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

2008 JAN -8 AM 11:37

IN THE MATTER OF APPLICATION 76213 FILED BY BRIGHT HOLLAND CORPORATION TO APPROPRIATE THE WATERS OF SQUAW CREEK & TRIBUTARIES	**PROTEST AND REQUEST TO DENY APPLICATION 76213; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; PETITION FOR A HYDROLOGICAL AND ENVRIONMENTAL STUDY PURSUANT TO N.R.S. 533.368**

FILED
JAN 08 2008
STATE ENGINEER'S OFFICE

COMES NOW DAVID RUMSEY, MICHAEL S. MOORE AND JOHN G. BOGARD, as individuals (hereafter "Protestants"), by and through their agent, and hereby protest the granting of Application 76213 (hereafter "Application"), filed by Bright Holland Corporation, on August 30, 2007 and again as a corrected Application on November 2, 2007, to appropriate the waters of Squaw Creek & Tributaries, 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, where the subject Application seeks to appropriate waters.

Rumsey, Moore and Bogard (collectively referred to as "Protestants") protest the Application for the following reasons and on the grounds, to wit:

1. The Applicant seeks to appropriate 3,500 acre-feet a year (10 cfs) from Squaw Creek and its tributaries to store in Squaw Creek Reservoir which proposed to be expanded. Water will be captured on a year round basis and provide carryover storage for secondary uses.

It is unknown the extent of reservoir expansion or exact location of lands inundated with the reservoir expansion.

2. NRS § 533.370(c) requires Bright Holland to prove its intent to construct any work necessary to apply the water to beneficial use, and its financial ability and reasonable expectation to actually construct the work and apply the water to beneficial use. The "anti-speculation doctrine" precludes speculative water right acquisitions in which the purported appropriator does not intend to put water to use for its own benefit without a showing of beneficial use. *See e.g. Bacher v. Office of State Engineer of State of Nevada*, 146 P.3d 793, 799 (Nev. 2006). For example, the Nevada State Engineer recently denied White Pine County's application to appropriate water from the Spring Valley Hydrographic Basin because the application was speculative and threatened to prove detrimental to the public interest. *See* Nevada State Engineer Ruling 5615, Page 19 (citing N.R.S. § 533.370(5)). White Pine County could not demonstrate any intent to actually build the power plant it proposed in its application, and likewise could not prove that it would put the water it applied to appropriate to beneficial use. *See* Nevada State Engineer Ruling 5615, Page 19 (citing N.R.S. § 533.370(5)). Bright Holland has not provided any evidence of its intent to expand the dam and reservoir project in its Application or that it is financially able and intends to actually construct the work and apply the water to beneficial use. The Application refers to secondary permits for unspecified multiple purposes to define beneficial uses at a later date instead of identifying beneficial uses of the dam and reservoir project in the Application itself.

3. The Application indicates that it will require eight (8) years to construct the works. The Application also indicates that water will be put to beneficial use pursuant to

secondary permits that Bright Holland will file at a later date. The extended amount of time required to construct the works, file additional secondary beneficial use permits, and put the water in the project to a (currently unspecified) beneficial use indicates the speculative nature of this Application, and project. The Application provides no justification as to why this costly, time-intensive project is necessary, and what the full scope or purpose of the actual project is. Protestants object to the extended period of time to prove beneficial use, because this ties-up water rights for an extended period for speculative purposes. Since the purpose and scope of the project are unclear, the Protestants reserve the right to add or amend this Protest as more information becomes available.

4. Since this is a application for primary storage (10 cfs & 5,000 afa) and there has been no definitive description of the secondary uses, the State Engineer is justified in requesting additional information regarding the project under N.R.S. §§ 533.370, 533.375 and 533.340 to gain a better understanding of the project. The State Engineer should send a letter to Bright Holland similar to its recent letter to Regional Utilities (73685 & 73686 dated March 6, 2007 requesting this type of information. This information may provide additional details and protest concerns. Accordingly, the Protestants reserve the right to amend their protest of the primary storage application as more information becomes available.

5. Because the nature and specifics of the secondary permits Bright Holland proposes to file for this project are unknown, it is impossible to exactly determine water rights that the Application and its secondary permits will affect. Based on information and belief, however, Protestants believe that the Application and its secondary permits will conflict with existing water rights of Protestants. Groundwater aquifers in the Smoke Creek Basin are

intimately connected to surface water sources in the Basin, such as Squaw Creek. The flows of water in Squaw Creek and its tributaries and flood flows of Squaw Creek are a natural component and a source of recharge to the groundwater resources in Smoke Creek Basin. The Application proposes to divert and store 3,500 acre-feet of water from upstream portions of Squaw Creek. This large-scale diversion and storage of Smoke Creek waters will have a negative impact on ground water and spring water sources relied upon by the Protestants and other farmers, ranchers and landowners in Basin 21, and will negatively impact flows to the wetlands and artesian wells throughout Basin 21. The Application's proposed diversion and storage will also adversely affect water quality in groundwater, spring water and surface water throughout the Basin that Protestants and other landowners rely on for water supply.

6. The Application proposes to inundate and store water in a large portion of land surrounding Squaw Creek, however the Application fails to provide any evidence that Bright Holland has control of the property the Application proposes to inundate. Portions of the proposed place of use described in the Application are in the Public domain. If Bright Holland inundates property that it does not control, the Application will injure existing water rights and the rights of property owners in the proposed area of use of the project.

7. NRS § 533.340(6) specifies additional requirements for applications proposing the storage of water. The application must state the purpose, the dimensions and location of the proposed dam, the capacity of the proposed reservoir, and a description of the land to be submerged by the impounded waters. Bright Holland's Application does not state the purpose of the project, and does not clearly specify the dimensions of the proposed dam beyond the approximate outline of the existing Squaw Creek Reservoir. Bright Holland's Application also

does not specify whether it has control over all of the land it proposes will be submerged by its storage project. Bright Holland must submit additional information to the State Engineer thoroughly describing these aspects of the proposed project.

8. Bright Holland has not provided sufficient information to demonstrate that there are sufficient flows in Squaw Creek to store 5,000 acre-feet of water a year and satisfy the 10 cfs diversion right that the Application proposes. If sufficient flows in Squaw Creek do not exist to satisfy the storage project the Application proposes, the State Engineer should deny the Application.

9. Protestant 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 surface and underground waters in the Smoke Creek Hydrographic Basin, including the Squaw Creek, which fully appropriate all flows from these sources, therefore there is no unappropriated water. See attached table, Exhibit 1, showing pending applications, changes and existing rights on the Squaw Creek source. Although the State Engineer has denied the adjudication petition, applications such as this one clearly demonstrates the pressing need for such adjudication.

10. In light of the appropriation activity in Basin 21, and the 3,500 acre- feet this application proposes to appropriate per year from Basin 21, the State Engineer should adjudicate water rights in the Smoke Creek Basin.

11. The Application seeks to appropriate 3,500 acre-feet of water per year from Squaw Creek. According to the USGS Reconnaissance Report #44, the perennial yield for Smoke Creek Desert/Basin 21 is 16,000 af/a. Nevada Division of Water Resources Water Rights

Database, Hydrographic Abstract for Basin 21, provides that there are over 12,000 af/a of permitted, 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. Because the flows of water in Squaw Creek and its tributaries and flood flows of Squaw Creek are a natural component and a source of recharge to the groundwater resources in Smoke Creek Basin, approval of the instant application for 3,500 acre-feet of water per year from Smoke Creek will further deplete the groundwater and continue to place the basin in overdraft.

12. 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.

15. Due to the large quantity of water this Application proposes to appropriate and potential inter-basin transfers that could be associated with the secondary applications proposed in connection with this Application, Bright Holland should conduct a hydrological study and environmental impact study 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.

17. 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, other landowners and wildlife. This Application, if approved, will also negatively impact flows to the wetlands, artesian wells and will adversely affect water quality.

19. The Application and referenced subsequent secondary applications require easements for rights of way over private and federally administered lands. The Applicant has made no demonstration that it is feasible for it to obtain said easements. The applicant does not own all of the area shown in the proposed place of use nor is it discernable whether they own the area proposed to be inundated with the reservoir expansion because it is not shown on the map.

20. The Application also proposes places of use on or near areas of federal property managed by the Bureau of Land Management ("BLM") as wilderness study areas to retain their wilderness character. Wilderness study area uses include protection of air and watersheds, fish and wildlife habitat, maintenance of soil and water quality, ecological stability, plant and animal gene pools, protection of archaeological and historical sites, habitat for wildlife, livestock grazing, and recreation. Inundating portions of federally administered wilderness study areas runs contrary to these specified uses and allows a man-made structure to intrude into the wilderness in violation of 43 U.S.C. § 1782 *et seq*.

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

23. The State Engineer must ensure that the provisions of N.R.S. § 533.370(6)(a) – (e) are fulfilled and addressed. This Application will limit the future growth and development to the detriment of rural communities in Basin 21. This is a violation of N.R.S. § 533.370(6)(d).

24. The proposed application is detrimental to the public interest for the following reasons:

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 detrimental impacts to wetlands and riparian areas;

f. The proposed use of water will likely impact the water supply in adjacent basins including 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 well 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 have a detrimental effect on wildlife refuges and protected habitats;

l. 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;

m. The proposed use conflicts with protectable interests in existing domestic wells as set forth in N.R.S. § 533.024.

25. Since the full scope of this project is unknown and speculative in nature, the protestant reserves the right to add or amend this protest as more information becomes available.

26. THEREFORE, Protestant respectively 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 4 day of January, 2008.

Respectfully submitted,

Chris C. Mahannah, PE, SWRS
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Reno, NV 89505
(775) 323-1804
Chris@gbis.com
Agent for Protestants David Rumsey,
Michael S. Moore and John G. Bogard

Subscribed and sworn to before (or affirmed) before me on this 4 day of January, 2008 by Chris C. Mahannah personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

BRITTNI CHRISTIANSEN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No. 06 107557-2 - Expires April 19, 2010

Notary Public

"EXHIBIT #1"

Nevada Division of Water Resources

Hydrographic Abstract

Number of Records: 17

Selection Criteria: basin IN ('021') AND app_status IN ('APP','CER','PER','RES','RFA','RFP','RLP','RVP','VST','DEC') AND source IN ('str') AND

Basin	Application	Change of Application	Cert	File date	App status	Source	Point of Diversion QQ	Q	SEC	TWN	RNG	Diversion rate	Use	Irrigated Acres	Duty balance	Duty unit	CO	Owner name
021	13943		5588	12-12-51	CER	STR	NE	NE	30	34N	22E	0.000	IRR	0.00		AFS	WA	BRIGHT-HOLLAND CORPORATION
		CHANGED BY: 67618			RFA	STR												
		CHANGED BY: 72507			WDR	STR												
	45282			02-04-82	RFA	STR	SE	NW	29	34N	22E	1.000	IRR	0.00	160.00	AFS	WA	CHRISTOPHER, MICHAEL & GERALDEAN
	67618	13943		05-30-01	RFA	STR	NE	NE	30	34N	22E	0.000	IRR	0.00		AFA	WA	BRIGHT-HOLLAND CORPORATION
	69068	V01280		08-12-02	RFA	STR	NE	NE	30	34N	22E	0.000	IRR	0.00	0.00	AFA	WA	BRIGHT-HOLLAND CORPORATION
	70650	V09128		11-19-03	RFA	STR	SE	SE	19	34N	22E	1.500	IRR	0.00	0.00	AFA	WA	BRIGHT-HOLLAND CORPORATION
	76213			08-30-07	APP	STR	NE	NW	19	34N	22E	10.000	STO	0.00		AFA	WA	BRIGHT HOLLAND COPORATION
	76214			08-30-07	APP	STR	NE	NW	16	33N	22E	10.000	STO	0.00		AFA	WA	BRIGHT HOLLAND COPORATION
	V01280			01-31-14	VST	STR	NE	NE	30	34N	22E	0.370	IRR	0.00	268.00	AFA	WA	BRIGHT-HOLLAND CORPORATION
		CHANGED BY: 69068			RFA	STR												
		CHANGED BY: 72512			WDR	STR												
	V09099			06-09-99	VST	STR	NE	NE	13	34N	21E	2.500	IRR	0.00	0.00		WA	BRIGHT-HOLLAND CORPORATION
		CHANGED BY: 72503			WDR	STR												
	V09128			08-27-99	VST	STR	SE	SE	19	34N	22E	1.500	IRR	0.00	0.00		WA	BRIGHT-HOLLAND CORPORATION
		CHANGED BY: 70650			RFA	STR												
		CHANGED BY: 72502			WDR	STR												

PRELIMINARY DATA
SUBJECT TO REVISION